IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CORY LOVELADY, an individual,

Plaintiff,

v.

LEGACY HEALTH, a corporation,

Defendant.

Case No. 3:24-cv-01014-SB

FINDINGS AND RECOMMENDATION

BECKERMAN, U.S. Magistrate Judge.

Plaintiff Cory Lovelady ("Lovelady") filed this lawsuit against his former employer, Defendant Legacy Health ("Legacy"), asserting religious discrimination claims under Title VII of the Civil Rights Act ("Title VII") and Oregon Revised Statutes ("ORS") § 659A.030.[1] Legacy moves to dismiss Lovelady's complaint pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6).

[1] The parties conferred and Lovelady agreed voluntarily to dismiss all of his federal and state law claims except for his religious discrimination claims. (Pl.'s Resp. Def.'s Mot. Dismiss ("Pl.'s Resp.") at 1, ECF No. 17; Def.'s Reply Supp. Mot. Dismiss ("Def.'s Reply") at 1 n.1, ECF No 18.) The Court therefore limits its opinion to these two claims. (*See* Def.'s Reply at 1 n.1, same; *see also* Def.'s Mot. Dismiss ("Def.'s Mot.") at 4-8, 18-19, ECF No. 10, setting forth the portions of Legacy's initial motion that remain in dispute and addressed in the response and reply).

The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1367, but not all parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). For the reasons explained below, the Court recommends that the district judge grant Legacy's motion to dismiss.

BACKGROUND[2]

In or around 2015, Legacy hired Lovelady to serve as a sterile technician and implant specialist in the Portland metropolitan area.[3] (Compl. ¶¶ 1, 16, 93.) For approximately six years, Lovelady worked in this capacity "without incident and with exclusively positive reviews[.]" (*Id.*)

In response to the COVID-19 pandemic, Legacy announced in the summer of 2021 that unless it granted an employee's request for a medical or religious exemption, all employees would be required to receive the COVID-19 vaccine as a condition of their employment. (*Id.* ¶ 7.) Lovelady determined that Legacy's mandate conflicted with his religious beliefs and that he was unable to receive any of the vaccines, because as a "devout" Christian who embraces the

[2] The Court draws the facts in this background section from Lovelady's complaint, and must accept them as true for the purpose of evaluating Legacy's motion to dismiss under Rule 12(b)(6). *See Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1016 n.1 (9th Cir. 2014) (doing the same (citing *Seven Arts Filmed Ent. Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013)).

[3] For ease of reference and to avoid confusion, the Court cites the paragraph numbering that Lovelady used in his complaint. The Court, however, notes that Lovelady inserted paragraphs ninety-three through ninety-five in between paragraphs (1) one through sixteen, and (2) seventeen through twenty-nine. (Compl. at 1-11, ECF No. 1.) The Court also notes that Legacy relies on the chronological paragraph number (i.e., paragraphs ninety-three through ninety-five and seventeen through twenty-nine are chronological paragraphs seventeen through nineteen and twenty through thirty-two, respectively). (*See* Def.'s Mot. at 3 n.1, recognizing that Lovelady's "paragraphs are misnumbered" and advising that Legacy's cites reference the "chronological paragraph number, not the number that appears in the [c]omplaint"; *but see, e.g.*, *id.* at 3-4, noting that Lovelady listed "multiple theories of liability" under Title VII and ORS § 659A.030 and citing paragraphs twenty-four and thirty-one instead of twenty-five and thirty-two).

"tenets of Christianity," he believes that "life begins at conception" and "objected to the use of fetal tissue . . . derived from an aborted fetus to perform medical experiments to develop or manufacture a vaccine [on the ground] that [it] conflicted with [such] religious convictions." (*Id.* ¶¶ 18, 25, 93.)

In August 2021, Lovelady applied for a religious exemption from Legacy's vaccine mandate. (*Id.* ¶ 93.) Lovelady only referred generally to religious beliefs that conflicted with Legacy's mandate:

> I, Cory Lovelady, hold religious beliefs that are conflicting with this mandate [that] healthcare workers . . . be vaccinated. Under these beliefs lies faith based decisions[.]
>
> Faith, in the midst of suffering is very common in any religion. To challenge my own personal[ly] held beliefs . . . while having mine and many other['s] livelihoods threatened is a challenging time for you, but I will not faulter. Under no circumstances will my decision based in faith be challenged, or will I be faced with being challenged by my beliefs. So, I am submitting this under duress and threats, because I feel that no matter what I put will be good enough.
>
> I will stand in my faith. I firmly stand behind my personal[ly] held based belief. Even though[] I am being challenged, coerced, and threatened to do this, it is my choice that cannot be challenged, and I have faith that you will make the right decision for me and my beliefs, and not threaten my livelihood.

(*Id.*) (ellipses omitted).

