

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 29 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KIER KEAND'E GARDNER, AKA Chris
Gardner,

Plaintiff-Appellant,

v.

THREE UNKNOWN OFFICERS OF IMU-
NORTH OF WSP, in Individual and Official
Capacities; et al.,

Defendants-Appellees.

No. 20-35783

D.C. No. 4:19-cv-05238-TOR

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Washington state prisoner Kier Keand'e Gardner appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging an Eighth Amendment violation arising from the denial of meals. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s summary judgment for failure to exhaust administrative remedies. *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014). We affirm.

The district court properly granted summary judgment because Gardner failed to exhaust his administrative remedies and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (proper exhaustion requires “using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)” (citation and internal quotation marks omitted)); *see also FTC v. Neovi, Inc.*, 604 F.3d 1150, 1159 (9th Cir. 2010) (“[A court] need not find a genuine issue of fact if, in its determination, the particular declaration was uncorroborated and self-serving.”).

Gardner’s opposed motion for oral argument (Docket Entry No. 16) and motion to supplement the record (Docket Entry No. 20) are denied.

AFFIRMED.