

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Elseddig Musa v. Footprint LLC

Musa · No. CV-24-02980-PHX-DJH · Decided February 17, 2026

OPINION

Musa

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Elseddig Musa, No. CV-24-02980-PHX-DJH 10 Plaintiff, ORDER 11 v. 12 Footprint LLC, 13
Defendant. 14 15 Before the Court is Footprint, LLC’s (“Footprint”) Motion to Dismiss the
entirety 16 of Plaintiff Elseddig Musa’s (“Musa”) Complaint in its entirety. (Doc. 13). Musa filed
17 Response opposing the Motion to Dismiss. For the reasons stated below, the Court will 18
grant the Motion to Dismiss in part and deny it in part. 19 I. Background 20 Musa states in his
Complaint that he holds a BS degree in electrical engineering and 21 an MBA. At the time of his
employment with Footprint, he had a BS degree. (Doc. 1 at ¶ 22 2). He attained the MBA later.
(Id.) To obtain employment back in 2021, he went to a 23 staffing agency by the name of Liberty
Staffing. (Id. at 7). After interviewing Musa and 24 having him fill out an application, Liberty
Staffing referred him to Footprint. (Id.) Musa 25 avers that he never hid his felony conviction, and
in fact disclosed it on his application 26 form. (Id.) While Musa initially started out working in
production at Footprint, he was 27 elevated to a position as a machine operator. (Id.) On the
recommendation of his direct 28 manager, Musa started the process of becoming a full-time
employee with Footprint on 1 about March 2022. (Id.) Musa considers a full-time position a
promotion in his Complaint 2 and refers to it as such. (Id. at 9). According to Musa, this is when
things started to fall 3 apart. He says that while he was awaiting his promotion, he started to feel
unwelcome at 4 work, particularly with Human Resources (“HR”). (Id. at 12). Musa believes that
the 5 genesis of the deterioration of his relationship with HR has its root in his religious practices.
6 (Id.) To adhere to his faith properly, he alleges he found a place to pray three times a day 7 while
at work. (Id.) Then, after his background check for his full-time employment came 8 back positive
for a 2016 conviction, he says he was terminated on March 30, 2022. (Id. at 9 13, 14 & 16). Now,
he brings the following three claims against Footprint: (1) disparate 10 impact under Title VII of
the Civil Rights Act; (2) disparate treatment under Title VII of 11 the Civil Rights Act; and (3) a
count three that only lists “Title VII.” (Doc. 1 at 4–5). The 12 Motion to Dismiss is denied as to
counts one and two and granted for count three. 13 II. Legal Standard 14 A successful motion to
dismiss under Rule 12(b)(6) must show either that the 15 complaint lacks a cognizable legal

