

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2018

FOR THE NINTH CIRCUIT

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

MICHAEL A. RISENHOOVER,

No. 18-16171

Plaintiff-Appellant,

D.C. No. 1:18-cv-00432-AWI-  
BAM

v.

SALINAS VALLEY STATE PRISON; et  
al.,

MEMORANDUM\*

Defendants-Appellees.

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

Submitted December 17, 2018\*\*

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

California state prisoner Michael A. Risenhoover appeals pro se from the district court's judgment dismissing for failure to exhaust administrative remedies his 42 U.S.C. § 1983 action alleging that prison officials failed to deliver his legal mail. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Nunez v.*

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\* 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).

*Duncan*, 591 F.3d 1217, 1222 (9th Cir. 2010). We affirm.

The district court properly dismissed Risenhoover’s action because Risenhoover did not exhaust prison grievance procedures concerning his claims and failed to show that exhaustion was effectively unavailable. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (exhaustion is mandatory and must be done in a timely manner consistent with prison policies); *Nunez*, 591 F.3d at 1224 (excusing prisoner’s failure to exhaust where prisoner is prevented from doing so).

We reject as without merit Risenhoover’s contention that the requirement to exhaust prison grievances is unconstitutional. *See Madrid v. Gomez*, 190 F.3d 990, 996 (9th Cir. 1999) (the Prison Litigation Reform Act “certainly passes constitutional muster”).

**AFFIRMED.**