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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| LARRY DOMINGUEZ,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>RUBEN R. ROSAS; et al.,<br><br>Defendants - Appellees. | No. 04-55757<br><br>D.C. No. CV-03-00195-DSF<br><br>MEMORANDUM [*] |

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted September 12, 2005[**]

Before: REINHARDT, RYMER, and HAWKINS, Circuit Judges.

Larry Dominguez, a California state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies pursuant to the Prison Litigation

[*] 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).

Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review the district court's application of substantive law de novo and its factual determinations for clear error. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003).

The district court dismissed the action because Dominguez failed to appeal the rejection of his grievance as untimely at each available level of the administrative process. Dist. Ct. Op. at 7. After the district court reached that decision, significant new cases have been decided, including the Supreme Court's decision in *Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) and our opinion in *Marella v. Terhune*, 568 F.3d 1024, 1027-28 (9th Cir. 2009). Accordingly, the district court did not have the opportunity to make factual findings relevant to the now-governing legal standards. We therefore vacate the district court's decision and remand to allow that court the opportunity to reconsider Dominguez's claim in light of intervening developments in the law.

Dominguez's motion for appointment of counsel is denied.

The previous memorandum disposition is withdrawn.

**VACATED and REMANDED.**