

MAR 30 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS HENDON,

Plaintiff - Appellant,

v.

BAROYA; et al.,

Defendants - Appellees.

No. 08-15489

D.C. No. 05-CV-00838-OWW

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Oliver W. Wanger, District Judge, Presiding

Submitted March 18, 2009\*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Carlos Hendon, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust

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\* 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).

administrative remedies pursuant to 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's determination that a prisoner failed to exhaust available administrative remedies, and review for clear error its findings of fact. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed the action because Hendon failed to submit any evidence demonstrating that he properly exhausted prison grievance procedures. *See id.* at 1119-20 (explaining that failure to exhaust administrative remedies is subject to an unenumerated Fed. R. Civ. P. 12(b) motion, and the court may look beyond the pleadings and decide disputed issues of fact).

Hendon's remaining contentions are unpersuasive.

**AFFIRMED.**