

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 5 2018

FOR THE NINTH CIRCUIT

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

EDWARD B. SPENCER,

Plaintiff-Appellant,

v.

W. M. KOKOL, Physician at SATF,

Defendant-Appellee.

No. 18-16261

D.C. No. 1:17-cv-01561-LJO-BAM

MEMORANDUM\*

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

Submitted November 27, 2018\*\*

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

California state prisoner Edward B. Spencer appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Hamilton v.*

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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).*

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

The district court properly dismissed Spencer's action because Spencer failed to allege facts sufficient to show that defendant was deliberately indifferent to Spencer's health condition. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (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); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (district court need not accept as true allegations that contradict matters properly subject to judicial notice or by exhibit).

Spencer's request to take judicial notice, set forth in his opening brief, is denied as unnecessary.

**AFFIRMED.**