

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Zahnga E. Peabody v. Thermo Fischer Scientific Inc.

Peabody v. Thermo Fischer Scientific Inc., Case No. 3:25-cv-00594-AR · No. Case No. 3:25-cv-00594-AR ·
Decided March 12, 2026

SUMMARY

This Findings and Recommendation addresses defendant Thermo Fischer Scientific Inc.'s Rule 12(b) (6) motion to dismiss claims brought by pro se plaintiff Zahnga E. Peabody. The magistrate judge recommends dismissing the Title VII retaliation claim without leave to amend, denying dismissal of the Title VII race-discrimination and ADEA claims on timeliness grounds, and dismissing those discrimination claims with leave to amend on the merits. The document also addresses a state-law retaliation claim and a common-law wrongful-discharge claim.

CASE DETAILS

COURT	United States District Court for the District of Oregon
WRITING FOR THE COURT	Jeff Armistead, United States Magistrate Judge
JURISDICTION	United States District Court for the District of Oregon
DECIDED	March 12, 2026
DOCKET	Case No. 3:25-cv-00594-AR
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendation on defendant's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss an amended complaint.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes them in the plaintiff's favor, draws reasonable inferences for the plaintiff, disregards legal conclusions couched as facts, and asks whether the complaint states a facially plausible claim. A limitations defense may be resolved on a motion to dismiss only when untimeliness is apparent from the complaint and materials properly considered.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- motions to dismiss
- employment discrimination
- title vii
- age discrimination
- wrongful termination

PRACTICE AREAS

employment law

civil rights

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether reporting workplace safety violations stated a protected-activity retaliation claim under Title VII.
2. Whether the Title VII race and national-origin discrimination claim and the ADEA age-discrimination claim were untimely based on the EEOC materials.
3. Whether the complaint plausibly alleged disparate-treatment discrimination under Title VII and Oregon law.
4. Whether the complaint plausibly alleged age discrimination under the ADEA.
5. Whether Oregon common-law wrongful discharge was available when an adequate statutory remedy existed under ORS 659A.199.
6. Whether the court should construe allegations raised for the first time in opposition briefing as asserting a USERRA claim.

HOLDINGS

1. Reporting workplace safety violations is not protected activity under Title VII because Title VII does not regulate workplace safety; the Title VII retaliation claim therefore failed to state a plausible claim.
2. The Title VII race and national-origin claim and the ADEA claim could not be dismissed as untimely at the pleading stage because the record did not establish with certainty whether the EEOC reopened its investigation or issued a later right-to-sue notice.
3. The complaint did not plausibly allege that similarly situated employees outside Peabody's protected class were treated more favorably, so the race and national-origin discrimination claims should be dismissed with leave to amend.
4. The complaint did not plausibly allege that Peabody was treated less favorably than younger coworkers or otherwise establish circumstances supporting an inference of age discrimination; dismissal of the ADEA claim with leave to amend was recommended.
5. The common-law wrongful-discharge claim was precluded because ORS 659A.199 provided an adequate statutory remedy for the same alleged whistleblower retaliation.
6. The court would not construe the amended complaint as asserting a USERRA claim because a complaint cannot be amended through opposition briefing, but Peabody could include such a claim in an amended complaint.

KEY QUOTATIONS

“Because reporting safety violations is not a protected activity under Title VII, Peabody fails to state a plausible federal claim for relief” (8)

“These practices, while shameful, are not enough to plausibly allege a claim of racial discrimination under Title VII because they do not demonstrate that similarly situated employees outside of Peabody’s protected class were treated more favorably.” (13)

“common law wrongful discharge is an interstitial tort: The tort may only be invoked when another claim does not provide a plaintiff with an adequate remedy” (16)

FACTUAL BACKGROUND

Peabody, a Black male, Navy veteran, and person over 40, worked for Thermo Fischer Scientific as a Field Service Engineer II in 2023. He alleged that promised training was canceled, that he received undesirable assignments and other disparate treatment, that he was placed on a performance improvement plan, and that he was terminated on December 1, 2023. He also reported a dangerous high-voltage interlock-bypass procedure in training materials and alleged that the employer retaliated against him. He filed EEOC and BOLI proceedings before commencing this action.

PROCEDURAL HISTORY

Peabody filed an amended complaint alleging Title VII retaliation and race and national-origin discrimination, ADEA age discrimination, Oregon whistleblower retaliation, and wrongful termination. Thermo Fischer Scientific moved under Rule 12(b)(6) to dismiss. The magistrate judge recommended granting the motion in part and denying it in part, subject to referral to a district judge and the parties' opportunity to object.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended that the Rule 12(b)(6) motion be granted in part and denied in part: dismiss Title VII retaliation without leave to amend; deny dismissal of the Title VII and ADEA claims as untimely; dismiss the race and national-origin claims with leave to amend; dismiss the ADEA claim with leave to amend; dismiss the common-law wrongful-discharge claim without leave to amend; and decline to construe the amended complaint as asserting USERRA, while permitting Peabody to add such a claim in an amended complaint.

CASES CITED

- Weston Fam. P'ship LLLP v. Twitter, Inc., 29 F.4th 611, 617 (9th Cir. 2022)
- United States v. Ritchie, 342 F.3d 903, 907-08 (9th Cir. 2003)
- Belciu v. Legacy Health, 2024 WL 3293896 (D. Or. May 22, 2024)
- Tsosie v. N.T.U.A. Wireless LLC, 2024 WL 4971963 (9th Cir. Dec. 4, 2024)
- Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010)
- Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012)
- Newcal Indus. v. Ikon Off. Sol., 513 F.3d 1038, 1043 n.2 (9th Cir. 2008)

- *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)
- *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)
- *Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir. 2017)
- *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990)
- *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 755 (9th Cir. 1997)
- *Thema v. Intel Corp.*, 2023 WL 5529978, at *3 (D. Or. Aug. 28, 2023)
- *Raad v. Fairbanks N. Star Borough Sch. Dist.*, 323 F.3d 1185, 1197 (9th Cir. 2003)
- *Crane v. Conoco, Inc.*, 41 F.3d 547, 553 (9th Cir. 1994)
- *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1121-22 (9th Cir. 2007)
- *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954, 969 (9th Cir. 2010)
- *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995)
- *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir. 1993)
- *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977)
- *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52 (2003)
- *Manatt v. Bank of Am., NA*, 339 F.3d 792, 797 (9th Cir. 2003)
- *Dawson v. Entek Int'l*, 630 F.3d 928, 935 (9th Cir. 2011)
- *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006)
- *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1049-50 (9th Cir. 2012)
- *Enlow v. Salem-Keizer Yellow Cab Co.*, 389 F.3d 802, 811 (9th Cir. 2004)
- *Ashraf v. Providence Newberg Med. Ctr.*, 2025 WL 2615149, at *4 (D. Or. Aug. 4, 2025)
- *Arnold v. Pfizer, Inc.*, 970 F. Supp. 2d 1106, 1145 (D. Or. 2013)
- *Walker v. State ex rel. Or. Travel Info. Council*, 367 Or. 761, 778 (2021)
- *Luke v. Target Corp.*, 2018 WL 2144347, at *2 (D. Or. May 9, 2018)
- *Duran v. Window Prods., Inc.*, 2010 WL 6420572, at *5 (D. Or. Dec. 22, 2010)
- *Wolff v. Tomahawk Mfg.*, 689 F. Supp. 3d 923, 952 (D. Or. 2023)
- *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)
- *Frenzel v. AliphCom*, 76 F. Supp. 3d 999, 1009 (N.D. Cal. 2014)

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