

APR 23 2013

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERTO WINFFEL,  Plaintiff - Appellant,  v.  A. POMAZAL; RONALD E. BARNES, Warden,  Defendants - Appellees.
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No. 12-15202

D.C. No. 2:10-cv-01709-MCE-GGH

MEMORANDUM\*

Appeal from the United States District Court  
 for the Eastern District of California  
 Morrison C. England, Jr., Chief Judge, Presiding

Submitted April 16, 2013\*\*

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

California state prisoner Alberto Winffel appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety in connection with a fall he sustained in a prison shower.

\* 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).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Winffel failed to raise a genuine dispute of material fact as to whether defendants knew of and disregarded an excessive risk to his safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”); *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (discussing the requirements for establishing supervisory liability).

**AFFIRMED.**