

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

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

ROSEMARY GREENLAW,

No. 20-16514

Plaintiff-Appellant,

D.C. No. 5:18-cv-04932-VKD

v.

MEMORANDUM*

JULIE A. SU, Acting Secretary of Labor,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Virginia K. DeMarchi, Magistrate Judge, Presiding**

Submitted April 17, 2023***

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Rosemary Greenlaw, a former federal employee, appeals pro se from the district court's judgment in her action alleging Title VII, Rehabilitation Act, Age Discrimination in Employment Act ("ADEA"), Freedom of Information Act

* 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).

(“FOIA”), and Privacy Act claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Leong v. Potter*, 347 F.3d 1117, 1121 (9th Cir. 2003) (failure to exhaust administrative remedies); *Arrington v. Wong*, 237 F.3d 1066, 1069 (9th Cir. 2001) (dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)). We affirm in part, vacate in part, and remand.

The district court dismissed Greenlaw’s Title VII, Rehabilitation Act, and ADEA claims for failure to exhaust administrative remedies because Greenlaw’s appeal to the Merit Systems Protection Board (“MSPB”) remained pending. However, MSPB issued final decisions during the pendency of this appeal. We thus vacate the judgment on these claims and remand for further proceedings.

Greenlaw has waived any challenge to the district court’s order granting summary judgment on her FOIA and Privacy Act claims because she failed to raise these claims in her opening brief. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (explaining that “we cannot manufacture arguments for an appellant and . . . will not consider any claims that were not actually argued in appellant’s opening brief” (citation and internal quotation marks omitted)). We thus affirm the grant of summary judgment on Greenlaw’s FOIA and Privacy Act claims.

The parties will bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.