NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELIZABETH OFUASIA, Plaintiff-Appellant, v. SPIRIT HALLOWEEN SUPERSTORES, LLC, a foreign business corporation; et al., Defendants-Appellees, and SPENCER SPIRIT HOLDINGS, INC., a foreign business corporation, Defendant.	No. 21-35783 D.C. No. 3:20-cv-00076-YY MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted October 21, 2022[**]
Portland, Oregon

[*] 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).

Before: PAEZ and BADE, Circuit Judges, and GILLIAM,[***] District Judge.

Elizabeth Ofuasia appeals from the district court's grant of summary judgment for defendant Spirit Halloween Superstores, LLC ("Spirit") in her case alleging federal and state law racial discrimination claims arising out of an incident in which Spirit employees asked her to leave one of its stores. The facts and procedural history are familiar to the parties, and we do not repeat them here. We have jurisdiction under 28 U.S.C. § 1291, and we review the district court's decision granting summary judgment de novo. *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). We affirm.

On appeal, Ofuasia does not contest the grant of summary judgment as to her claims under 42 U.S.C. § 1985 and Oregon law. Our decision is thus limited to whether the district court erred in granting summary judgment as to her claims under 42 U.S.C. § 1981, 42 U.S.C. § 1982, and 42 U.S.C. § 2000a.

We analyze each of these claims under the *McDonnell Douglas* burden-shifting framework used in Title VII disparate treatment cases. *See Lindsey v. SLT L.A., LLC*, 447 F.3d 1138, 1144-45 (9th Cir. 2006) (applying *McDonnell Douglas* burden-shifting analysis to § 1981 racial discrimination claim); *Phiffer v. Proud Parrot Motor Hotel, Inc*., 648 F.2d 548, 551 (9th Cir. 1980) (describing prima

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[***] The Honorable Haywood S. Gilliam, Jr., United States District Judge for the Northern District of California, sitting by designation.

facie elements under 42 U.S.C. § 1982).

Here, the district court, adopting the magistrate judge's findings, determined that Ofuasia failed to meet her burden under the *McDonnell Douglas* test. The court concluded that Ofuasia did not make a prima facie showing of racial discrimination, explaining that she "relie[d] heavily on her own declarations, offer[ed] no additional evidence, and cite[d] no legal authority." The court found that, even if Ofuasia had made a prima facie showing, Spirit offered a legitimate, nondiscriminatory reason for its actions: an employee reported seeing Ofuasia or her friend shoplifting. The court further found that Ofuasia failed to show that the proffered reason was a pretext for intentional discrimination. The court rejected Ofuasia's claim that Spirit offered inconsistent reasons as to why she and her friend were asked to leave the store, explaining that it was "difficult to find any material inconsistency in [Spirit's] proffered reasons as they each boil down to a suspicion of shoplifting." The court concluded that Spirit's explanations were not conflicting, and that even if the store manager mistakenly said that there was video footage of the incident, that did not support a finding of pretext.

A plaintiff can prove pretext "either directly by persuading the court that a discriminatory reason more likely motivated [the defendant] or indirectly by showing that [the defendant's] proffered explanation is unworthy of credence." *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1124 (9th Cir. 2000)

(citation omitted). "Although a plaintiff may rely on circumstantial evidence to show pretext, such evidence must be both specific and substantial." *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002). "[W]hen evidence to refute the defendant's legitimate explanation is totally lacking, summary judgment is appropriate" even where the plaintiff has met the minimal burden of making a prima facie showing. *Lindsey*, 447 F.3d at 1148 (citing *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 890-91 (9th Cir. 1994)). Even assuming Ofuasia met her burden of presenting a prima facie case, the district court correctly found her evidence insufficient to establish any triable issue as to whether Spirit's proffered legitimate nondiscriminatory reason was a pretext for intentional discrimination. The district court appropriately granted summary judgment in Spirit's favor.

AFFIRMED.