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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PATRICK KUNKEL,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>SHERRY LOPEZ, CMO Kern Valley State Prison; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 14-15363

D.C. No. 1:11-cv-01026-SAB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Stanley Albert Boone, Magistrate Judge, Presiding\*\*

Submitted December 9, 2014\*\*\*

Before: WALLACE, LEAVY, and BYBEE, Circuit Judges.

Patrick Kunkel, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

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

\*\* Kunkel 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 Kunkel's action because Kunkel failed to allege facts showing that defendants were deliberately indifferent to Kunkel's ankle infections. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (9th Cir. 2004) (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; neither a mere difference of opinion concerning the course of treatment nor negligence in diagnosing or treating a medical condition amounts to deliberate indifference); *see also Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (requirements for establishing supervisory liability); *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009) (failure to follow internal prison policies does not rise to the level of a constitutional violation).

**AFFIRMED.**