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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NATHAN KEVIN TURNER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JOHN ROHRER, M.D.,</p> <p>Defendant - Appellee.</p>
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No. 13-16558

D.C. No. 2:09-cv-00632-TLN-DAD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Troy L. Nunley, District Judge, Presiding

Submitted September 23, 2014\*\*

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

California state prisoner Nathan Kevin Turner 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 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th

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\* 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).

Cir. 2004), and we affirm.

The district court properly granted summary judgment because Turner failed to raise a genuine dispute of material fact as to whether defendant consciously disregarded a serious risk to Turner's health related to his knee and shoulder injuries by failing to classify his medical needs as "urgent" or not pursuing a more aggressive course of treatment. *See Farmer v. Brennan*, 511 U.S. 825, 845, 847 (1994) (a prison official acts with deliberate indifference if "he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it"); *Toguchi*, 391 F.3d at 1058 (prisoner's difference of opinion with physician regarding course of treatment is not sufficient; rather, to show deliberate indifference, prisoner must establish that the chosen course of treatment "was medically unacceptable under the circumstances" (citation and internal quotation marks omitted)); *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("[A] party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.").

**AFFIRMED.**