In late September 2021, Legacy denied Lovelady's application without "conduct[ing] any follow up" or requesting "more details about [Lovelady's] religious beliefs," placed Lovelady on unpaid administrative leave, and terminated Lovelady's employment. (*Id.* ¶ 93.) Before Legacy fired Lovelady, Legacy's management "constantly reassured [Lovelady] . . . that [the pandemic] would not last forever, and that no one would get fired[] regardless of vaccination status." (*Id.* ¶¶ 93-94.)

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Following his termination, Lovelady filed a charge with the Equal Employment Opportunity Commission ("EEOC"). (*Id.* ¶ 2.) Lovelady received the EEOC's ninety-day right-to-sue notice on March 26, 2024. (*Id.*) Lovelady then filed this action on June 24, 2024. (Compl. at 13.)

LEGAL STANDARDS

"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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Supreme Court has explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Although "[t]he plausibility standard is not akin to a 'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). Thus, "where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

DISCUSSION

The parties' conferral efforts narrowed the issues presently before the Court to (1) whether Lovelady alleges facts sufficient to state a plausible failure to accommodate claim under Title VII and ORS § 659A.030, and (2) whether Lovelady failed timely to file his claim under ORS § 659A.030. (*See* Pl.'s Resp. at 1, 3, 6-7; Def.'s Reply at 1-8; *cf.* Def.'s Mot. at 4-8, 18-19.)

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I. RELIGIOUS DISCRIMINATION

A. Lovelady's Theory of Liability

Lovelady asserts religious discrimination claims against Legacy under Title VII and ORS § 659A.030. (Compl. ¶¶ 17, 24.) Lovelady's claims are based on the theory that Legacy failed to accommodate his request for a religious exemption from Legacy's vaccine mandate and instead terminated his employment. (*See id.* ¶¶ 17-20, 93, alleging that Legacy denied Lovelady's "requests for religious accommodation and . . . exemption[] from [Legacy's] vaccine mandate[]" and "failed to make a good faith effort to recognize or accommodate [Lovelady's] religious beliefs," and "engaged in . . . adverse employment actions culminating in [Lovelady's] unlawful termination").

B. Applicable Law

1. Parallel Federal and State Law

Both Title VII and ORS § 659A.030 make it unlawful for an employer to discharge an individual "because of" their "religion." Specifically, Title VII provides that it is "an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion[.]" 42 U.S.C. § 2000e-2(a)(1). Similarly, ORS § 659A.030 provides that "[i]t is an unlawful employment practice . . . [f]or an employer, because of an individual's . . . religion, . . . to refuse to hire or employ the individual or to bar or discharge the individual from employment." OR. REV. STAT. § 659A.030(1)(a).

Title VII defines "religion" as including "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate . . . [the] employee's . . . religious observance or practice without undue hardship

on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Considering that "Congress defined 'religion,' for Title VII's purposes, as 'includ[ing] all aspects of religious observance and practice, as well as belief[,]' . . . religious [belief] is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated[, absent undue hardship]."[4] *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774-75 (2015) (quoting 42 U.S.C. § 2000e(j)). Consequently, a Title VII plaintiff's religious discrimination claim may be based on a failure to accommodate theory. *See Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004) (recognizing that a plaintiff's "claim for religious discrimination under Title VII can be asserted under several different theories, including . . . failure to accommodate") (citations omitted).

"Courts construe Oregon's statutory counterpart . . . as identical to Title VII." *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1437 n.2 (9th Cir. 1993) (discussing the predecessor version of ORS § 659A.030); *see also Moore v. Portland Pub. Schs.*, 537 P.3d 544, 559 (Or. Ct. App. 2023) (explaining that "Oregon courts look to federal cases construing Title VII of the federal Civil Rights Act for guidance in construing ORS 659A.030, because its predecessor, *former* ORS 659.030, *renumbered as* ORS 659A.030 . . . , was modeled after that act" (citing *H.K. v. Spine Surgery Ctr. of Eugene, LLC*, 470 P.3d 403, 406 (Or. Ct. App. 2020), *rev. denied*, 484 P.3d 319 (Or. 2021))). Accordingly, the Court need not separately analyze Lovelady's religious discrimination claims under Title VII and ORS § 659A.030.[5] *See Heller*, 8 F.3d at 1437-41 &

[4] Legacy does not challenge Lovelady's claims on undue hardship grounds at this stage. (*See* Def.'s Reply at 1-8; Def.'s Mot. at 4-8, reflecting that Legacy did not raise such a challenge).

[5] The Court notes that the First Circuit recently observed that *Heller* was abrogated on other grounds by *Groff v. DeJoy*, 600 U.S. 447 (2023), a Title VII case addressing "what constitutes an undue hardship." *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9, 18 (1st Cir. 2024).

n.2 (analyzing the plaintiff's failure to accommodate theory under the Title VII framework after noting that the plaintiff's Oregon "statutory claim succeed[ed] or fail[ed] with his Title VII claim"); *Brown v. Nw. Permanente, P.C.*, No. 3:22-cv-00986-SI, 2023 WL 6147178, at *3-6 (D. Or. Sept. 20, 2023) (addressing the plaintiff's failure to accommodate theory and noting that "[c]ourts analyze claims for religious discrimination under ORS § 659A.030 and Title VII together").

