NOT FOR PUBLICATION

FILED

MAY 13 2020

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLEN JONES WARD, Plaintiff-Appellant, v. CORIZON, Medical/Custodial Trustee for the State of Idaho Department of Corrections, Defendant-Appellee.	No. 19-35510 D.C. No. 1:18-cv-00471-DCN MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Idaho state prisoner Glen Jones Ward appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising out of the denial of a special diet to address his numerous food allergies. We have jurisdiction under 28

* 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).

U.S.C. § 1291. We review de novo. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal for failure to state a claim under 28 U.S.C. § 1915A). We affirm.

The district court properly dismissed Ward's action because Ward failed to allege facts sufficient to demonstrate that he suffered a constitutional violation as a result of an official policy or custom of Corizon. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Tsao v. Desert Palace, Inc*., 698 F.3d 1128, 1139 (9th Cir. 2012) (to state a § 1983 claim against a private entity that acts under color of state law, a plaintiff must show that a constitutional violation "was caused by an official policy or custom of [the private entity]").

The district court did not abuse its discretion in denying Ward further leave to amend because amendment would have been futile. *See Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (setting forth standard of review and explaining that leave to amend may be denied if amendment would be futile); *Chodos v. West Publ'g Co*., 292 F.3d 992, 1003 (9th Cir. 2002) (explaining that a district court's discretion to deny leave to amend is "particularly broad" when it has previously granted leave to amend).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We do not consider facts or documents that were not raised before the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

All pending motions and requests are denied.

AFFIRMED.