

App No. 25A558

**In The
Supreme Court of The United States**

**Chantel Mitchell, Petitioner
v.
Office Depot, Inc., Respondent**

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit**

APPENDIX

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 18 2025

FOR THE NINTH CIRCUIT

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

CHANTEL MITCHELL,

Plaintiff - Appellant,

v.

OFFICE DEPOT, INC.,

Defendant - Appellee.

No. 24-292

D.C. No.

3:22-cv-00183-SLG-KFR

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Sharon L. Gleason, Chief District Judge, Presiding

Submitted July 14, 2025**

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Chantel Mitchell appeals pro se from the district court's judgment dismissing her employment action alleging discrimination claims under federal law. We have jurisdiction under 28 U.S.C. § 1291. "We review a district court's ruling that a Title VII action is barred by the statute of limitations de novo." *Payan*

* 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).

v. Aramark Mgmt. Servs. Ltd. P'ship, 495 F.3d 1119, 1121 (9th Cir. 2007). We affirm.

The district court properly dismissed Mitchell's action because Mitchell filed her complaint more than ninety days after she received a "Right to Sue" letter from the Equal Employment Opportunity Commission ("EEOC"). 42 U.S.C. § 2000e-5(f)(1); *see also Scholar v. Pac. Bell*, 963 F.2d 264, 266-67 (9th Cir. 1992) ("The requirement for filing a Title VII civil action within 90 days from the date EEOC dismisses a claim constitutes a statute of limitations."). While the ninety-day deadline is subject to equitable tolling, Mitchell has not established that (1) "[she] has been pursuing [her] rights diligently," and (2) "some extraordinary circumstance stood in [her] way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

Mitchell gives two excuses for filing late: she contracted COVID-19 during the ninety-day period and she miscounted when the ninety days expired. Given that Mitchell had seventy-five days to prepare her complaint before she tested positive for COVID-19, and returned to work five days later, her failure to timely file constitutes "a garden variety claim of excusable neglect" to which the equitable tolling doctrine does not apply. *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990).

AFFIRMED.

UNITED STATES DISTRICT COURT

for the
District of Alaska

CHANTEL MITCHELL,

Plaintiff

v.

OFFICE DEPOT, INC.,

Defendant

Civil Action No. 3:22-cv-00183-SLG-KFR

JUDGMENT IN A CIVIL ACTION

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

DECISION BY COURT. This action came to trial or decision before the Court. The issues have been tried or determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

THAT this action is dismissed with prejudice.

APPROVED:

s/Sharon L. Gleason

Sharon L. Gleason
United States District Judge

Date: December 19, 2023

Note: Award of prejudgment interest, costs and attorney's fees are governed by D.Ak. LR 54.1, 54.2, and 58.1.

Brian D. Karth
Brian D. Karth
Clerk of Court

claims.⁶ But on de novo review, the Court agrees with the Magistrate Judge that planning to wait until the last week to file a complaint is not evidence of diligence.

For the foregoing reasons, on de novo review, Plaintiff's objections to the Magistrate Judge's report are all overruled. The Court has reviewed the balance of the *Findings and Recommendations on Motion to Dismiss Under 12(b)(6)* and agrees with its analysis. Accordingly, the Court adopts the Findings and Recommendations, and IT IS ORDERED that the *Rule 12(b)(6) Motion to Dismiss* is GRANTED. This case is DISMISSED. Further, because the complaint cannot be saved by any amendment, this dismissal is with prejudice.⁷

The Clerk of Court is directed to enter a final judgment accordingly.

DATED this 19th day of December, 2023

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

⁶ Docket 30 at 8 (*citing* Docket 29 at 10).

⁷ See *Dumas v. Kipp*, 90 F.3d 386, 292 (9th Cir. 1996) ("where amendment would be futile, a claim is properly dismissed with prejudice").

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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AUG 27 2025

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v.

OFFICE DEPOT, INC.,

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No. 24-292

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3:22-cv-00183-SLG-KFR

District of Alaska,
Anchorage

ORDER

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

The panel unanimously voted to deny Mitchell's petition for panel rehearing, and has recommended denying the petition for rehearing en banc. The full court has been advised of Mitchell's petition for rehearing en banc, and no judge of the court has requested a vote. Fed. R. App. P. 40. Mitchell's petition for panel rehearing and rehearing en banc, Dkt. No. 19, is **DENIED**.

**Additional material
from this filing is
available in the
Clerk's Office.**