2. Circuit Case Law

a. Recent Published Opinion

In a recent published opinion, the Ninth Circuit addressed whether the plaintiff adequately "ple[d] a prima facie case of failure to accommodate religion under Title VII," and determined that the plaintiff "stated [such a] claim[] under Title VII." *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1222-24 (9th Cir. 2023). As a threshold matter, the Ninth Circuit observed that "[c]laims under Title VII . . . for failure to accommodate religion are . . . analyzed under a burden-shifting framework." *Id.* at 1222 (citing *Heller*, 8 F.3d at 1440). The Ninth Circuit explained that under this framework, "the employee must plead a prima facie case of failure to accommodate religion," and "if the employee is successful, the employer can show that it was nonetheless justified in not accommodating the employee's religious beliefs or practices." *Id.* (citing *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999)).

Consistent with this understanding, the Ninth Circuit turned to what a plaintiff must allege "[t]o plead a prima facie case of failure to accommodate religion under Title VII," and explained that "[t]o plead [such] a prima facie case . . . , a plaintiff must allege, among other things, that she holds 'a bona fide religious belief' that conflicts with an employment

requirement."[6] *Id.* (quoting *Heller*, 8 F.3d at 1438). The Ninth Circuit held that the plaintiff "adequately alleged that [a job requirement] pose[d] a conflict with her religious beliefs," and noted that the defendant did "not otherwise contest the sufficiency of [the plaintiff's] prima facie case[.]" *Id.* at 1222-24.

In support of its holding, the Ninth Circuit explained that "[t]he Supreme Court has, albeit in the free exercise context, cautioned against second-guessing the reasonableness of an individual's assertion that a requirement burdens her religious beliefs, emphasizing that a court's 'narrow function . . . in this context is to determine whether the line drawn reflects an honest conviction.'" *Id.* at 1223 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)). The Ninth Circuit also explained that although "[t]his principle does not mean that courts must take plaintiffs' conclusory assertions of violations of their religious beliefs at face value[,] . . . [a Title VII plaintiff's] burden to allege a conflict with religious beliefs is fairly minimal." *Id.* (citation omitted) (citing *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981)). For these reasons and others, the Ninth Circuit reversed the district court's dismissal under Rule 12(b)(6) of the plaintiff's Title VII claim for failure to accommodate her religion. *Id.* at 1226-28.

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[6] "To establish a prima facie case for religious discrimination under a failure-to-accommodate theory, an employee must [also] show . . . [that] she informed her employer of the belief and conflict[,] and . . . the employer discharged, threatened, or otherwise subjected her to an adverse employment action because of h[er] inability to fulfill the job requirement." *Keene v. City & Cnty. of S.F.*, No. 22-16567, 2023 WL 3451687, at *2 (9th Cir. May 15, 2023) (brackets omitted) (quoting *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006)).

b. Recent Nonprecedential Opinion[7]

In a recent unpublished opinion, the Ninth Circuit similarly addressed a district court's dismissal with prejudice of the plaintiff's religious discrimination claims under Title VII and state law. *See Beuca v. Wash. State Univ.*, No. 23-35395, 2024 WL 3450989, at *1-2 (9th Cir. July 18, 2024). The district court found that the plaintiff "failed . . . plausibly [to] plead his claims' basic elements and [the defendant] successfully established an undue hardship affirmative defense," and as a result, dismissed the plaintiff's "complaint and denied leave to amend as futile." *Id.* at *1.

On appeal, the Ninth Circuit first addressed "[t]he elements of a failure to accommodate claim under both the [applicable Washington statute] and Title VII." *Id.* The Ninth Circuit noted that a claim for failure to accommodate religion under Title VII (and parallel state law) consists of three elements: "(1) the plaintiff had a bona fide religious belief, the practice of which conflicts with an employment duty; (2) he informed his employer of the belief and conflict; and (3) the employer discharged, threatened, or otherwise subjected him to an adverse employment action because of his inability to fulfill the job requirement." *Id.* (simplified) (quoting *Peterson*, 358 F.3d at 606).

