

NOV 27 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DEVONNE MICHAEL LEE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JESUS FERNANDEZ, M.D.,</p> <p>Defendant - Appellee.</p>
--

No. 11-55871

D.C. No. 5:09-cv-02161-MMM-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Federal prisoner Devonne Michael Lee appeals pro se from the district court's judgment dismissing his action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging

* 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).

deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. §1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Lee's action because Lee failed to allege facts in his sixth amended complaint sufficient to demonstrate that defendant's actions manifested deliberate indifference. *See Toguchi v. Chung*, 391 F.3d 1051, 1058, 1060 (9th Cir. 2004) (prison officials act with deliberate indifference only if they know of and disregard an excessive risk to a prisoner's health, and a showing of medical malpractice or negligence is insufficient to establish an Eighth Amendment violation).

AFFIRMED.