

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 23 2021
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RHONDA NANETTE POLITE,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant-Appellee,

and

JOHN,

Defendant.

No. 20-55621

D.C. No. 8:19-cv-01518-JLS-DFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted September 14, 2021**

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Rhonda Nanette Polite appeals pro se from the district court's judgment

* 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).

dismissing her action alleging a violation of Title VII and state law. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011). We may affirm on any basis supported by the record. *Enlow v. Salem-Keizer Yellow Cab Co.*, 389 F.3d 802, 811 (9th Cir. 2004). We affirm.

Dismissal of Polite’s Title VII claim was correct because Polite failed to allege facts sufficient to state a plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (a plaintiff fails to show she is entitled to relief if the complaint’s factual allegations “do not permit the court to infer more than the mere possibility of misconduct”); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (elements of a Title VII failure-to-hire employment discrimination claim).

The district court did not abuse its discretion by dismissing Polite’s second amended complaint without leave to amend because amendment would have been futile. *See Serra v. Lappin*, 600 F.3d 1191, 1200 (9th Cir. 2010) (setting forth standard of review and factors for determining whether to grant leave to amend); *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) (“[T]he district court’s discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint.” (citation and internal quotation marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

RHONDA POLITE,

No. SACV 19-01518 JLS(DFM)

Plaintiff,

JUDGMENT

v.

“JOHN,” NANCY A. BERRYHILL,
ACTING COMMISSIONER OF
SOCIAL SECURITY; OR ANDREW
SAUL, COMMISSIONER OF
SOCIAL SECURITY

Hon. Josephine L. Staton
United States District Judge

Defendants.

The Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendant Andrew Saul, Commissioner of Social Security, having come on for hearing, and the Court having considered the pleadings, evidence presented, and the Memorandum of Points and Authorities,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion be granted and judgment is hereby entered for Defendant.

Dated: May 22, 2020

**HONORABLE JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE**

NO.
IN THE
SUPREME COURT of the United States

Rhonda Nanette Polite (Petitioner)

v.

KILOLO KIJAZAZI, Acting Commissioner

Of Social Security
Respondent

“John”

Respondent

On Petition for Writ of Certiorari

To The UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATEMENT OF MAILING PETITION FOR CERTIORARI

I, Mark Higgins, process server for Rhonda N. Polite deposited in the post office located on Loara Street in Anaheim, California, in two priority boxes addressed to the Clerk of the Supreme Court of the United States, first-class postage prepaid, containing Motion to proceed informa paupers Certificate of compliance and 1 original and 10 copies of the petition for certiorari in the above-entitled case.

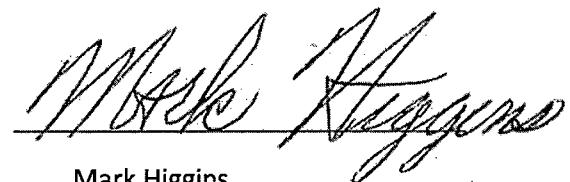
I am a citizen of the United States, a resident of Orange County, and I am over 18 years of age. I am not a party to the within-entitled action. My residence address is 1310 West Diamond Street apartment #104 Anaheim, California. On May 6, 2022 I mailed Writ of Certiorari by placing a true copy thereof, by regular mail to the following individuals/organizations:

U.S. Department of Justice
950 Pennsylvania Avenue NW Washington, D.C. 20530-0001

Civil Process Clerk
U.S. Attorney for the Central District
Office of the U.S. Attorney Building
300 North Los ANGELES Street
Los Angeles, CA 90012
Attn: Hillary Burelle

Social Security Administration
160 Spear Street Suite #800
San Francisco, CA 94105-1545
Attn: Donna Anderson

May 6, 2022



Mark Higgins
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