

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2026

FOR THE NINTH CIRCUIT

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

ADRIAN SOLORIO,

Plaintiff - Appellant,

v.

W. SULLIVAN, Warden; E
BARTHELMES; I OTTSMAN; V
CHAVEZ; CLAYTON; R.J.
MACIEJEWSKI; R CALDRON,
Correctional Doctor; S JEFFREY,
Correctional Nurse; LT CARDENAS,

Defendants - Appellees.

No. 23-2585

D.C. No.

1:19-cv-00688-JLT-GSA

MEMORANDUM*

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

Submitted October 15, 2026 **

Before: O'SCANNLAIN, SILVERMAN, and N.R. SMITH, Circuit Judges.

California state prisoner Adrian Solorio appeals pro se from the district

* 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).

court's judgment following a jury verdict in his 42 U.S.C. § 1983 action alleging violations of his Eighth Amendment rights. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review dismissal of claims for failure to state a claim de novo. *Long v. Sugai*, 91 F.4th 1331, 1336 (9th Cir. 2024). We affirm.

The district court properly dismissed supervisory liability claims alleged against Lieutenant Barthelmes and Warden Sullivan. The Second Amended Complaint failed to allege facts to establish sufficient personal participation by the supervisors. *See Felarca v. Birgeneau*, 891 F.3d 809, 819-20 (9th Cir. 2018) (setting forth the test for supervisor liability); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that conclusory allegations without supporting facts do not state a plausible claim).

The district court properly dismissed the deliberate indifference medical care claims alleged against Nurse Jeffrey and Dr. Calderon because the Second Amended Complaint failed to allege any facts that would establish that the medical staff were aware of and disregarded his alleged medical needs. *See Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (holding that a prison official acts with deliberate indifference if he or she knows of and disregards an excessive risk to inmate health); *Iqbal*, 556 U.S. at 678 (explaining that conclusory allegations without supporting facts do not state a plausible claim).

Solorio forfeited his sufficiency-of-the-evidence claim by failing to raise it

in pre-verdict and post-verdict motions before the district court. *See Nitco Holding Corp. v. Boujikian*, 491 F.3d 1086, 1089 (9th Cir. 2007) (setting forth the requirements to preserve appellate review of sufficiency-of-the-evidence claims).

We decline to consider the remaining arguments listed in the opening brief because they were not raised in the District Court or supported by argument in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.