theory or fails to allege facts sufficient to support its theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013) (citing *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)). A complaint that sets forth a cognizable legal theory will survive a motion to dismiss if it contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” 20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 21 544, 570 (2007)). A claim has facial plausibility when “the plaintiff pleads factual content 22 that allows the court to draw the reasonable inference that the defendant is liable for the 23 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is 24 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a 25 defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556). 26 In ruling on a 12(b)(6) motion, the Court takes the plaintiff’s well-pleaded factual 27 allegations as true and construes them in the light most favorable to the plaintiff. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual 1 allegations are not entitled to a presumption of truth and are not sufficient to defeat a 2 12(b)(6) motion. *Iqbal*, 556 U.S. at 678. A complaint does not need to have detailed 3 factual allegations, but it must have more than a “the-defendant-unlawfully-harmed-me 4 accusation.” *Id.* 5 III. Discussion 6 The Court finds that Musa has alleged enough facts to withstand a motion to dismiss 7 for both his disparate impact and disparate treatment claim. He has not for count three of 8 his Complaint, but the Court will allow leave to amend. 9 A. Disparate Impact 10 Footprint disputes that Musa has properly alleged the elements of a disparate impact 11 claim or identified the discriminatory policy at issue. (Doc. 13 at 5–6). In opposition, 12 Musa claims he has identified enough factual details to conform to the elements of a claim 13 as required under Title VII. (Doc. 15 at 2). The Court agrees. 14 Under the disparate impact theory, a plaintiff is not required to prove intentional 15 discrimination to demonstrate that an employer has violated Title VII. *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 986 (1988). An employer can be found to have violated 17 Title VII, and section 703 specifically, if a facially neutral employment practice has 18 significant adverse effects on protected groups. *Id.* The support for a disparate impact 19 claim is usually found in statistical disparities and the focus is on competing explanations 20 for these disparities. *Id.* A necessary premise of a disparate impact claim is that some 21 employment practices, although endorsed without a deliberately discriminatory motive, 22 practically function as intentional discrimination. *Id.* at 987. A prima facie case requires 23 the following elements: “(1) show a significant disparate impact on a protected class or 24 group; (2) identify the specific employment practices or selection criteria at issue; and (3) 25 show a causal relationship between the challenged practice or criteria and the disparate 26 impact.” *Hemmings v. Tidyman’s Inc.*, 285 F.3d 1174, 1190 (9th Cir. 2002). 27 At this stage of the proceedings, Plaintiff has alleged enough for a viable disparate 28 impact claim. Musa stated in his Complaint that he is a Muslim. (Doc. 1 at 1). He identified 1 background checks as the employment practice or policy at issue in his Complaint. (Doc. 2 1 at ¶¶ 13, 14, 17 & 20). Then, he stated the following: “[M]uslims along with Blacks and 3 Latinos have

higher rates of arrest and conviction rates than do whites.” (Doc. 1 at 5–6). 4 Put simply, Musa is stating that Footprint’s background check and screening practices have 5 a significant disparate impact on Muslims because they suffer from higher rates of arrest. 6 In turn, this leads to disqualifying them from employment. In other words, while the 7 practice is facially neutral, it has a discriminatory effect on Muslims. Nothing more is 8 required from Musa at the motion to dismiss stage and his disparate impact claim may go 9 forward. *Ashcroft*, 556 U.S. at 678 (“A claim has facial plausibility when ‘the plaintiff 10 pleads factual content that allows the court to draw the reasonable inference that the 11 defendant is liable for the misconduct alleged.’”). *Id.* 12

B. Disparate Treatment 13 Footprint argues that Musa’s claim for disparate treatment does not meet the 14 elements required for such a claim. (Doc. 13 at 7–8). By not mentioning his exact race, 15 according to Footprint, Musa cannot bring a race discrimination claim as part of his 16 disparate treatment claim. (*Id.* at 9). According to Footprint, Musa also failed to point to a 17 “similarly situated” employee who received more favorable treatment than he did. (*Id.* at 18 8). Musa disagrees and states that he has made out a *prima facie* case for disparate treatment 19 for both his race and his religion. (Doc. 15 at 4). The Court also disagrees with Footprint 20 that Musa has not alleged enough to withstand a motion to dismiss as to this claim. 21 Unlike a disparate impact claim, disparate treatment claims require discriminatory 22 motive on the part of the employer when adopting a challenged policy. *Int’l Bhd. of 23 Teamsters v. United States*, 431 U.S. 324, fn. 15 (1977). Mere awareness the employer 24 might have had about the adverse impacts of the policy is not enough. *Personnel 25 Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979). The plaintiff must 26 show that the employer chose a specific policy because of its effect on protected classes. 27 *Id.* The elements for disparate treatment are as follows: (1) plaintiff is part of a protected 28 class; (2) plaintiff is qualified for the position at issue; (3) he suffers from an adverse 1 employment action; and (4) similarly situated individuals outside of the plaintiff’s 2 protected class are treated more favorably than he is. *Davis v. Team Elec. Co.*, 520 F.3d 3 1080, 1089 (9th Cir.2008). 4 Musa has also stated enough to go forward on his disparate treatment claim. He is a 5 member of a protected class because he is a Muslim and because of his race. He says he 6 was qualified for his position: “[H]R flagrantly ignored Musa’s superior credentials for full 7 time employment and instead terminated a valuable and productive employee based on 8 HR’s religious prejudice and Musa’s race.” (Doc. 1 at 6). Musa suffered an adverse 9 employment action by not being offered a full-time role with Footprint. He goes on to claim 10 that “A co-worker in his department with skills inferior to Musa’s had a conviction. That 11 employee was placed on full-time status at the same time Musa was terminated allegedly 12 due to a years old convictions superseded by consistent high performance and his degrees.” 13 (Doc. 1 at ¶ 20). Essentially, he is saying that someone similarly situated, also with a 14 conviction, but not a Muslim, and not Musa’s race, was treated more favorably than he 15 was. Musa specifies this assertion in his Response to Footprint’s Motion to Dismiss: 16 “Plaintiff alleges a similarly situated individual with a conviction but of a different 17 protected background

