

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 21 2022

FOR THE NINTH CIRCUIT

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

PETER GARCIA,

No. 21-35418

Plaintiff-Appellant,

D.C. No. 6:20-cv-01800-MC

v.

MEMORANDUM*

WATERFALL COMMUNITY HEALTH
CENTER,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted July 12, 2022**

Before: SCHROEDER, R. NELSON, and VANDYKE, Circuit Judges.

Peter Garcia appeals pro se from the district court's judgment dismissing his action alleging violations of the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act ("ADA"), and state law. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

dismissal under Federal Rule of Civil Procedure 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm in part, vacate in part, and remand.

The district court properly dismissed Garcia's action because Garcia failed to allege facts sufficient to state a plausible claim for relief. *See id.* at 341-42 (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief).

The district court did not abuse its discretion in dismissing Garcia's action without leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and grounds for denial of leave to amend).

We review a district court's award of attorney's fees for abuse of discretion. *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1104 (9th Cir. 2007). Here, the district court awarded attorney fees to defendant without making factual findings or stating its legal conclusions. *See Fed. R. Civ. P.* 54(d)(2)(C). We therefore vacate the district court's award and remand for further proceedings.

We do not consider Garcia's contentions regarding defendant's motion for sanctions, which are beyond the scope of this appeal.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on

appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The parties shall bear their own costs on appeal.

AFFIRMED in PART, VACATED in PART, and REMANDED.