NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIE SCHOBY,	No. 13-15815
Plaintiff - Appellant,	D.C. No. 2:10-cv-00582-KJM-JFM
v.	
P. PINKERTON,	MEMORANDUM[*]
Defendant - Appellee.	

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted June 12, 2014[**]

Before: McKEOWN, WARDLAW, and M. SMITH, Circuit Judges.

California state prisoner Willie Schoby appeals pro se from the district

court's summary judgment dismissing 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, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 2004), and we affirm.

The district court properly granted summary judgment because Schoby failed to raise a genuine dispute of material fact as to whether defendant was deliberately indifferent to his post-bladder surgery dietary needs. *See id.* at 1057-60 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to a prisoner's health; negligence and a mere difference in medical opinion are insufficient).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Schoby's contention regarding the lack of finality of the district court's order granting summary judgment is unpersuasive.

Schoby's motion for recall of judgment is denied as moot.

AFFIRMED.