Like the district court, the Ninth Circuit determined that the plaintiff failed to state claims for failure to accommodate his religion because the operative "complaint [was] largely

[7] The circuit's "unpublished dispositions" "can be cited, and may prove useful, as examples of the applications of settled legal principles when a district court or litigant is interested in demonstrating how a given principle operates in practice," but unpublished dispositions are "officially nonprecedential" and "not appropriately used . . . as the pivotal basis for a legal ruling by a district court." *Grimm v. City of Portland*, 971 F.3d 1060, 1067 (9th Cir. 2020) (citing *Hart v. Massanari*, 266 F.3d 1155, 1178-79 (9th Cir. 2001)). Unpublished dispositions are "also of little use to district courts or litigants in predicting how this [circuit]—which . . . is in no way bound by such dispositions—will view any novel legal issues . . . on appeal." *Id.*

conclusory and [did] not contain sufficient factual allegations to 'plausibly suggest entitlement to relief.'" *Id.* (quoting *Mattioda v. Nelson*, 98 F.4th 1164, 1174 (9th Cir. 2024)); *see also Beuca v. Wash. State Univ.*, No. 2:23-cv-0069, 2023 WL 3575503, at *1-2 (E.D. Wash. May 19, 2023) (noting that the plaintiff alleged only that he held "sincere religious beliefs and convictions that prevent[ed] him from taking the COVID-19 vaccination," he "apprised the [d]efendants of his sincerely held religious belief[s]," and he "lost this job due to his sincerely held religious belief[s]," and emphasizing that the plaintiff did "not provide any additional details about his beliefs," it was "not clear . . . whether [the] [p]laintiff submitted an exemption request to [the only named] [d]efendant," the plaintiff did "not elaborate as to how he informed [the] [d]efendants" of his beliefs, and the plaintiff did "not provide any additional facts connecting his discharge to his religious beliefs") (simplified), *rev'd on other grounds*, 2024 WL 3450989, at *1-2.

"Apart from the failure to plead a prima facie case, the district court [in *Beuca*] denied [the plaintiff] leave to amend[.]" 2024 WL 3450989, at *1. The district court found that "amendment would be futile because [the defendant] successfully established undue hardship." *Id.* The district court "also found that leave to amend was futile and dilatory because [the plaintiff] already amended his complaint and . . . had ample opportunity [yet failed] to identify any facts and causes of action that he could plausibly allege in th[e] matter." *Id.* at *2. In reversing, the Ninth Circuit held that the district court's undue hardship and futility analyses did not apply a recently clarified standard, and the record and stage of proceedings precluded a "rul[ing] as a matter of law that [the plaintiff's] request constituted an undue hardship." *Id.* at *1-2. The Ninth Circuit also explained that "[i]mportantly, [the plaintiff] amended his complaint only once, and it was in state court, where different pleading standards appl[ied]." *Id.* at *2.

Furthermore, the Ninth Circuit explained that the plaintiff "also outlined the broad strokes of potential amendments in his briefing and at oral argument." *Id.* For all of these reasons, and because "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so requires,'" the Ninth Circuit held that "[t]he district court abused its discretion in denying leave to amend." *Id.* (quoting *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)).

C. Analysis

The Court finds that Lovelady fails to "nudge[]" his religious discrimination claims "across the line from conceivable to plausible," and thus recommends that the district judge grant Legacy's motion to dismiss. *See Twombly*, 550 U.S. at 570 ("Because the plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.").

1. Elements

Under both Title VII and ORS § 659A.030, Lovelady's failure to accommodate claim consists of three elements: "(1) [the plaintiff] had a bona fide religious belief, the practice of which conflicts with an employment duty; (2) he informed his employer of the belief and conflict; and (3) the employer discharged, threatened, or otherwise subjected him to an adverse employment action because of his inability to fulfill the job requirement." *Peterson*, 358 F.3d at 606 (citing *Heller*, 8 F.3d at 1438); *see also Heller*, 8 F.3d at 1437-38 & n.2 (addressing Title VII and the predecessor version of ORS § 659A.030 and explaining that because "[c]ourts construe Oregon's statutory counterpart . . . as identical to Title VII," the plaintiff's "state statutory claim succeed[ed] or fail[ed] with his Title VII claim" for failure to accommodate his religious practices). The parties agree on this framework. (Def.'s Mot. at 6; Pl.'s Resp. at 7.) The parties, however, disagree about whether Lovelady alleges facts sufficient to satisfy the second

element. (*See, e.g.*, Def.'s Reply at 2 & n.3, arguing that Lovelady "cannot establish the second element" and confirming that for purposes of its motion, Legacy does not contest or dispute the sincerity or religious nature of Lovelady's beliefs, or argue that Lovelady's beliefs need to be purely religious).

