

OCT 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY SEALS,

Plaintiff - Appellant,

v.

RICHARDS, Long Beach Police Officer  
e/s/a James Richardson; et al.,

Defendants - Appellees.

No. 08-55187

D.C. No. CV-05-08430-GW-OP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George H. Wu, District Judge, Presiding

Submitted October 13, 2009\*\*

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Anthony Seals appeals pro se from the district court's summary judgment for Long Beach Police Department Officers Richardson and Hubert in Seals's 42

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action alleging that excessive force was used against him in the course of his arrest. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the grant of summary judgment, *Oliver v. Keller*, 289 F.3d 623, 626 (9th Cir. 2002), and for an abuse of discretion the denial of leave to amend, *Roberts v. Ariz. Bd. of Regents*, 661 F.2d 796, 798 (9th Cir. 1981). We affirm.

The district court properly granted summary judgment because Seals failed to raise a genuine issue of material fact as to whether defendants Richardson and Hubert used excessive force during Seals's arrest and subsequent treatment at the hospital for allegedly swallowing a controlled substance. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (explaining that a summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data).

The district court did not abuse its discretion by denying Seals's motion for leave to amend his complaint because Seals filed the motion after defendants moved for summary judgment. *See Roberts*, 661 F.2d at 798 (affirming denial of motion to amend raised after discovery was "virtually complete" and the defendant's motion for summary judgment was pending before the court).

Seals's remaining contentions are unpersuasive.

**AFFIRMED.**