

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2018

FOR THE NINTH CIRCUIT

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

JOSHUA JONATHAN SCHROEDER,

No. 17-56563

Plaintiff-Appellant,

D.C. No. 3:17-cv-00184-DMS-BGS

v.

MEMORANDUM\*

TRADER JOE'S COMPANY,

Defendant-Appellee.

Appeal from the United States District Court  
for the Southern District of California  
Dana M. Sabraw, District Judge, Presiding

Submitted February 13, 2018\*\*

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Attorney Joshua Jonathan Schroeder appeals pro se from the district court's order denying his motion for a preliminary injunction to enjoin defendant from violating the Food, Drug, and Cosmetics Act ("FDCA"). We have jurisdiction under 28 U.S.C. § 1292(a)(1). We review for an abuse of discretion. *Alliance for*

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\* 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).

*the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). We affirm.

The district court did not abuse its discretion by denying Schroeder’s request for preliminary injunctive relief because Schroeder failed to show that he is likely to succeed on the merits. *See* 21 U.S.C. § 337(a) (“[A]ll such proceedings for the enforcement, or to restrain violations of [the FDCA] shall be by and in the name of the United States.”); *Alliance for the Wild Rockies*, 632 F.3d at 1134-35 (plaintiff seeking preliminary injunction must establish that he is likely to succeed on the merits, he is likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in his favor, and an injunction is in the public interest).

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 reject as meritless Schroeder’s contentions regarding the Judiciary Act, the separation of powers doctrine, and the applicability of de novo review.

**AFFIRMED.**