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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ELISANDRO MENDOZA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>STEFANIE HUMPHREY,</p> <p>Defendant - Appellee.</p>
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No. 12-15993

D.C. No. 3:09-cv-00717-LRH-VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted March 12, 2013**

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

Nevada state prisoner Elisandro Mendoza appeals pro se from the district court's order denying his motion for relief from judgment under Federal Rule of Civil Procedure 60(b) following the dismissal of Mendoza's 42 U.S.C. § 1983

* 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).

action for failure to exhaust administrative remedies. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion in denying Mendoza's motion for relief from judgment because Mendoza failed to establish grounds for relief under Rule 60(b). *See id.* at 1263 (discussing grounds for relief from judgment under Rule 60(b)); *see also McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (holding that the district court must dismiss the complaint, rather than staying proceedings, where a prisoner has not exhausted administrative remedies prior to filing suit).

AFFIRMED.