

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 3 2020

FOR THE NINTH CIRCUIT

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

ROBERT HACKWORTH, Jr.,

No. 19-16239

Plaintiff-Appellant,

D.C. No. 5:17-cv-05569-BLF

v.

MEMORANDUM*

S. TOMLINSON,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Beth Labson Freeman, District Judge, Presiding

Submitted October 26, 2020**

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

California state prisoner Robert Hackworth, 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 alleging First Amendment retaliation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*,

* 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 Hackworth failed to exhaust his administrative remedies, and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (proper exhaustion requires “using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)” (citation and internal quotation marks omitted)); *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009) (a prisoner’s grievance must “alert[] the prison to the nature of the wrong for which redress is sought” (citation and internal quotation marks omitted)).

We reject as meritless Hackworth’s contention that defendants should have raised the exhaustion defense in a motion to dismiss rather than a motion for summary judgment. *See Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014) (en banc).

AFFIRMED.