

SEP 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWIN N. GONZALEZ,

Plaintiff - Appellant,

v.

JOHN DOE, Correctional Officer; et al.,

Defendants - Appellees.

No. 10-56567

D.C. No. 3:07-cv-01962-W-POR

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Thomas J. Whelan, District Judge, Presiding

Submitted September 10, 2012\*\*

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

Edwin N. Gonzalez, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional violations concerning the maintenance of allegedly false information

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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).

in his Central File and his placement on a contraband watch. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003) (dismissal for failure to exhaust); *Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001) (Fed. R. Civ. P. 12(b)(6) dismissal). We affirm.

The district court properly dismissed Gonzalez's First and Eighth Amendment claims because Gonzalez failed to exhaust administrative remedies before filing his second amended complaint. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (requiring proper exhaustion); *Griffin v. Arpaio*, 577 F.3d 1117, 1120-21 (9th Cir. 2009) (grievances must give notice of claim).

The district court properly dismissed Gonzalez's procedural due process claim because even assuming that a liberty interest was at stake, Gonzalez failed to allege facts showing a lack of process. *See Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (procedural due process violation requires a deprivation of a protected liberty interest by the government and lack of process).

**AFFIRMED.**