

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2025

FOR THE NINTH CIRCUIT

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

BRIAN ARMSTRONG,

Plaintiff - Appellant,

v.

WB STUDIO ENTERPRISES, INC.;
WARNER BROTHERS
ENTERTAINMENT, INC.,

Defendants - Appellees.

No. 24-5049

D.C. No.

2:23-cv-03854-GW-JPR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted October 8, 2025
Pasadena, California

Before: RAWLINSON, MILLER, and JOHNSTONE, Circuit Judges.

Brian Armstrong appeals from the district court's grant of summary judgment for WB Studio Enterprises, Inc. and Warner Brothers Entertainment, Inc. (collectively, "Warner Brothers"), on his 42 U.S.C. § 1981 discrimination, retaliation, and hostile work environment claims. We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

28 U.S.C. § 1291. We review de novo a district court’s grant of summary judgment. *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir. 2008).

We affirm.

Section 1981 makes it unlawful to intentionally discriminate because of race when “mak[ing] and enforc[ing] contracts,” which includes “the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.”

42 U.S.C. § 1981(b); *Gen. Bldg. Contractors Ass’n, Inc. v. Pennsylvania*, 458 U.S. 375, 391 (1982). To show intentional discrimination because of race, plaintiffs must prove that “but for” race, they would not have suffered the loss of a right protected by the statute. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 333, 341 (2020).

1. The district court properly granted summary judgment on Armstrong’s § 1981 discriminatory failure-to-hire claim. Armstrong failed to raise a genuine dispute of material fact that the hiring decision maker, Patti Lee, made her decisions because of race rather than legitimate reasons. *See id.*; *Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 638, 640 (9th Cir. 2003). Statements made by people who were not involved in the hiring process are not material because Armstrong failed to establish a genuine dispute that those statements were connected to the hiring authority for the position at issue. *See Vasquez*, 349 F.3d at 640 (analyzing conduct of facility director who made decision to transfer plaintiff

rather than conduct of co-worker who made racially charged statements). Warner Brothers's statement regarding its "Commitment to Diversity and Inclusion" did not constitute a race-based reason for hiring other candidates because the commitment did not contain any specific instructions or directive on whom to hire, nor is there evidence that Patti Lee relied on the commitment in making her hiring decisions.

2. The district court properly granted summary judgment on Armstrong's § 1981 retaliation claim. Even assuming Armstrong engaged in a protected activity and suffered an adverse employment action, he failed to raise a genuine dispute of material fact that there was a causal link between the two. *See Surrell*, 518 F.3d at 1108. Whether a causal link may be inferred depends on some showing that the relevant decision maker was aware of the protected activity, which Armstrong did not genuinely dispute. *See Raad v. Fairbanks N. Star Borough Sch. Dist.*, 323 F.3d 1185, 1197 (9th Cir. 2003) (affirming summary judgment for school district because no evidence of requisite awareness by "the particular principals" who made allegedly retaliatory hiring decision).

3. The district court properly granted summary judgment on Armstrong's § 1981 hostile work environment claim. Armstrong failed to raise a genuine dispute of material fact that the alleged conduct was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive work

environment. *See Manatt v. Bank of Am., NA*, 339 F.3d 792, 798 (9th Cir. 2003). Generally, “teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes” in the conditions of employment. *Id.* There is no genuine dispute that the conduct challenged by Armstrong was not severe, pervasive, or unreasonably interfered with his work performance. *See McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1113 (9th Cir. 2004).

AFFIRMED.