2. Past Decisions

This Court has previously recognized that in vaccine mandate cases, a plaintiff can state a bona fide religious belief that conflicts with an employment requirement by alleging Christian-based beliefs in the sanctity of life and opposition to taking a vaccine connected to, or derived even remotely from, aborted fetal cell lines. *See White v. Columbia Sportswear Co.*, No. 3:24-cv-00006-SB, 2024 WL 5080032, at *8 (D. Or. Oct. 28, 2024) (citing, *inter alia*, *Welch v. Or. Health & Sci. Univ.*, No. 3:23-cv-01231-SB, 2024 WL 3106930, at *14 (D. Or. May 17, 2024), *findings and recommendation adopted*, 2024 WL 5077983, at *1 (D. Or. Dec. 11, 2024)), *findings and recommendation adopted*, 2024 WL 3106838, at *1 (D. Or. June 20, 2024); *see also Welch*, 2024 WL 3106930, at *14 (first citing *Stephens v. Legacy-GoHealth Urgent Care*, No. 3:23-cv-00206-SB, 2023 WL 7612395, at *7-9 (D. Or. Oct. 23, 2023), *findings and recommendation adopted in full and clarified in part*, 2023 WL 7623865, at *1 (D. Or. Nov. 14, 2023); and then citing *Trinh v. Shriners Hosps. for Child.*, No. 3:22-cv-01999-SB, 2023 WL 7525228, at *10-11 (D. Or. Oct. 23, 2023), *findings and recommendation adopted*, 2023 WL 7521441, at *1 (D. Or Nov. 13, 2023)). Opinions of other judges in this district are in accord. *See, e.g.*, *Schafer v. Legacy Health*, No. 3:23-cv-01543-HZ, 2024 WL 1932544, at *3-4 (D. Or. May 2, 2024) (recognizing that "[j]udges in this district have concluded that 'invocation of an anti-abortion stance, guidance from spiritual leaders, and the use of fetal cells in developing COVID-19 vaccines appropriately alleged a bona fide religious belief'" (first quoting *Denton v. Shriners Hosp. for Child.*, No. 3:23-cv-00826-JR, 2024 WL 1078280, at *3 (D. Or. Feb. 8,

2024), *findings and recommendation adopted*, 2024 WL 1075324, at *1 (D. Or. Mar. 12, 2024); and then citing *Kather v. Asante Health Sys.*, No. 1:22-cv-01842-MC, 2023 WL 4865533, at *4 (D. Or. July 28, 2023))).

The Court has also dismissed complaints in vaccine mandate cases where the plaintiffs relied largely on conclusory assertions and recitations of statutory language and alleged no facts plausibly to suggest that (1) the plaintiffs' beliefs were rooted in their religions, (2) there was an actual conflict between the plaintiffs' beliefs and their employers' vaccine mandate, and/or (3) in requesting an exemption, the plaintiffs informed their employer of the belief and conflict. *See White*, 2024 WL 5080032, at *8 (so stating and collecting cases); *Welch*, 2024 WL 3106930, at *14 (same).

In *Stephens*, for example, the Court emphasized that the plaintiff alleged only that as a "devout Christian" and "devoutly religious member of the Christian faith who endeavors at all times to follow the teachings of Christ," she "did not believe it was consistent with her faith to take the vaccine." 2023 WL 7612395, at *6. In recommending dismissal, the Court explained that general references to Christianity do not meet even a "fairly minimal" burden at the pleading stage, as such allegations are conclusory and fail plausibly to suggest that a plaintiff's anti-vaccination beliefs are in fact religious. *Id.* (citing *Kather*, 2023 WL 4865533, at *5); *see also Parrish v. Shriners Hosps. for Child.*, No. 3:24-cv-00013-JR, 2024 WL 3688869, at *1-2 (D. Or. Aug. 7, 2024) (Immergut, J.) (explaining that the relevant plaintiff's "sole allegation [was] that she 'applied for a religious exception based on her deeply held Christian religious beliefs,'" and that "[t]his single allegation [was] not enough" because "[p]laintiffs must allege a conflict in Title VII cases, which requires some description of the plaintiffs' particular beliefs") (simplified).

Like *Stephens*, this Court's initial decision in *Trinh* emphasized that the plaintiff alleged only that she was a "deeply religious person who follow[ed]" unspecified "ten[ets] of both the Christian faith and Buddhism," she was "dedicated to following" unspecified "tenets of her faith to the best of her ability," and "[as] a devoutly religious person," she "had serious objections to taking the vaccine because it would constitute violating her bodily integrity and tainting the purity of her body." 2023 WL 7525228, at *2, *8-10. In recommending dismissal, the Court explained that the plaintiff's allegations were conclusory and emphasized the lack of specific allegations or factual enhancement on how or why the plaintiff's beliefs and unspecified religious tenets conflicted with the vaccine. *See id.* at *8-10 (citing *Kather*, 2023 WL 4865533, at *5); *cf. Bolden-Hardge*, 63 F.4th at 1222-24 (evaluating whether the plaintiff had plausibly alleged "an *actual* conflict" between her religious beliefs and work requirement) (emphasis added); *Bulek v. Kaiser Found. Hosps.*, No. 3:23-cv-01585-MO, 2024 WL 1436134, at *3 (D. Or. Apr. 3, 2024) ("Courts will not second-guess the reasonableness of a plaintiff's assertion that a requirement conflicts with her religious beliefs, but plaintiffs still must say what the conflict is. . . . This burden is minimal, but plaintiffs must still allege a conflict. Here, [the plaintiff] has not alleged any facts showing a conflict between her religious beliefs and [the defendant's] vaccine mandate.").

