

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 1 2017

FOR THE NINTH CIRCUIT

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

JOHN DOUGLAS HUNTER,

Plaintiff-Appellant,

v.

RON DAVIS, Warden; et al.,

Defendants-Appellees.

No. 17-15536

D.C. No. 3:16-cv-03657-JST

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Submitted October 23, 2017**

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

John Douglas Hunter, a California state prisoner, appeals pro se from the district court judgment dismissing his 42 U.S.C. § 1983 action alleging unlawful conditions of confinement. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (2012). We affirm.

* 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).

The district court properly dismissed Hunter's action because Hunter failed to allege facts sufficient to show that any defendant knew of and disregarded an excessive risk to his health. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-58 (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; mere negligence is insufficient to establish deliberate indifference).

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

AFFIRMED.