was treated more favorably.” (Doc. 15 at 4). And while Footprint 18 clings to the argument that Musa did not identify his race, he very clearly identified it in 19 his EEOC Complaint and his Response to Footprint’s Motion to Dismiss. (Doc. 13-1 at 2– 20 3., Ex. A, EEOC and Civil Rights Division Complaint; see also Doc. 15, Response to 21 Motion to Dismiss (“Plaintiff was denied a full-time opportunity based on Defendant’s 22 discriminatory application of background check policies, disproportionately affecting 23 Muslims and Africans.”)). These allegations suffice at this stage. *Silvas v. E*Trade Mortg. 24 Corp.*, 514 F.3d 1001, 1003 (9th Cir. 2008) (stating that the Court construes the well- 25 pleaded factual allegations as true). 26 27 C. Count III of the Complaint 28 The third Count of the Complaint, contrary to the other two, has not stated enough 1 to withstand a motion to dismiss. It generally pleads the following: 2 Footprint’s termination of Musa was wrongful and illegal pursuant to the Civil Rights Act of 1964, 42 U.S.C. A. 2000e 3 et. seq. and caused Musa to suffer actual damages for loss of income and emotional distress entitling Musa to an award of 4 damages in an amount to be established in this action. 5 As plead, the Court cannot make out a claim and conclusory allegations are not 6 sufficient to withstand a motion to dismiss. However, the Court will allow Musa leave to 7 amend his Complaint. 8 IV. Service and Exhaustion of Administrative Remedies 9 Footprint also argues that Musa did not timely file his EEOC Complaint, did not 10 exhaust his administrative remedies, and did not properly serve Footprint. The Court does 11 not find that any of those arguments warrant dismissal of the lawsuit at this stage. 12 i. Timeliness of Musa’s EEOC and Civil Rights Division Claim 13 It is certainly true that Musa needs to have filed a timely charge with the EEOC and 14 timely acted upon his right-to-sue letter. See 42 U.S.C. § 2000e-5(e)-(f); see also *Myers- 15 Desco v. Lowe’s HIW, Inc.*, 484 Fed. Appx. 169, 171 (9th Cir. 2012). For a charge to be 16 timely filed, it needs to have been filed within 180 days of the alleged unlawful 17 employment practice. 42 U.S.C. § 2000e–5(e)(1). The 180-day deadline is extended to 300 18 days if the charge is initially filed with a state agency that enforces its own anti- 19 discrimination laws. *EEOC v. Dinuba Medical Clinic*, 222 F.3d 580, 585 (9th Cir.2000); 20 see also 42 U.S.C. § 2000e–5(e). 21 Footprint asserts that Musa did not timely file his EEOC Complaint after his 22 termination by stating the following: “Plaintiff has not alleged that he complied with the 23 administrative exhaustion requirements by timely filing a charge.” (Doc. 13 at 10). Leaving 24 the merits of Footprint’s argument to one side, the motion to dismiss stage is the improper 25 time for the Court to decide a statute of limitations defense because it raises a factual 26 question. See *DeSoto Cab Co., Inc. v. Uber Techs., Inc.*, 2018 WL 10247483, at *13 (N.D. 27 Cal. Sept. 24, 2018) (“Where the applicability of a statute of limitations concerns a factual 28 dispute . . . it is inappropriate to resolve a statute of limitations issue at the motion to 1 dismiss stage.”). Therefore, the Court cannot provide a resolution on the statute of 2 limitations issue Footprint has raised, at this time. 3 ii. Exhaustion of Administrative Remedies 4 The purpose of Title VII’s administrative exhaustion requirement is to give 5 employers notice of the claims against them and an opportunity to address these issues 6 before litigation. See *Leong v. Potter*, 347 F.3d 1117, 1122 (9th Cir. 2003). In determining 7 the scope of

