

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2017

FOR THE NINTH CIRCUIT

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

MARIO DE VERA,

No. 14-16281

Plaintiff-Appellant,

D.C. No. 3:12-cv-05644-LB

v.

MEMORANDUM*

UNITED AIRLINES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Laurel D. Beeler, Magistrate Judge, Presiding**

Submitted April 11, 2017***

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Mario De Vera appeals pro se from the district court's summary judgment in his diversity action alleging breach of contract and breach of fiduciary duty. We have jurisdiction under to 28 U.S.C. § 1291. We review de novo the district

* 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).

court's summary judgment. *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on De Vera's breach of contract claim because De Vera failed to raise a genuine dispute of material fact as to whether there was a contract between the parties regarding travel benefits. *See Daniels v. Select Portfolio Servicing, Inc.*, 201 Cal. Rptr. 3d 390, 412 (Ct. App. 2016) (setting forth elements of breach of contract claim); *see also Moncada v. W. Coast Quartz Corp.*, 164 Cal. Rptr. 3d 601, 623 (Ct. App. 2013) (subjective beliefs of parties cannot provide the basis for contract formation).

The district court properly granted summary judgment on De Vera's breach of fiduciary duty claim because De Vera failed to raise a genuine dispute of material fact as to whether a fiduciary or confidential relationship existed between him and United Airlines. *See Knox v. Dean*, 140 Cal. Rptr. 3d 569, 582-83 (Ct. App. 2012) (setting forth elements of breach of fiduciary duty claim).

We reject as unsupported by the record De Vera's contentions that the district court did not address his allegations and that his complaint was not transferred to the district court.

AFFIRMED.