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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN R. BAKER,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>YOLANDA MARTINEZ, Deputy Warden at Santa Rita unit; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 11-15807

D.C. No. 4:07-cv-00576-FRZ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Frank R. Zapata, District Judge, Presiding

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Arizona state prisoner John R. Baker appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

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

dismissal for failure to exhaust, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and for an abuse of discretion a dismissal for failure to serve the summons and complaint in a timely manner, *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 512-13 (9th Cir. 2001). We affirm.

The district court properly dismissed without prejudice the claims against defendants Martinez and Quiroz because Baker failed to exhaust administrative remedies prior to filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (holding that “proper exhaustion” is mandatory and requires adherence to administrative procedural rules).

The district court did not abuse its discretion in dismissing without prejudice the claims against defendants Sanchez and Verdugo because Baker failed to effect timely service or establish good cause for not having done so. *See Fed. R. Civ. P. 4(m)* (requiring service within 120 days after the complaint is filed); *In re Sheehan*, 253 F.3d at 512-13 (discussing good cause standard).

Baker’s contentions that the district court judge was biased are unpersuasive.

**AFFIRMED.**