NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MALLY GAGE, Plaintiff - Appellant, v. MAYO CLINIC; MAYO CLINIC - ARIZONA, Defendants - Appellees.	No. 23-4410 D.C. No. 2:22-cv-02091-SMM MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted June 18, 2025**

Before: SANCHEZ, H.A. THOMAS, and DESAI, Circuit Judges.

Mally Gage appeals the district court's dismissal of her First Amended Complaint ("FAC") for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). "We review *de novo* the district court's grant of a motion to dismiss under

* 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).

Rule 12(b)(6), accepting all factual allegations in the complaint as true and construing them in the light most favorable to the nonmoving party." *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted).[1] We review the district court's grant of an extension of time under Federal Rule of Civil Procedure 6(b) for abuse of discretion. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

1. The FAC fails to state a claim of religious discrimination under Title VII. *See* 42 U.S.C. §§ 2000e(j), 2000e-2(a)(1). First, the FAC does not plausibly allege that Mayo Clinic and Mayo Clinic Arizona (collectively, "Mayo") failed to accommodate Gage's religious conflict with its COVID vaccination requirement. We use a burden-shifting framework to evaluate failure to accommodate claims. *See Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004). If a plaintiff pleads a prima face case of failure to accommodate, the burden shifts to the employer "to show that it initiated good faith efforts to accommodate reasonably the employee's religious practices or that it could not reasonably accommodate the

[1] The district court properly applied this standard when it determined that the FAC failed to state a claim.

employee without undue hardship." *Id.* (quotation omitted). An employer meets its burden if it offers a reasonable accommodation that eliminates the employee's religious conflict. *Am. Postal Workers Union, S.F. Loc. v. Postmaster Gen.*, 781 F.2d 772, 777 (9th Cir. 1986).

Here, the FAC pleads facts indicating that Mayo made good faith efforts to accommodate Gage. The FAC alleges that Mayo's religious accommodation request form included substantive conditions—such as masking and frequent COVID testing—to which Gage had to agree when submitting her exemption request. The form thus proposed a reasonable accommodation: if granted an exemption, Gage would not have to receive the COVID vaccine, but she would need to undergo other measures to mitigate her risk of transmitting COVID. *Cf. Hudson v. W. Airlines, Inc.*, 851 F.2d 261, 266 (9th Cir. 1988) (treating scheduling processes offered in a collective bargaining agreement as a reasonable accommodation for an employee's religious conflict). Because this accommodation would resolve Gage's religious conflict with Mayo's vaccination requirement, Mayo satisfied its burden under Title VII. *See Am. Postal Workers Union*, 781 F.2d at 777.

Gage alleges that Mayo did not offer a reasonable accommodation in good faith because she objected to the form and offered her own proposed accommodations, which Mayo ignored. But "a reasonable accommodation need not be on the employee's terms only." *Id.* Once Mayo offered an accommodation that

resolved Gage's religious conflict, its burden was satisfied; it had no obligation to accept Gage's preferred accommodations. *See id.* ("[T]he employee has a correlative duty to make a good faith attempt to satisfy [her] needs through means offered by the employer.").

Second, the FAC fails to plausibly plead a claim of disparate treatment. An employee pleads a prima facie case of disparate treatment by alleging that "(1) [s]he is a member of a protected class; (2) [s]he was qualified for [her] position; (3) [s]he experienced an adverse employment action; and (4) similarly situated individuals outside [her] protected class were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination." *Peterson*, 358 F.3d at 603.

Gage alleges no facts to support the fourth prong. The FAC states that Mayo's form "displays intentional malice" and "preconceived prejudice," but such conclusory allegations do not plausibly give rise to an inference of discrimination. *See id.*; *Iqbal*, 556 U.S. at 678. Similarly, the FAC states that Mayo did not require employees outside Gage's protected class to agree to the form's masking and testing conditions. But the facts alleged in the FAC indicate that Mayo imposed these conditions on any employee seeking an exemption from the vaccine, regardless of their religious beliefs. Thus, the FAC does not plausibly plead that Mayo treated non-Christians more favorably than Christians when applying its COVID policies.

2. The FAC fails to state a claim of retaliation. *See* 42 U.S.C. § 2000e-3(a). To plead a prima facie case of retaliation, a plaintiff must allege that "(1) she had engaged in protected activity; (2) she was thereafter subjected by her employer to an adverse employment action; and (3) a causal link existed between the protected activity and the adverse employment action." *Porter v. Cal. Dep't of Corr.*, 419 F.3d 885, 894 (9th Cir. 2005). The FAC and its exhibits make clear that Mayo did not hire Gage because she was "considered a back out of hire" after she refused to complete the religious accommodation request form. Thus, although the temporal proximity between Gage's EEOC complaint and the termination of her hiring process might otherwise give rise to an inference of causation, *see Bell v. Clackamas County*, 341 F.3d 858, 865 (9th Cir. 2003), the FAC alleges facts that make this inference implausible.

3. The FAC fails to state a claim of pregnancy discrimination. *See* 42 U.S.C. §§ 2000e(k), 2000e-2(a)(1). The FAC does not allege that similarly situated employees who were not pregnant were treated more favorably than Gage. And it does not allege any facts that give rise to an inference of discrimination. *See Peterson*, 358 F.3d at 603–05.

4. The district court did not abuse its discretion by granting Mayo multiple extensions to file its motions to dismiss. The district court found good cause to grant each extension, *see* Fed. R. Civ. P. 6(b)(1)(A), and Gage does not show that it acted

illogically, implausibly, or without support in inferences drawn from the record, *see Ahanchian*, 624 F.3d at 1258–59.

5. We decline to review the other claims that Gage raises in her opening brief because they were not presented to the district court. *See Tibble v. Edison Int'l*, 843 F.3d 1187, 1193 (9th Cir. 2016) ("Generally, we do not entertain arguments on appeal that were not presented or developed before the district court." (cleaned up)).

AFFIRMED.