

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2017

FOR THE NINTH CIRCUIT

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

FREDDY MORENO TORRES,

No. 16-15760

Plaintiff-Appellant,

D.C. No. 5:14-cv-05136-BLF

v.

MEMORANDUM\*

MICHAEL C. SAYRE, M.D., “CMO”,  
sued in their official and individual  
capacity; et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Beth Labson Freeman, District Judge, Presiding

Submitted March 8, 2017\*\*

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Freddy Moreno Torres, a California state prisoner, appeals pro se from the district court’s summary judgment in 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, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th

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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).

Cir. 2004), and we affirm.

The district court properly granted summary judgment because Torres failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent in treating his chronic pain and the 2013 injury to his left arm. *See id.* at 1057-60 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner's health; negligence and a mere difference in medical opinion are insufficient to establish deliberate indifference); *see also Estelle v. Gamble*, 429 U.S. 97, 107 (1976) (“A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment.”).

**AFFIRMED.**