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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERALD VAUGHN GWEN, Plaintiff-Appellant, v. CORE CIVIC; et al., Defendants-Appellees.	No. 23-15776 D.C. No. 2:21-cv-02150-JAT-JFM MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted November 14, 2023[**]

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Arizona state prisoner Gerald Vaughn Gwen appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Nunez v. Duncan*, 591 F.3d 1217,

[*] 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).

1222 (9th Cir. 2010). We affirm.

The district court properly granted summary judgment because Gwen failed to exhaust administrative remedies and failed to raise a genuine dispute of material fact as to whether administrative remedies were unavailable to him. *See Ross v. Blake*, 578 U.S. 632, 642-44 (2016) (explaining that an inmate must exhaust such administrative remedies as are available before bringing an action, and describing limited circumstances in which administrative remedies are unavailable); *Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) (exhaustion requires compliance with prison deadlines and other procedural rules). Contrary to Gwen's contentions, defendants pled exhaustion as an affirmative defense, defendants' motion for summary judgment was not procedurally defective, and Gwen was informed of the requirements for opposing summary judgment.

The district court did not abuse its discretion in denying Gwen's request for additional time to oppose summary judgment under Federal Rule of Civil Procedure 56(d). *See Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 612, 619-20 (9th Cir. 2017) (setting forth standard of review and explaining that to prevail on a Rule 56(d) request, a party must state the specific facts it seeks in further discovery, and show that such facts exist and are "essential to oppose summary judgment" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying Gwen's various discovery motions because Gwen's motions were procedurally deficient or untimely. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) ("A district court is vested with broad discretion to permit or deny discovery, and a decision to deny discovery will not be disturbed except upon the clearest showing that the denial of discovery results in actual and substantial prejudice to the complaining litigant." (citation and internal quotation marks omitted)); *see also* Fed. R. Civ. P. 26(a)(1)(B)(iv) (excepting initial disclosure in actions brought pro se by a person in custody).

AFFIRMED.