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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUSTIN LOMAKO,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>I. D. CLAY, Chief Deputy Warden; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-15636

D.C. No. 2:05-cv-02254-LKK-DAD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Justin Lomako, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action under 28 U.S.C. § 1915A

* 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).

for failure to state a claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Lomako's action because none of Lomako's claims rise to the level of constitutional violations. *See Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (explaining that "only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation" (internal quotation marks and citation omitted)); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (discussing deliberate indifference to serious medical needs).

To the extent Lomako raises a retaliation claim on appeal, we do not consider it because no such claim was alleged in the amended complaint. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) ("[A] plaintiff waives all claims alleged in the dismissed complaint which are not realleged in an amended complaint."), *aff'd*, 525 U.S. 299 (1999).

AFFIRMED.