NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERNANDO YATES, Plaintiff-Appellant, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, Defendant-Appellee.	No. 17-16776 D.C. No. 3:16-cv-01077-MEJ MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding**

Submitted December 18, 2017***

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Fernando Yates appeals pro se from the district court's summary judgment in his employment action alleging disability discrimination and retaliation in

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

violation of the Americans with Disabilities Act ("ADA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Kaplan v. City of N. Las Vegas*, 323 F. 3d 1226, 1229 (9th Cir. 2003). We affirm.

The district court properly granted summary judgment on Yates' disability discrimination claim because Yates failed to raise a genuine dispute of material fact as to whether his hearing loss constituted a disability. *See id.* at 1231 (discussing definition of "disability" under the ADA, including being "regarded as" having a disability); *see also Walton v. U.S. Marshals Serv.*, 492 F.3d 998, 1006 (9th Cir. 2007) (explaining that in order to show that plaintiff is "regarded as" having a disability, the plaintiff "must show that [his] employer regards [him] as substantially limited in a major life activity and not just unable to meet a particular job performance standard").

The district court properly granted summary judgment on Yates' retaliation claim because Yates failed to raise a genuine dispute of material fact as to whether his employer's legitimate, non-retaliatory reasons for its actions were pretextual. *See Brown v. City of Tucson*, 336 F.3d 1181, 1187-88 (9th Cir. 2003) (explaining application of burden-shifting analysis to ADA retaliation claims and requirements for establishing pretext).

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 without merit Yates' contention regarding the district court's alleged bias.

AFFIRMED.