More recently, in *Welch*, the Court addressed vaccine exemption-related statements that did not invoke religious beliefs related to abortion but were nevertheless sufficient at the pleading stage. 2024 WL 3106930, at *15. The plaintiff at issue in *Welch* invoked her beliefs regarding her faith and God, which she tied to her readings and interpretations of her Bible. *Id.* Specifically, the plaintiff stated that (1) she was "a baptized, born again Christian, and based on the Bible that [she] read and used to guide [her] life, [she was] to rely on and put [her] trust in

[her] God for protection and healing, which [was] the foundation of [her] faith," (2) if she "were to get th[e] vaccine, [she] would be relying on something man-made and not God, which would mean [that she did not] trust [God] or have faith and that would go against [her] faith and the Bible that [she] read, which [said] 'to trust in the Lord with all things' . . . [and] 'do you know that your body is a temple of the Holy Spirit within you, whom you have from God? You are not your own, for you were bought with a price. So glorify God in your body,'" (3) "[g]etting th[e] vaccine, not knowing how it may affect [her] mentally and physically either now or in the future, would go against the Bible and what God tells [her]," and (4) she had "already contracted Covid in the past, [and] thus ha[d] already built up natural broad-spectrum antibodies with the immune system that God gave [her, and she would be] relying on that and God to protect [her] instead of something man-made." *Id.*

The Court concluded that the plaintiff plausibly alleged that she held bona fide religious beliefs that conflicted with her employer's vaccine mandate. *See id.* at *16. In support, the Court noted that construing all facts and inferences in the plaintiff's favor, the plaintiff's statements suggested that based on her readings and interpretations of verses in her Bible (some of which she quoted), she could not receive a vaccine injection (i.e., rely on "something man-made and not God") for "protection and healing" without violating the "foundation of her faith," going "against the Bible and what God tells her," exhibiting a lack of faith and "trust in the Lord with all things," and failing to treat her "body [as] a temple of the Holy Spirit within [her]" and "glorify God in [her] body." *Id.* The Court explained that dismissal was inappropriate because these statements amounted to more than conclusory assertions of a conflict between religious beliefs and a vaccine mandate, and showed how the plaintiff's conflict was rooted in her religious beliefs. *Id.* (first citing *Shafer*, 2024 WL 1932544, at *3; and then citing *Quinn v.*

Legacy Health, No. 3:23-cv-00331-JR, 2024 WL 620344, at *2 (D. Or. Feb. 13, 2024) (Nelson, J.)); *see also Shafer*, 2024 WL 1932544, at *3 ("[A] court must distinguish between conflicts that are rooted in religious belief as opposed to ones based on purely secular philosophical concerns.") (simplified); *Quinn*, 2024 WL 620344, at *2 (noting that one plaintiff's religious exemption requests stated "I AM GOD" and "do not need a religious authority other than God" but also stated that she was "a non-denominational Christian," the "Bible ma[de] it clear that [her] body [was] a temple," she could not "[t]ak[e] [a] new vaccine/experimental gene therapy/gateway to the Mark of the Beast [without] griev[ing] [her] Lord and [her] soul," and "the 'Mark of the Beast' refers to a concept from the Christian Bible," and holding that this plaintiff met "the minimal standard for pleading a sincere religious belief that conflicts with an employment requirement").

Similarly, in *White*, the Court found that the plaintiff's allegations were comparable to those courts have found sufficient at the pleading stage in this district. 2024 WL 5080032, at *10. The *White* plaintiff's claim was based primarily on these allegations: (1) she was "a devoutly religious individual who adhere[d] to principles of a Christian faith and [was] dedicated to following the tenets of her faith to the best of her ability," (2) the defendant's vaccine "mandate . . . caused [her] extreme anxiety and fear," (3) "[a]ccording to the Bible, Godly decisions made in line with the fruit of the Holy Spirit are made with love, joy, peace, goodness, kindness, faithfulness, gentleness, and self-control," (4) "anxiety and fear are not the fruit of the holy spirit, [and thus] receiving the vaccine [was] biblically against her faith and conscience," (5) she "asked God for direction and the Holy Spirit moved her heart and conscience to not accept the COVID-19 vaccine and to place her trust in Him," and (6) "[i]f she [was] to go against

this guidance, she believe[d] [that] she would be sinning and jeopardizing her relationship with God." *Id.*

