

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 4 2023

FOR THE NINTH CIRCUIT

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

LEE SWAFFORD, AKA Swafford Lee,

No. 22-16498

Plaintiff-Appellant,

D.C. No. 2:19-cv-00721-DAD-AC

v.

MEMORANDUM*

JASON ROHRER,

Defendant-Appellee,

and

R. NEUSHMID, Warden; T. WAMBLE;
OLLER, R.N.; BUCKER, C.O.; JOHNSON,

Defendants.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted July 18, 2023**

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

California state prisoner Lee Swafford appeals pro se from the district

* 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).

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. *Cortez v. Skol*, 776 F.3d 1046, 1050 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment because Swafford failed to raise a genuine dispute of material fact as to whether Rohrer was deliberately indifferent to Swafford's serious medical needs by denying Swafford's requests for a lower bunk accommodation. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (9th Cir. 2004) (holding deliberate indifference is a "high legal standard" requiring a defendant be aware of and disregard an excessive risk to an inmate's health; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference).

We do not consider 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 treat Swafford's motion (Docket Entry No. 22) as a motion to file a supplemental brief and grant the motion. The Clerk will file the brief submitted at Docket Entry No. 16.

AFFIRMED.