

**SEP 27 2007**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

FRANK VALENZUELA, JR.,

Plaintiff - Appellant,

v.

C. SMITH; et al.,

Defendants - Appellees,

and

E. REYES, Appeals Coordinator; et al.,

Defendants.

No. 06-15746

D.C. No. CV-04-00900-  
FCD/DAD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, Jr., District Judge, Presiding

Submitted September 24, 2007\*\*

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Frank Valenzuela, Jr., a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that prison officials acted with deliberate indifference to his serious medical needs in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Valenzuela did not raise a genuine issue of material fact as to whether defendants were deliberately indifferent in treating his surgically repaired [fractured] right thumb. *See id.* A difference in opinion between Valenzuela and the prison physicians about the preferred course of medical treatment does not constitute an Eighth Amendment violation. *See id.* at 1058.

The district court did not abuse its discretion in denying Valenzuela's discovery motions because the defendants' responses to Valenzuela's discovery requests were sufficient. *See Kulas v. Flores*, 255 F.3d 780, 783 (9th Cir. 2001) (district court's rulings concerning discovery are reviewed for an abuse of discretion). The district court did not abuse its discretion in denying Valenzuela's request concerning the prison's mail room policies because the request was moot. The district court did not abuse its discretion in denying Valenzuela's request for an extension to object to the magistrate judge's findings and recommendations

because his request was untimely. *See Hawaiian Rock Prods. Corp. v. A.E. Lopez Enters., Ltd.*, 74 F.3d 972, 976 (9th Cir. 1996) (district court's decision to deny a continuance is reviewed for an abuse of discretion).

**AFFIRMED.**