

JUL 31 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARIN D. GREENE,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants - Appellees.

No. 13-16859

D.C. No. 2:12-cv-01757-MCE-
CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., Chief Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Darin D. Greene, a California state prisoner, appeals pro se from the district court's judgment dismissing for failure to exhaust administrative remedies his 42 U.S.C. § 1983 action alleging race-based lockdowns in violation of the Equal Protection Clause. We have jurisdiction under 28 U.S.C. § 1291. We review de

* 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).

novo, *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc), and we affirm.

The district court properly concluded that Greene failed to exhaust his administrative remedies because Greene did not exhaust his grievance through the final level of review and he did not show that administrative remedies were effectively unavailable to him. *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); *Sapp v. Kimbrell*, 623 F.3d 813, 823-24, 826-27 (9th Cir. 2010) (describing limited circumstances where improper screening renders administrative remedies unavailable or where exhaustion might otherwise be excused).

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

Appellee Salinas’ motion to strike Exhibit J of Greene’s opening brief, filed on February 18, 2014, is granted. The motion is otherwise denied.

AFFIRMED.