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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DWAYNE LAMONT BURGESS,

Plaintiff-Appellant,

v.

J. RAYA; et al.,

Defendants-Appellees.

No. 17-17427

D.C. No. 1:11-cv-00921-LJO-JLT

MEMORANDUM*

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

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

California state prisoner Dwayne Lamont Burgess appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging an Eighth Amendment claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Albino v. Baca*, 747

* 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).

1 F.3d 1162, 1168 (9th Cir. 2014) (en banc). We affirm.

2 The district court properly granted summary judgment because Burgess
3 failed to exhaust his administrative remedies with respect to his claim that he was
4 exposed to pepper spray for a prolonged period of time after alerting defendants to
5 his health issues. *See id.* at 1171-72 (setting forth the parties’ respective burdens
6 for a failure to exhaust defense under the Prison Litigation Reform Act); *Griffin v.*
7 *Arpaio*, 557 F.3d 1117, 1120-21 (9th Cir. 2009) (a prisoner’s grievance must
8 “alert[] the prison to the nature of the wrong for which the redress is sought” and
9 provide sufficient information “to allow prison officials to take appropriate
10 responsive measures”) (citations and internal quotation marks omitted)).

11 We do not consider matters not specifically and distinctly raised and argued
12 in the opening brief, or arguments and allegations raised for the first time on
13 appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). We do not
14 consider documents not filed with the district court. *See United States v. Elias*, 921
15 F.2d 870, 874 (9th Cir. 1990).

16 **AFFIRMED.**