NOT FOR PUBLICATION

FILED

JAN 27 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNESTO ALVARADO,

Plaintiff - Appellant,

v.

UNITED NATURAL FOODS, INC.,

Defendant - Appellee,

and

LAUREN BIEMER, LAUREN STALEY, EVAN SMITH, VICTOR MONTIEL, JOHN DOE, SANDRA DOE,

Defendants.

No. 24-5731

D.C. No. 5:24-cv-00655-FMO-AS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted January 22, 2026**

Before: WARDLAW, CLIFTON, and R. NELSON, Circuit Judges.

* 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).

Ernesto Alvarado appeals pro se from the district court's judgment dismissing his action alleging Title VII violations against his former employer. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under 28 U.S.C. § 1915(e)(2). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Alvarado's Title VII discrimination and hostile work environment claims because Alvarado failed to allege facts sufficient to state a claim. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 & n.5 (9th Cir. 2003), *as amended* (Jan. 2, 2004) (setting forth elements of discrimination and hostile work environment claims under Title VII); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998) (emphasizing that Title VII only prohibits discrimination "because of" protected characteristics).

The district court properly dismissed Alvarado's Title VII retaliation claim because Alvarado failed to allege facts sufficient to show that he was engaged in protected activity. *See Lui v. DeJoy*, 129 F.4th 770, 782 (9th Cir. 2025) (setting forth elements of a Title VII retaliation claim); *Moyo v. Gomez*, 40 F.3d 982, 984 (9th Cir. 1994) (explaining that an employee's complaint about workplace conduct constitutes protected activity only when the employee has a reasonable belief that the alleged conduct violated Title VII).

The district court did not abuse its discretion by dismissing Alvarado's

operative complaint without leave to amend because amendment would be futile. *See Chappel v. Lab'y Corp. of Am.*, 232 F.3d 719, 725–26 (9th Cir. 2000) (setting forth standard of review and explaining that futility of amendment is a proper justification for the denial of leave to amend).

AFFIRMED.