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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>DARRYL LEE GOLDSTEIN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SAYLOR, Dr., Chief Medical Officer, San Quentin; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 11-17575

D.C. No. 4:07-cv-05958-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra Brown Armstrong, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Darryl Lee Goldstein, a California state prisoner, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28

* 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).

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

The district court properly granted summary judgment because Goldstein failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to his foot pain and condition. *See id.* at 1060 (“Deliberate indifference is a high legal standard. A showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation under the Eighth Amendment.”); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (to establish that a difference of opinion amounted to deliberate indifference, a prisoner must show that the defendants’ chosen course of treatment was medically unacceptable and in conscious disregard of an excessive risk to the prisoner’s health).

AFFIRMED.