

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 22 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ANTHONY BERNARD SMITH, Jr.,

No. 17-16379

Plaintiff-Appellant,

D.C. No. 5:16-cv-00156-LHK

v.

MEMORANDUM\*

STEVE ALBRITTON, Associate Warden;  
S. KLUGER, Correctional Lt.,

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Lucy H. Koh, District Judge, Presiding

Submitted August 15, 2018\*\*

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

California state prisoner Anthony Bernard Smith, Jr., appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action related to daytime congregational prayer. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*,

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

775 F.3d 1182, 1191 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment because Smith failed to properly exhaust his administrative remedies, and failed to raise a genuine dispute of material fact as to whether there was “something in his particular case that made the existing and generally available administrative remedies effectively unavailable to him.” *Albino v. Baca*, 747 F.3d 1162, 1171-72 (9th Cir. 2014) (en banc); *see also Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (requiring proper exhaustion, which means “using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)” (emphasis, citation, and internal quotation marks omitted)). Contrary to Smith’s contention, the 2013 group grievance was not duplicative of the issues raised in this case.

**AFFIRMED.**