

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 24 2024

FOR THE NINTH CIRCUIT

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

IAN GAGE,

No. 23-16078

Plaintiff-Appellant,

D.C. No. 2:19-cv-02745-DLR

v.

MEMORANDUM\*

MIDWESTERN UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District Court  
for the District of Arizona  
Douglas L. Rayes, District Judge, Presiding

Submitted December 17, 2024\*\*

Before: WALLACE, GRABER, and BUMATAY, Circuit Judges.

Ian Gage appeals pro se from the district court’s summary judgment, on remand from this court, in his action alleging violations of the Americans with Disabilities Act (“ADA”). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Nunies v. HIE Holdings, Inc.*, 908 F.3d 428, 430-31 (9th Cir.

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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).

2018). We vacate and remand.

The district court granted summary judgment on Gage's ADA claim because it concluded that Gage failed to raise a genuine dispute of material fact as to whether he is disabled or had a record of such disability. In coming to this conclusion, the district court discredited the email that Gage presented, in which he recounted his symptoms and their effect on him, as unsworn, uncorroborated, and self-serving. However, this email reflects the personal knowledge of Gage, who could testify consistent with its contents at trial. *See SEC v. Phan*, 500 F.3d 895, 909 (9th Cir. 2007) (concluding that the district court erred in disregarding declarations as "uncorroborated and self-serving"); *Fraser v. Goodale*, 342 F.3d 1032, 1037 (9th Cir. 2003) (concluding that plaintiff's diary could be considered on summary judgment because she could testify consistent with its contents at trial). We vacate the grant of summary judgment for defendant on Gage's ADA claim and remand for the district court to consider in the first instance whether the contents of the email, in addition to the other evidence in the record, raise a genuine dispute of material fact as to whether the symptoms of Gage's formaldehyde sensitivity and his respiratory impairments substantially limit a major life activity.

In light of our disposition, we do not consider Gage's contentions related to the motion for a contempt hearing.

We reject as unsupported by the record Gage's contentions that the district court judge was biased against him.

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, 985 n.2 (9th Cir. 2009).

The parties will bear their own costs on appeal.

**VACATED and REMANDED.**