

NOT FOR PUBLICATION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

DANNY GARCIA,

Plaintiff-Appellant,

v.

KALISHER, Dr.; et al.

Defendants-Appellees.

No. 16-15804

D.C. No. 3:15-cv-00045-JD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Submitted March 8, 2017**

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

Danny Garcia, 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

* 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 Garcia failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to his medical conditions. *See id.* at 1057-60 (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; a difference of opinion concerning the course of treatment, medical malpractice, or negligence in diagnosing or treating a medical condition does not amount to deliberate indifference).

Contrary to Garcia's argument that he was denied fair notice of the rules and procedures pertaining to summary judgment and an opportunity to be heard, the record shows that defendants served Garcia with concurrent notice of the requirements of summary judgment set forth in *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998) (en banc).

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).

Garcia's motion to accept a supplemental brief (Docket Entry No. 14) is granted. The Clerk shall file the supplemental brief at Docket Entry No. 10. To the extent that Garcia seeks leave to supplement the record, this motion (Docket Entry No. 14) is denied.

Garcia's other pending motions (Docket Entry Nos. 9 and 13) are denied.

AFFIRMED.