

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEP 14 2018

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

JANICE SMETS,

Plaintiff-Appellant,

v.

HEATHER WILSON, Secretary of the Air
Force,

Defendant-Appellee.

No. 16-56551

D.C. No. 2:15-cv-08555-JFW-JC
Central District of California,
Los Angeles

ORDER

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Smets's petition for panel rehearing (Docket Entry No. 28) is denied.

No further filings will be entertained in this closed case.

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NOT FOR PUBLICATION

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MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted March 13, 2018***

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Janice Smets appeals pro se from the district court's summary judgment in her action alleging age discrimination and retaliation in violation of the Age

* Heather Wilson has been substituted for her predecessor, Deborah Lee James, as Secretary of the Air Force under Fed. R. App. P. 43(c)(2).

** 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).

Discrimination in Employment Act (“ADEA”) and Title VII. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Smets’s age discrimination claim because Smets failed to raise a genuine dispute of material fact as to whether she was discriminated against on the basis of her age. *See Cotton v. City of Alameda*, 812 F.2d 1245, 1248 (9th Cir. 1987) (setting forth elements of a prima facie case of age discrimination under the ADEA).

The district court properly granted summary judgment on Smets’s retaliation claim because Smets failed to raise a genuine dispute of material fact as to whether defendant took an adverse employment action against her. *See Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1034-35 (9th Cir. 2006) (setting forth elements of a prima facie case of retaliation under Title VII).

The district court properly denied Smets’s motion to remand the action to the Equal Employment Opportunity Commission. *See* 29 C.F.R. § 1614.409 (“Filing a civil action . . . shall terminate Commission processing of the appeal.”).

We reject as without merit Smets’s contention that the district court lacked jurisdiction over her action as a “mixed case” complaint or appeal under 29 C.F.R. § 1614.302.

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).

Smets's motion to correct the opening brief (Docket Entry No. 26) is granted.

AFFIRMED.