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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>D. MOORE,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>J. AVERY; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 05-55983

D.C. No. CV-03-01362-DT

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and RYMER, Circuit Judges.

California state prisoner D. Moore, appeals from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C.

* 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).

§ 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

Wyatt v. Terhune, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed the action because Moore did not properly exhaust administrative remedies before filing his complaint in federal court. *See Ngo v. Woodford*, 539 F.3d 1108, 1110 (9th Cir. 2008).

AFFIRMED.