

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 9 2020

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

DONNA MARIE DAWSON,

No. 19-16216

Plaintiff-Appellant,

D.C. No. 2:18-cv-04829-DLR

v.

MEMORANDUM*

MARY ANN VALDEZ, Personally and
Professionally; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Douglas L. Rayes, District Judge, Presiding

Submitted March 3, 2020**

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Donna Marie Dawson appeals pro se from the district court's judgment dismissing her employment action alleging discrimination based on her disability. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of the applicable statute of limitations. *Ellis v. City of San Diego*,

* 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).

176 F.3d 1183, 1188 (9th Cir. 1999). We affirm.

The district court properly dismissed Dawson's disability discrimination claim because Dawson failed to file her claim within the applicable limitations period, and failed to allege facts sufficient to establish that the EEOC rescinded the notice of right to sue on her disability discrimination claim. *See* 42 U.S.C. § 2000e-5(f)(1) (setting forth 90-day period in which Title VII complainant may bring a civil action); *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1121-22 (9th Cir. 2007) (90-day period operates as a limitations period; if a litigant does not file suit within 90 days of receipt of the notice of right to sue, the action is time-barred); *see also Stiefel v. Bechtel Corp.*, 624 F.3d 1240, 1243-44 (9th Cir. 2010) (Americans with Disabilities Act adopts the procedure set forth in § 2000e-5); *Lute v. Singer Co.*, 678 F.2d 844, 846-47 (9th Cir. 1982) (90-day period from original right-to-sue notice did not apply because EEOC rescinded the notice within the 90-day period in which suit may be brought).

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).

All pending motions and requests, including Dawson's request set forth in the opening brief for a protective order and sanctions, are denied.

AFFIRMED.

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Donna Marie Dawson,

No. CV-18-04829-PHX-DLR

10 Plaintiff,

ORDER

11 v.

12 Mary Ann Valdez, et al.,

13 Defendants.

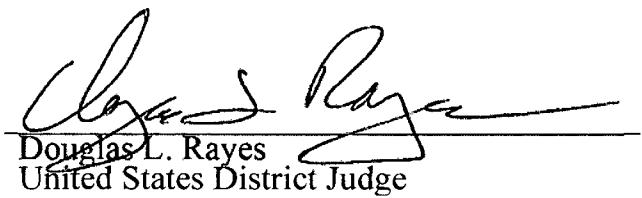
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16 At issue is Defendants' motion to dismiss. (Doc. 13.) Defendants correctly argue
17 that Plaintiff's complaint is untimely. Plaintiff's complaint alleges a wrongful
18 discrimination claim under Title VII of the Civil Rights Act. The Equal Employment
19 Opportunity Commission ("EEOC") issued Plaintiff a Notice of Right to Sue Letter on
20 June 6, 2018. The notice advised Plaintiff that if she wanted to pursue litigation she must
21 file her lawsuit within 90 days. *See 42 U.S.C. § 2000e-5(f)(1).* Plaintiff did not file this
22 case until December 20, 2018, which is far beyond the 90-day deadline. Plaintiff claims
23 that the June 6, 2018 notice does not control because she filed an appeal with the EEOC in
24 March 2019. The EEOC has authority to rescind a notice during the initial 90-day period.
25 If the EEOC does not rescind the notice before the expiration of the initial 90-day period,
26 then the original 90-day period controls and the EEOC may not later rescind the notice and
27 reconsider the decision. *See Lute v. Singer Co.*, 678 F.2d 844, 846-47 (9th Cir. 1982).
28 Plaintiff provides no evidence that the EEOC either rescinded her first notice before the

1 expiration of the 90-day deadline or issued a second notice that would render her complaint
2 timely. Accordingly,

3 **IT IS ORDERED** that Defendant's motion to dismiss (Doc. 13) is **GRANTED**.

4 The Clerk of the Court shall enter judgment accordingly and terminate this case.

5 Dated this 13th day of May, 2019.

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Douglas L. Rayes
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
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FOR THE DISTRICT OF ARIZONA
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9 Donna Marie Dawson,

NO. CV-18-04829-PHX-DLR

10 Plaintiff,

JUDGMENT OF DISMISSAL IN A
11 **CIVIL CASE**

v.

12 Mary Ann Valdez, et al.,

13 Defendants.

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15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed May
18 14, 2019, judgment of dismissal is entered. Plaintiff to take nothing, and the complaint
19 and action are dismissed.

20 Brian D. Karth

21 District Court Executive/Clerk of Court

22 May 14, 2019

23 By s/ D. Draper
24 Deputy Clerk

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FOR THE NINTH CIRCUIT

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JUN 23 2020

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DONNA MARIE DAWSON,

Plaintiff-Appellant,

v.

MARY ANN VALDEZ, Personally and
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Defendants-Appellees.

No. 19-16216

D.C. No. 2:18-cv-04829-DLR
District of Arizona,
Phoenix

ORDER

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Dawson's petition for panel rehearing (Docket Entry No. 45) and "expedited motion for entry of judgment against appellees" (Docket Entry No. 46) are denied.

No further filings will be entertained in this closed case.