FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD THOMAS,	No. 09-17212
Plaintiff - Appellant,	D.C. No. 2:09-cv-00855-CMK
v.	
J. LAWRENCE WRIGHT; et al.,	MEMORANDUM[*]
Defendants - Appellees.	

Appeal from the United States District Court
for the Eastern District of California
Craig M. Kellison, Magistrate Judge, Presiding[**]

Submitted February 15, 2011[***]

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Edward Thomas, a California state prisoner, appeals pro se from the district

court's judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust

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[*]   This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

[**]   The parties consented to the jurisdiction of the magistrate judge. *See*
28 U.S.C. § 636(c).

[***]   The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

administrative remedies under the Prison Litigation Reform Act, 42 U.S.C.

§ 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the

district court's application of substantive law, and for clear error its factual

determinations, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we

affirm.

The district court did not clearly err by deciding disputed issues of fact in

favor of defendants and finding that Thomas was not prevented from filing

grievances. *See id*. at 1119-20 ("In deciding a motion to dismiss for failure to

exhaust nonjudicial remedies, the court may look beyond the pleadings and decide

disputed issues of fact."). Accordingly, the district court properly dismissed the

action because Thomas failed to exhaust administrative remedies prior to filing

suit. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that "proper

exhaustion" under § 1997e(a) is mandatory and requires adherence to

administrative procedural rules).

AFFIRMED.