

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 27 2017

FOR THE NINTH CIRCUIT

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

JOHN E. BURGESS,

Plaintiff-counter-claim-
defendant-Appellant,

v.

DENNIS MINENI,

Defendant-counter-claimant-
plaintiff-Appellee,

UNITED STATES OF AMERICA,

Counter-defendant-Appellee.

No. 15-16770

D.C. No. 1:15-cv-00487-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Sheila K. Oberto, Magistrate Judge, Presiding**

Submitted February 14, 2017***

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

* 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).

John E. Burgess appeals pro se from the district court's summary judgment for the United States in his breach of contract action against Mineni. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

In his opening brief, Burgess fails to address how the district court erred in granting summary judgment and, thus, this issue is waived. *See Wilcox v. Comm'r*, 848 F.2d 1007, 1008 n.2 (9th Cir. 1988) (arguments not raised on appeal by pro se litigant deemed abandoned); *see also Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant's opening brief are waived).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.