administrative exhaustion, it is well-established in the Ninth Circuit that a plaintiff's EEOC charge should be construed "with the utmost liberality." *Kaplan v. 9 International Alliance of Theatrical & Stage Employees*, 525 F.2d 1354, 1359 (9th Cir. 10 1975). Exhaustion should be found for all claims that either fell within the scope of the 11 EEOC's actual investigation or an EEOC investigation which can reasonably be expected 12 to grow out of the charge of discrimination." *E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 13 899 (9th Cir. 1994). 14 Footprint insists that Musa's EEOC Complaint does not provide them with notice 15 of the claims against them. (Doc. 13 at 12–13). However, Musa's three-paragraph EEOC 16 charge describes that he applied for full-time status at Footprint, for a role that he believes 17 he was fully qualified for but did not end up getting because he did not clear his background 18 check. (Doc. 13-1 at 2–3., Ex. A, EEOC and Civil Rights Division Complaint). He stated 19 in his EEOC Complaint that he believes Footprint's background check policy is 20 discriminatory. (*Id.*) He also stated the following: "I believe I have been discriminated 21 against because of my religion and race (American Black), in violation of Title VII of the 22 Civil Rights Act 1964 as amended." (*Id.*) Construed liberally, along with the rest of his 23 EEOC and Civil Rights Division Complaint, Musa's claims for impact and treatment fall 24 within the scope of his EEOC Complaint. 25 iii. Proper Service under Rule 4 26 As a final point, Footprint states that Musa did not properly effectuate service for 27 his Summons or his Complaint because he personally served Footprint's Chief People 28 Officer at its Gilbert office. (Doc. 13 at 13–14). By serving Footprint's Chief People 1 Officer himself, Footprint contends that Musa violated Rule of Civil Procedure 4, which 2 only allows non-parties over the age of 18 to effectuate service. (*Id.* at 14; see also Fed. 3 R. Civ. P. 4(c)(2) (mandating this requirement)). 4 The Court is required to apply a "liberal and flexible construction" of the service 5 rules, especially when a pro se plaintiff is involved. *Borzeka v. Heckler*, 739 F.2d 444, 447 6 (9th Cir. 1984). The Court can exercise broad discretion to dismiss the case or retain it but 7 quash service. *S.J. v. Issaquah Sch. Dist. No. 411*, 470 F.3d 1288, 1293 (9th Cir. 2006). 8 What is not required is dismissal of the action for failure to serve properly if "(a) the party 9 that had to be served personally received actual notice, (b) the defendant would suffer no 10 prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve 11 properly, and (d) the plaintiff would be severely prejudiced if his complaint were 12 dismissed." *Borzeka*, 739 F.2d at 447. 13 Here, Footprint has made an appearance in this case. And Footprint does not argue 14 that it did not receive actual notice or that it would suffer any prejudice from the defective 15 service. *Clark v. Washington State Dep't of Health*, 735 F. Supp. 3d 1334, 1349 (W.D.

