

MAY 29 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOEL ANTHONY HOLLEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>M. SCOTT, Officer, CSR; et al.,</p> <p>Defendants - Appellees.</p>

No. 13-16651

D.C. No. 1:12-cv-01090-MJS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Michael J. Seng, Magistrate Judge, Presiding**

Submitted May 13, 2014***

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Joel Anthony Holley, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

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

** Holley consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)). We affirm.

The district court properly dismissed Holley's action because Holley failed to allege facts showing that defendants were deliberately indifferent to a risk of Holley contracting Valley Fever by housing him at Pleasant Valley State Prison. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (a prison official is deliberately indifferent only if he or she "knows of and disregards" an excessive risk to inmate health).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.