The Court determined that these allegations amounted to more than conclusory assertions of a conflict between religious beliefs and a vaccine mandate, and showed how the plaintiff's conflict was rooted in her religious beliefs. *Id.* (citing *Parrish*, 2024 WL 3688869, at *1 (Immergut, J.)); *see also Parrish*, 2024 WL 3688869, at *1 (stating that "'[p]laintiffs must . . . allege a conflict' in Title VII cases, which requires some description of the plaintiffs' particular beliefs" (quoting *Bulek*, 2024 WL 1436134, at *3)). The Court also noted, by way of comparison, that in *Coates v. Legacy Health*, No. 3:23-cv-00931-JR, 2024 WL 4381123, at *1-2 (D. Or. Oct. 3, 2024) (Baggio, J.), the district court held that the Title VII plaintiffs relied on "minimal pleadings" but their allegations were sufficient to state plausible claims for religious discrimination:

> Although Plaintiff Hickman alleges secular reasoning (e.g., distrust of the media and governing bodies), she additionally alleges that God will protect her body from COVID-19. She asserts that receiving the vaccine "violates [her] conviction that [her] body has been given to [her] by God and He has given [her body] all the tools it needs to protect itself[.]" Accordingly, Plaintiff Hickman meets the minimal standard for pleading a sincere religious belief. *See Bolden-Hardge*, 63 F.4th at 1223.
>
> Plaintiff Sigafoose alleges that she is writing with personal religious convictions that prevent her from receiving the COVID-19 vaccine including that her "body is a temple of the Holy Spirit[.]" Although Plaintiff Sigafoose states that her religious convictions are personal to her, at this stage she has plead the minimal standard for a sincere religious belief. *See Bolden-Hardge*, 63 F.4th at 1223.
>
> Lastly, although Plaintiff Brenden acknowledges that "the Church does not prohibit the use of any vaccine[]", she further states that the Christian teaching has led her to decline the COVID-19 vaccine. She explains, that if "a Christian comes to an informed and sure judgment in conscience that he or she should not receive a vaccine, then the Church requires that the person follow this certain judgment of conscience and refuse the vaccine." Again, while minimal, Plaintiff Brenden has pled that she expressed a religious conflict with receiving the COVID-19 vaccine to her employer. *See Bolden-Hardge*, 63 F.4th at 1223.

> Development of the factual record may demonstrate in detail Plaintiffs Hickman, Sigafoose, and Brenden's religious relationship, if any, to the requirement to receive the COVID-19 vaccine, at this stage in the proceedings, however, the minimal pleadings are sufficient to state a claim. . . .

Id. at *3-4 (simplified).

3. Disposition

The Court finds that Lovelady fails adequately to allege that he informed Legacy of his religious belief and conflict with Legacy's mandate. *See Peterson*, 358 F.3d at 606 (describing this element).

Lovelady alleges that Legacy's mandate conflicted with his religious beliefs and that he was unable to receive any of the vaccines, because as a "devout" Christian who embraces the "tenets of Christianity," he believes that "life begins at conception" and "objected to the use of fetal tissue . . . derived from an aborted fetus to perform medical experiments to develop or manufacture a vaccine [on the ground] that [it] conflicted with [such] religious convictions." (Compl. ¶¶ 18, 25, 93.) Lovelady, however, alleges that his exemption request only stated that a conflict existed and focused almost entirely on his objections to any challenge to his unspecified beliefs and "faith":

> I, Cory Lovelady, hold religious beliefs that are conflicting with this mandate [that] healthcare workers . . . be vaccinated. Under these beliefs lies faith based decisions[.]
>
> Faith, in the midst of suffering is very common in any religion. To challenge my own personal[ly] held beliefs . . . while having mine and many other['s] livelihoods threatened is a challenging time for you, but I will not faulter. Under no circumstances will my decision based in faith be challenged, or will I be faced with being challenged by my beliefs. So, I am submitting this under duress and threats, because I feel that no matter what I put will be good enough.

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> I will stand in my faith. I firmly stand behind my personal[ly] held based belief. Even though[] I am being challenged, coerced, and threatened to do this, it is my choice that cannot be challenged, and I have faith that you will make the right decision for me and my beliefs, and not threaten my livelihood.

(*Id.* ¶ 93) (ellipses omitted).

Lovelady suggests that he provided "enough information about [his] religious [beliefs] to permit [Legacy] to understand the existence of a conflict between [his] religious [beliefs] and [Legacy's] job requirements." (Pl.'s Resp. at 8, quoting *Heller*, 8 F.3d at 1439); *see also Heller*, 8 F.3d at 1439 (explaining that "[a] sensible approach would require only [such] information"). In so arguing, Lovelady relies on his exemption request (quoted above) and his allegations that his objection was "based on his pro-life beliefs, but that no one from [Legacy's] institution contacted him to seek further information." (Pl.'s Resp. at 16, citing Compl. ¶ 93.) Lovelady also argues that this Court's opinions in *Welch* and *White* align with the "current trajectory of [the] caselaw" recognizing that "Title VII should be interpreted more expansively and protective of religious liberty, rather than less so," which "fatally undercuts" Legacy's motion. (*Id.* at 11, 14-16.)

