

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JORGE GUADARRAMA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>F. LO, M.D.; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-56601

D.C. No. 3:08-cv-00078-MMA-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

California state prisoner Jorge Guadarrama appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal of an

* 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).

action for failure to state a claim. *Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001). We affirm.

After giving Guadarrama notice of the deficiencies in his original complaint and giving leave to submit an amended complaint, the district court properly granted defendants' motion and dismissed Guadarrama's amended complaint for failure to state a claim. *See Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (“[v]erbal harassment or abuse . . . [alone] is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983”) (citation and internal quotation omitted); *Toguchi v. Chung*, 391 F.3d 1051, 1059-60 (9th Cir. 2004) (difference of opinion concerning the appropriate course of treatment does not amount to deliberate indifference to serious medical needs); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (setting forth five basic elements of a First Amendment retaliation claim); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998) (for a due process violation, the conduct must be so arbitrary that it “shocks the conscience” and violates the “decencies of civilized conduct”).

AFFIRMED.