

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2023

FOR THE NINTH CIRCUIT

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

EVERETT SPILLARD,

No. 22-15208

Plaintiff-Appellant,

D.C. No. 2:20-cv-00702-KJM-CKD

v.

MEMORANDUM*

COSTA, Captain; MARGERET UMANAH,
LVN; BICK, Dr., Administrator; SHUTE,
Doctor PCP; SMITH, Head Doctor;
KETHINEL, Infectious Disease Doctor;
BRANDON, ER Doctor; S. GATES,
Administrator; LIRA, Lt.; SNYDER, Sgt.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

Spillard's motion to proceed in forma pauperis ("IFP") on appeal (Docket Entry No. 25) is granted.

* 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).

California state prisoner Everett Spillard appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Spillard's action because Spillard failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (discussing due process claims arising out of negligent or intentional deprivation of property); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (setting forth elements of a First Amendment retaliation claim in the prison context); *Toguchi v. Chung*, 391 F.3d 1051, 1056-60 (9th Cir. 2004) (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference).

We reject as unsupported by the record Spillard's contention that the magistrate judge was biased against him.

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).

All pending motions, other than Spillard's motion to proceed IFP on appeal, are denied.

AFFIRMED.