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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID W. WILSON,

Plaintiff - Appellant,

v.

L. M. ZAFRA; et al.,

Defendants - Appellees.

No. 08-17632

D.C. No. 2:06-cv-1577-FCD-KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

David W. Wilson, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional and state law violations related to prison officials' alleged failure to provide mental

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

health care. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* dismissal for failure to state a claim. *See Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Wilson's deliberate indifference to medical needs claim because he did not allege that he suffered a sufficiently serious harm when defendant Nurse Zafra ignored his request to see a psychiatrist on the weekend. *See Toguchi v. Chung*, 391 F.3d 1051 (9th Cir. 2004). The district court also properly dismissed Wilson's remaining claims because they are vague and conclusory and because Wilson failed to allege how any official deprived him of his constitutional or other protected rights by affirmative conduct or through failure to act, as required under Section 1983. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th 1988). Wilson's remaining contentions are unpersuasive.

We deny as moot appellee Zafra's request for judicial notice.

AFFIRMED.