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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RICHARD M. GILMAN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>EDWARD S. ALAMEIDA, JR., Director; et al.,</p> <p>Defendants - Appellees.</p>
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No. 06-15592

D.C. No. CV-04-00035-DFL/KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

California state prisoner Richard M. Gilman appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that prison

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

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

officials violated the Eighth Amendment and state law by being deliberately indifferent to his medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003) (dismissal based on prisoner's failure to exhaust administrative remedies); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A), and we affirm.

The district court properly dismissed without prejudice Gilman's claim that defendant Zhu was deliberately indifferent to his medical needs because Gilman failed to exhaust administrative remedies prior to filing his federal civil rights action. *See McKinney v. Carey*, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (per curiam) (holding that 42 U.S.C. § 1997e(a) requires dismissal without prejudice where a prisoner has not exhausted administrative remedies prior to filing suit); *Woodford v. Ngo*, 548 U.S. 81 (2006) (holding that "proper exhaustion" under PLRA requires using all available administrative steps).

Gilman's remaining contentions are unpersuasive.

AFFIRMED.