NOT FOR PUBLICATION

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY L PATTON, Plaintiff - Appellant, v. LOADHOLT, F.N.P.; BRAR; MOON; RADING; GORD ON LOVE; DHILLION; NICOLA AGUILERA; HAILE; CLARK KELSO; MICHELE DITOMAS; VIDAL SANCHEZ, Defendants - Appellees.	No. 23-3036 D.C. No. 2:19-cv-00451-KJN MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kendall J. Newman, Magistrate Judge, Presiding

Submitted July 14, 2025**

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Anthony Patton appeals pro se from the district court's grant of summary

* 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).

judgment and denial of leave to file a sixth amended complaint. Patton brought a prisoner 42 U.S.C. § 1983 action alleging violation of his Eighth Amendment rights based on medical deliberate indifference. We have jurisdiction under 28 U.S.C. § 1291. "We review de novo a district court's summary judgment ruling that an inmate has not exhausted his claims" and review for abuse of discretion the denial of leave to amend. *Fordley v. Lizarraga*, 18 F.4th 344, 350 (9th Cir. 2021); *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). We affirm. Because the parties are familiar with the facts, we need not recount them here.

Summary judgment was proper because the record shows that Patton failed to exhaust prison administrative remedies as required by the Prison Litigation Reform Act. 42 U.S.C. § 1997e(a). Patton's operative grievance never named the defendants or the prison where they worked. Even if Patton's reference to being untreated for 12 years put defendants on notice to satisfy the administrative requirements, Patton's grievance was regardless past the 30-day deadline for filing claims. Code Regs. tit. 15, §§ 3999.227(g), (b). While a grievance that is processed on the merits despite procedural defects can in some cases satisfy exhaustion, *Reyes v. Smith*, 810 F.3d 654 (9th Cir. 2016), the grievance exhausts only as to the issues and defendants addressed, and here the response to Patton's grievance did not address any actions taken by defendants or the prison they worked at to suggest the grievance had put prison officials on

notice. *See id.*at 659; *Griffin v. Arpaio*, 557 F.3d 1117, 1121 (9th Cir. 2009).

The district court did not abuse its discretion when it denied Patton leave to file a sixth amended complaint. All the factors that courts consider in deciding whether to grant leave to amend weighed against Patton: "(1) bad faith*;* (2) undue delay*;* (3) prejudice to the opposing party*;* (4) futility of amendment*;* and (5) whether the plaintiff has previously amended his complaint." *Nunes v. Ashcroft,* 375 F.3d 805, 808 (9th Cir. 2004).

Defendants' motion to strike Patton's newly added declaration and related arguments is granted, because providing "evidence for the first time on appeal cannot create a triable issue of fact" where the party "failed to articulate this evidence to the district court in opposition to the summary judgment motion." *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 999 (9th Cir. 2002). No exceptions are applicable here. *See Bolker v. Comm'r*, 760 F.2d 1039, 1042 (9th Cir. 1985).

Because the district court's decision is affirmed, Patton's motion to appoint counsel is denied as moot.

AFFIRMED.