

JUL 31 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL DWAYNE RODGERS,

Plaintiff - Appellant,

v.

GREG MUNKS; et al.,

Defendants - Appellees.

No. 14-15167

D.C. No. 3:13-cv-02116-MEJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding**

Submitted July 21, 2015***

Before: CANBY, BEA, and MURGUIA, Circuit Judges

San Mateo County jail inmate Russell Dwayne Rodgers appeals pro se from the district court's judgment dismissing for failure to exhaust administrative

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

remedies his 42 U.S.C. § 1983 action alleging Eighth Amendment claims arising from the alleged failure to supply hygiene supplies. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc). We affirm.

The district court properly concluded that Rodgers failed to exhaust his administrative remedies because Rodgers did not appeal the relevant grievance decision to the final level of review before presenting his claims to the district court. *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 by denying Rodgers’s motions for appointment of counsel because Rodgers did not demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and exceptional circumstances requirement).

The district court did not abuse its discretion by denying Rodgers’s motions to compel discovery responses because Rodgers failed to establish that the denial caused substantial prejudice. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth standard of review and explaining that a district court’s decision to deny discovery “will not be disturbed except upon the clearest showing

that denial of discovery results in actual and substantial prejudice to the complaining litigant” (citation and internal quotation marks omitted)).

We reject Rodgers’s contentions regarding judicial bias and the district court’s alleged failure to allow him further discovery.

We do not consider arguments and allegations raised for the first time on appeal, or 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).

Rodgers’s motion for the entry of default and request for appointment of counsel, filed on April 20, 2015, are denied.

Appellees’s motion for an extension of time, filed on April 30, 2015, is denied as moot.

AFFIRMED.