

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 12 2020

FOR THE NINTH CIRCUIT

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

RALPH CHARLES SLUSHER,

No. 19-16983

Plaintiff-Appellant,

D.C. No. 3:18-cv-08175-SRB-ESW

v.

MEMORANDUM*

CHARLES L. RYAN; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted August 5, 2020**

Before: SCHROEDER, HAWKINS, and LEE, Circuit Judges.

Arizona state prisoner Ralph Charles Slusher appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims arising from alleged exposure to black spore mold. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim

* 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).

under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012). We affirm.

The district court properly dismissed Slusher's action because Slusher 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 liberally construed, a plaintiff must allege facts sufficient to state a plausible claim); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 675-77 (2009) (a § 1983 claim cannot be premised on a theory of respondeat superior); *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (requirements for cruel and unusual punishment claim); *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 the prisoner's health or safety).

We reject as unsupported by the record Slusher's contention that the district court denied a motion to appoint counsel.

Slusher's motion for appointment of counsel, set forth in the opening brief, is denied.

AFFIRMED.