NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFREY JAMES FAULKNER, Plaintiff-Appellant, v. CENTURION OF ARIZONA; et al., Defendants-Appellees.	No. 22-15435 D.C. No. 2:20-cv-01603-DLR MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Douglas L. Rayes, District Judge, Presiding

Submitted July 6, 2023[**]
San Francisco, California

Before: D.W. NELSON, SILVERMAN, and JOHNSTONE, Circuit Judges.

Jeffrey James Faulkner, an inmate in the custody of the Arizona Department of Corrections, appeals pro se the district court's summary judgment order in his 42 U.S.C. § 1983 action alleging that prison healthcare provider Centurion of Arizona ("Centurion") and its medical staff violated his Eighth Amendment rights

[*] 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).

by failing to timely and appropriately treat pain in his left foot, hip, and back. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's grant of summary judgment de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and its discovery rulings for an abuse of discretion, *Stevens v. Corelogic, Inc.* 899 F.3d 666, 677 (9th Cir. 2018). We affirm.

The district court properly granted summary judgment for Nurse Practitioner Furar because there was no genuine dispute of material fact as to whether Furar acted with deliberate indifference to Faulkner's serious medical needs by ordering his gabapentin crushed, and by discontinuing the medication and offering alternatives. The district court properly granted summary judgment for Nurse Practitioner DeMello because there was no genuine dispute of material fact as to whether DeMello acted with deliberate indifference to Faulkner's serious medical needs by failing to renew his gabapentin prescription and offering him alternatives. Faulkner did not produce evidence that the "chosen course of treatment was medically unacceptable under the circumstances and was chosen in conscious disregard of an excessive risk to" his health. *Toguchi*, 391 F.3d at 1058 (citations, internal quotation marks, and alterations omitted).

The district court properly granted summary judgment for Centurion because there was no genuine dispute of material fact as to whether a Centurion "policy or custom" caused a violation of Faulkner's Eighth Amendment rights. *See Tsao v.*

Desert Palace, Inc., 698 F.3d 1128, 1139 (9th Cir. 2012) (holding that liability under § 1983 of a private entity acting under color of state law requires proof "a constitutional violation occurred . . . caused by [the private entity's] official policy or custom"). Faulkner did not produce evidence that Centurion policies or customs amounted to deliberate indifference to Faulkner's serious medical needs. *See Toguchi*, 391 F.3d at 1057–58.

Nor is there reversible error in the district court's denial of Faulkner's untimely motion to compel production nor his request to deny summary judgment because of any failure to produce documents. The district court correctly recognized that "[t]hough the conduct of discovery is generally left to a district court's discretion, summary judgment is disfavored where relevant evidence remains to be discovered, particularly in cases involving confined pro se plaintiffs." *Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004). It did not err when it nevertheless determined summary judgment was appropriate because the allegedly missing discovery would be "'fruitless' with respect to the proof of a viable claim." *Id.* (citation omitted). Further, Faulkner has not shown the district court abused its discretion in denying his untimely motion to compel discovery for failure to show good cause. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608–09 (9th Cir. 1992) (establishing that a pretrial scheduling order may be altered only "upon a showing of 'good cause'" (citation and internal quotation

marks omitted)). Nor has he made the required "clearest showing that denial of discovery result[ed] in actual and substantial prejudice" to disturb the district court's exercise of its broad discretion. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (citation and internal quotation marks omitted).

The district court also did not abuse its discretion in determining that Dr. Orm was sufficiently qualified to testify about the efficacy of crushed gabapentin. *See United States v. Garcia,* 7 F.3d 885, 889 (9th Cir. 1993).

Faulkner's contention that the district court was biased against him is unsupported by the record. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.").

We decline to consider issues not raised before the district court, including Faulkner's contentions that his medical records are inauthentic. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam). We further decline to consider issues not specifically raised and argued in the opening brief, including the district court's grant of summary judgment for defendants Miller, Mendoza, Nze, and Lamar. *See id.*

All pending motions are DENIED.

AFFIRMED.