

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 9 2022

FOR THE NINTH CIRCUIT

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

PIA HOLMES,

Plaintiff-Appellant,

v.

UNITED STATES VETERANS  
INITIATIVE,

Defendant-Appellee.

No. 20-55617

D.C. No.

2:19-cv-06779-JFW-JC

MEMORANDUM\*

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

Submitted September 7, 2022\*\*

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

Pia Holmes appeals pro se from the district court's summary judgment for defendant in Holmes' civil rights action. We have jurisdiction under 28 U.S.C.

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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).

§ 1331. We review de novo, *S.R. Nehad v. Browder*, 929 F.3d 1125, 1132 (9th Cir. 2019), and we affirm.

The district court properly granted summary judgment on Holmes' claims under Title VI and Title II of the Civil Rights Act, because Holmes failed to raise a genuine dispute of material fact as to whether the conduct of U.S. Veterans Initiative (U.S. Vets), or its staff, was motivated by race, color, religion, or national origin. *See* 42 U.S.C. § 2000d; *Alexander v. Sandoval*, 532 U.S. 275, 278 (2001). Holmes does not argue that she was treated badly or denied services on account of these reasons.

The district court properly granted summary judgment on Holmes' claims under the American with Disabilities Act, because Holmes failed to raise a genuine dispute of material fact as to whether U.S. Vets violated the ADA. *See McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004).

The district court properly granted summary judgment on Holmes' claims under Title IV of the Higher Education Act, because such claims must be brought by or against the Secretary of Education. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

The district court properly granted summary judgment on Holmes' negligence claims based upon actions taken by U.S. Vets prior to August 5, 2017, because such claims were barred by the statute of limitations. Cal. Civ. Proc. Code

§§ 335.1, 339. We decline to consider Holmes' argument, made for the first time on appeal, that U.S. Vets engaged in a continuing violation of her rights through either August 15, 2017, or through 2018. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

The district court properly granted summary judgment on Holmes' claims that U.S. Vets or its staff were negligent because of statements made during Holmes' state court action, because such claims are barred by California's litigation privilege. *See* Cal. Civ. Code. § 47; *Hagberg v. Cal. Fed. Bank*, 81 P.3d 244, 248 (Cal. 2004); *Kimes v. Stone*, 84 F.3d 1121, 1126-28 (9th Cir. 1996) (explaining requirements and application of the privilege).

The district court properly granted summary judgment on Holmes' remaining negligence claims because Holmes failed to raise a genuine dispute of material fact as to whether U.S. Vets breached any duty it owed to Holmes, or that such breach was the proximate cause of any injury Holmes suffered. *See Conroy v. Regents of Univ. Of Cal.*, 203 P.3d 1127, 1132 (Cal. 2009).

The district court properly granted summary judgment on Holmes' fraud and misrepresentation claims, because Holmes failed to raise a genuine dispute of material fact as to whether U.S. Vets, or its staff, misrepresented a past or existing material fact. *See Conroy*, 203 P.3d at 1135-36 (elements of a fraudulent misrepresentation claim; explaining difference between fraudulent and negligent

misrepresentation); *Fox v. Pollack*, 226 Cal. Rptr. 532, 537 (Cal. Ct. App. 1986) (elements of a negligent misrepresentation claim). Moreover, to the extent Holmes claims that U.S. Vets or its staff made misrepresentations during Holmes' state court action, the claim is barred by California's absolute litigation privilege. *See* Cal. Civ. Code. § 47; *Hagberg*, 81 P.3d at 248; *Kimes*, 84 F.3d at 1126-28.

The district court properly granted summary judgment on Holmes' tortious interference claim, because Holmes failed to raise a genuine dispute of material fact as to whether U.S. Vets interfered with a business relationship between Holmes and a third party. *See Fresno Motors, LLC v. Mercedes Benz, USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014); *Nelson v. Tucker Ellis, LLP*, 262 Cal. Rptr. 3d 250, 264 n.5 (Ct. App. 2020). We decline to consider Holmes' argument, made for the first time on appeal, that U.S. Vets committed a tortious interference with healthcare. *Smith*, 194 F.3d at 1052. Moreover, to the extent Holmes claims injury because of conduct by U.S. Vets or its staff during Holmes' state court case, the claims are barred by California's litigation privilege. *See* Cal. Civ. Code. § 47; *Hagberg*, 81 P.3d at 248; *Kimes*, 84 F.3d at 1126-28.

The district court properly granted summary judgment on Holmes' claim for "garden variety emotional distress," because Holmes failed to establish a prima facie case of either intentional or negligent infliction of emotional distress. *See Hughes v. Pair*, 209 P.3d 963, 976 (Cal. 2009) (elements of an intentional

infliction of emotional distress claim); *Belen v. Ryan Seacrest Prods., LLC*, 280 Cal. Rptr. 3d 662, 678 (Cal. Ct. App. 2021) (elements of a negligent infliction of emotional distress claim).

We reject as without merit Holmes’ arguments that the district court failed to consider a relevant regulation, or that declarations of U.S. Vets employees are inconsistent.

**AFFIRMED.<sup>1</sup>**

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<sup>1</sup> Because of our disposition of this appeal, we need not address the district court’s alternative holding that Holmes’ claims were barred by collateral estoppel.