

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 22 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DANNY FABRICANT,

Plaintiff-Appellant,

v.

J. T. SHARTLE, Warden,

Defendant-Appellee.

No. 16-17339

D.C. No. 4:13-cv-00366-JAS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James Alan Soto, District Judge, Presiding

Submitted March 13, 2018**

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Federal prisoner Danny Fabricant appeals pro se from the district court's summary judgment in his action brought under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), 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 Ninth Circuit Rule 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. *Ford v. City of Yakima*, 706 F.3d 1188, 1192 (9th Cir. 2013). We affirm.

The district court properly granted summary judgment for defendant because Fabricant failed to raise a genuine dispute of material fact as to whether defendant was deliberately indifferent to Fabricant's bruxism. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (9th Cir. 2004) (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner's health; a mere difference in medical opinion or negligence is insufficient to establish deliberate indifference).

The district court did not abuse its discretion in denying Fabricant's motions to conduct discovery because Fabricant failed to show that he was actually and substantially prejudiced. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1084, 1093 (9th Cir. 2003) (setting forth standard of review; noting that a district court's denial of discovery "will not be disturbed except upon the clearest showing that the denial . . . results in actual and substantial prejudice to the complaining litigant").

All pending requests are denied.

AFFIRMED.