

NOT FOR PUBLICATION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,

No. 17-56038

Plaintiff-Appellee,

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

v.

MEMORANDUM*

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.

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.