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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID S. PERRYMAN, Plaintiff - Appellant, v. SAN FRANCISCO SHERIFF DEPARTMENT; et al., Defendants - Appellees.	No. 12-16199 D.C. No. 3:08-cv-04973-TEH MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, District Judge, Presiding

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

California state prisoner David S. Perryman appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging 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).

district court's dismissal for failure to exhaust administrative remedies and for clear error its factual determinations, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed Perryman's action because Perryman did not properly exhaust administrative remedies. *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 clearly err in finding that Perryman's submission of a grievance to the captain did not exhaust Perryman's administrative remedies. *See Marella v. Terhune*, 568 F.3d 1024, 1027 (9th Cir. 2009) (noting that prisoners must "complete the administrative review process in accordance with the applicable procedural rules") (*quoting Woodford*, 548 U.S. at 88)).

We do not consider matters not distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.