

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OCT 3 2017

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

MARY LEE GAINES,

Plaintiff-Appellant,

v.

S. LWIN, M.D. of the California  
Department of Corrections, Central  
California Womens' Facility; et al.,

Defendants-Appellees.

No. 17-15142

D.C. No. 1:16-cv-00168-LJO-MJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, Chief Judge, Presiding

Submitted September 26, 2017\*\*

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

California state prisoner Mary Lee Gaines appeals pro se from the district court's judgment dismissing her 42 U.S.C. § 1983 action alleging deliberate indifference to her safety. We have jurisdiction under 28 U.S.C. § 1291. We

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\* 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).

review de novo a dismissal for failure to state a claim under 28 U.S.C. § 1915A.

*Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011). We affirm.

The district court properly dismissed Gaines’s deliberate indifference claim because Gaines failed to allege facts sufficient to show that defendant Berber knew of and disregarded an excessive risk to Gaines’s safety. *See Foster v. Runnels*, 554 F.3d 807, 814 (9th Cir. 2009) (“To establish a prison official’s deliberate indifference, an inmate must show that the official was aware of a risk to the inmate’s health or safety and that the official deliberately disregarded the risk . . .”).

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Gaines’s state law claim because it properly determined that Gaines’s federal claim was unfounded. *See Trs. of the Constr. Indus. & Laborers Health & Welfare Tr. v. Desert Valley Landscape & Maint., Inc.*, 333 F.3d 923, 926 (9th Cir. 2003) (“[I]t [is] appropriate for the district court to decline jurisdiction over . . . supplemental state claims [when] the federal claim [has] proven to be unfounded.”).

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).

**AFFIRMED.**