16 Wash. 2024) (outlining the court's decision-making process in this exact scenario). Musa, 17 on the other hand, would certainly be prejudiced if he had to refile his lawsuit. Good cause 18 also exists to provide Musa with additional time to effectuate service because he made a 19 reasonable effort to complete service within the required time and because his attempt 20 provided Footprint with actual notice of the lawsuit. *Clark*, 735 F. Supp. 3d at 1351. 21 Therefore, the Court

will allow Musa more time to effectuate service properly under 22 Federal Rule of Civil Procedure 4. 23 V. Leave to Amend 24 Where a district court grants a motion to dismiss, it should generally provide leave 25 to amend unless the complaint could not be saved by any amendment. See Fed. R. Civ. P. 26 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). 27 The Court “may exercise its discretion to deny leave to amend due to ‘undue delay, bad 28 faith or dilatory motive on [the] part of the movant, repeated failure to cure deficiencies by 1 amendments previously allowed undue prejudice to the opposing party . . . [and] futility of 2 amendment.’ ” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir. 3 2010) (quoting *Foman v. Davis*, 371 U.S. 178, 182, (1962)). Leave to amend may be 4 denied when “the court determines that the allegation of other facts consistent with the 5 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv- 6 Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). In sum, leave to amend “is 7 properly denied [where] amendment would be futile.” *Carrico v. City and Cty. of San 8 Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). 9 The Court will grant Musa leave to amend count three of his Complaint to state a 10 legally cognizable theory, if he so wishes. Musa’s complaint must be amended to address 11 the deficiencies identified above and he must clearly designate on the face of the document 12 that it is the “First Amended Complaint.” Musa should tell his case’s story in a short and 13 plain manner then state each claim or cause of action a separate count, alleging facts that 14 satisfy all the elements of the claims he is bringing. For example, he must allege a private 15 cause of action to base each of her claims, identify the legal elements to meet that cause of 16 action, and allege sufficient and particularized facts that show how she meets each requisite 17 element. 18 Musa’s amended complaint should follow the form detailed in Rule 7.1 of the Local 19 Rules of Civil Procedure (“LRCiv”). Examples of different types of complaints 20 demonstrating the proper form can be found in the appendix of forms that is contained with 21 the Federal Rules of Civil Procedure (forms 11–21).¹ This amended complaint must be 22 retyped or rewritten in its entirety and may not incorporate any part of the original 23 Complaint by reference. It must also clearly state the grounds for this Court’s jurisdiction, 24 either by bringing a federal cause of action or by showing how the Court may exercise its 25 diversity jurisdiction. See Fed. R. Civ. P. 8(a)(1). 26 The Court recommends Musa review the information available in the District 27 1 Those forms as well as the Federal Rules of Civil Procedure and the Local Rules, as well as other information for individuals filing without an attorney may be found on the District 28 Court’s internet web page at www.azd.uscourts.gov/. 1 || Court’s Handbook for Self-Represented Litigants, which is available online.* Musa should || also be aware that “an amended complaint supersedes the original complaint and renders || it without legal effect[.]” *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc). Thus, after amendment, the Court will treat an original complaint as nonexistent. || *Id.* at 925. 6 Accordingly, 7 IT IS ORDERED that Footprint LLC’s Motion to Dismiss (Doc. 13) is granted in 8 || part and denied in part. It is granted as to Count Three of Plaintiff Elseddig Musa’s 9 || Complaint and denied as to Counts One and Two. 10 IT IS

FURTHER ORDERED that Plaintiff is allowed to file a First Amended 11 |} Complaint for Count Three within thirty (30) days of the date this Order is entered. 12 IT IS FINALLY ORDERED that Plaintiff should serve the Summons and his 13 || Original Complaint (Doc. 1) on Defendant Footprint LLC in a way that conforms to the requirements of Federal Rule of Civil Procedure 4 and should do so no later than February |) 27,2026. 16 Dated this 17th day of February, 2026. 17 19 norable' Diané4. Hunietewa 20 United States District Judge 21 22 23 24 25 26 27 || 2 The Handbook may be found at <http://www.azd.uscourts.gov/handbook-self-represented-litigants>.
-10-