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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JESSE MANN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>C. LEE, Health Care Manager; et al.,</p> <p>Defendants - Appellees.</p>
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No. 10-16059

D.C. No. 3:07-cv-00781-MMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Maxine M. Chesney, District Judge, Presiding

Submitted October 25, 2011\*\*

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Jesse Mann, 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 medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

we affirm.

The district court properly granted summary judgment because Mann failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to his back condition. *See id.* at 1057-58 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner's health and safety; negligence and a mere difference in medical opinion are insufficient); *McGuckin v. Smith*, 974 F.2d 1050, 1062 (9th Cir. 1992) (no deliberate indifference where plaintiff failed to raise a genuine dispute of material fact as to whether prison doctor defendants were responsible for delays in treatment and surgery), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

We do not consider Mann's contentions raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

**AFFIRMED.**