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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DURRELL PUCKETT,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>NORTH KERN STATE PRISON EMPLOYEES; et al.,</p> <p>Defendants - Appellees.</p>
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No. 10-16103

D.C. No. 1:08-cv-01243-BTM-
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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Barry T. Moskowitz, District Judge, Presiding**

Submitted May 24, 2011***

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Durrell Puckett, 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

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

** The Honorable Barry T. Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

*** 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 dismissal for failure to exhaust, and for clear error its factual determinations. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed Puckett's action because Puckett failed to exhaust administrative remedies prior to filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) ("proper exhaustion" is mandatory and requires adherence to administrative procedural rules); *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (requiring exhaustion of administrative remedies prior to filing suit).

We do not consider documents or facts presented for the first time on appeal. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

Puckett's remaining contentions are unpersuasive.

AFFIRMED.