

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

TERRY LAMELL EZELL,

Plaintiff-Appellee,

v.

JOSE ESQUETINI, in his capacity as a federal employee acting within the scope of his duties, and as an individual; MARTIN HERNANDEZ, in his capacity as a federal employee acting within the scope of his duties, and as an individual,

Defendants-Appellees.

No. 17-56038

D.C. No. 2:14-cv-04791-FMO-DFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Federal prisoner Terry Lamell Ezell appeals pro se from the district court's summary judgment for defendants in his action under *Bivens v. Six Unknown*

* 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).

Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s decision on cross-motions for summary judgment. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment for defendants because Ezell failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent in the treatment of his narcolepsy. *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).

We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

We treat Ezell’s “amended appeal” (Docket Entry No. 10) as a request to supplement the opening brief, and grant the request. The Clerk shall file Docket Entry No. 10.

AFFIRMED.