

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 5 2020

FOR THE NINTH CIRCUIT

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

DANNY GARCIA,

Plaintiff-Appellant,

v.

TSENG, Dr.,

Defendant-Appellee.

No. 19-15252

D.C. No. 2:14-cv-00093-TLN-
DMC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted June 2, 2020**

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

California state prisoner Danny Garcia 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 review de novo cross-motions for summary judgment. *Guatay*

* 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).

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 Tseng because Garcia failed to raise a genuine dispute of material fact as to whether Tseng was deliberately indifferent to Garcia’s leg-length discrepancy and his back and shoulder pain. *See Toguchi v. Chung*, 391 F.3d 1051, 1056-60 (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); *see also Estelle v. Gamble*, 429 U.S. 97, 107 (1976) (“A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice”).

We do not consider Garcia’s arguments regarding his First Amendment claim because it was not properly presented to the district court. *See Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1080 (9th Cir. 2008) (explaining that “[w]here . . . the complaint does not include the necessary factual allegations to state a claim, raising such claim in a summary judgment motion is insufficient to present the claim to the district court”).

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

or in the reply brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We do not consider documents not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Garcia's requests for miscellaneous relief, set forth in the reply brief, are denied.

AFFIRMED.