

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 20 2019

FOR THE NINTH CIRCUIT

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

GARDELL COWART,

Plaintiff-Appellant,

v.

NGOZI IGNIBNOZA; et al.,

Defendants-Appellees.

No. 18-16740

D.C. No. 1:16-cv-00004-AWI-SKO

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted March 12, 2019\*\*

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

California state prisoner Gardell Cowart 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 affirm.

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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).

The district court did not err by refusing to compel defendants to produce Cowart's deposition transcript because Cowart failed to demonstrate how his deposition testimony would have precluded summary judgment. *See Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998) (setting forth standard of review and explaining that the burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence sought would preclude summary judgment).

Cowart has waived any challenge to the substance of the district court's summary judgment because he did not argue them in his opening brief. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e review only issues which are argued specifically and distinctly in a party's opening brief.” (citation and internal quotation marks omitted)); *Acosta–Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant's opening brief are waived).

**AFFIRMED.**