Heller provides useful guidance here. In that case, the plaintiff's wife had been studying to convert from Catholicism to Judaism and the plaintiff's son's bar mitzvah could not take place until his mother's conversion because "Jewish law mandates that children take their mother's religion[.]" *Id.* at 1437. Shortly after the plaintiff's employer canceled all vacation and leave in advance of a three-day "tent sale," the plaintiff's rabbi called to inform him that he had two dates available for the plaintiff's wife's conversion ceremony. *Id.* The plaintiff's children were also converting to Judaism at the plaintiff's wife's two-hour ceremony, the plaintiff was required to attend absent extraordinary circumstances, and the plaintiff believed in "good faith" that the rabbi's available dates, which conflicted with the employer's three-day sale, "could not be

changed[.]" *Id.* at 1436-39 & n.1. As a result, the plaintiff called his immediate supervisor to "explain[] his situation," asked for "two hours off" on one of the available dates, and confirmed that he was unable to "hold the ceremony at another time." *Id.* at 1437. After the plaintiff's supervisor granted him permission to attend the ceremony and the plaintiff's rabbi made necessary arrangements, a superior overruled and instructed the plaintiff's supervisor to "inform [the plaintiff] that he was required to attend [work that day] and that, if he failed to do so, he would be fired." *Id.* The plaintiff's supervisor did so and fired the plaintiff when he "insisted on attending the ceremony." *Id.* After attending the ceremony, the plaintiff sued his employer, alleging religious discrimination claims under "Title VII and its Oregon statutory counterpart[.]" *Id.*

In a post-bench and jury trial appeal, the Ninth Circuit addressed the employer's argument that the plaintiff "never explained the nature of the ceremony to [the employer, and thus] did not give notice of his conflict." *Id.* at 1439. The Ninth Circuit explained that "[a] sensible approach would require only enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements." *Id.* In support of this "sensible approach" standard, the Ninth Circuit cited a Seventh Circuit case deeming "sufficient" an employee's notice that he was "not able to work on Saturday because of [his] religious obligation," and an Eighth Circuit case stating that an "employee must, at least, "inform[] his employer of his religious needs[.]" *Id.* (first citing *Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978); and then citing *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1286 (8th Cir.1977), *cert. denied*, 434 U.S. 1039 (1978)).

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Applying this approach, the Ninth Circuit held that the plaintiff's "notice to [the defendant] was satisfactory." *Id.* In so holding, the Ninth Circuit emphasized that the plaintiff's supervisor and the supervisor's superior "knew that [the plaintiff] was Jewish," the plaintiff's supervisor "knew that [the plaintiff's] wife was studying for conversion," and "when [the plaintiff] requested the time off, he informed [his supervisor] why he needed to miss work." *Id.* The Ninth Circuit also explained that "[a]ny greater notice requirement would permit an employer to delve into the religious practices of an employee in order to determine whether religion mandates the employee's adherence[,]" and "[i]f courts may not make such an inquiry, then neither should employers." *Id.* (simplified). For these reasons, the Ninth Circuit found that the district court "erred in holding that [the plaintiff] did not establish a prima facie Title VII case[.]" *Id.*

In arguing that he did not need to provide Legacy with "extensive notice" regarding his conflicting religious beliefs and Legacy's vaccine mandate, Lovelady notes that *Heller* requires "only enough" or "sufficient" information about such a conflict and recognizes that employers may not delve into their employees' religious beliefs. (Pl.'s Resp. at 8, quoting *Heller*, 8 F.3d at 1439.) *Heller*, however, recognized that the plaintiff's supervisor and the supervisor's superior not only knew that the plaintiff was Jewish and that the plaintiff's wife was studying to convert to Judaism, the plaintiff also "informed" his supervisor "why he needed to miss work." 8 F.3d at 1436-37, 1439. That is to say, the plaintiff also "explained his situation" to his supervisor. *Id.* at 1437.

Unlike *Heller*, Lovelady fails adequately to allege that he provided "enough information" about his religious beliefs to "permit" Legacy to "understand the existence of a conflict" between his religious beliefs and Legacy's vaccine mandate. *See id.* (describing this "sensible approach"

"notice requirement"). Lovelady essentially acknowledges that he invokes pro-life beliefs in his complaint, but his exemption request failed to identify or refer to such beliefs. (*See* Pl.'s Resp. at 8, reflecting that Lovelady emphasizes that he quoted his exemption request and alleges that his objection to Legacy's vaccine mandate was "based on his pro-life beliefs, [and] that no one from [Legacy's] institution contacted him to seek further information"). In other words, Lovelady acknowledges that he failed adequately to explain his situation to Legacy. Instead, Lovelady conclusorily stated that his religious beliefs conflicted with Legacy's mandate, referred generally to his faith, and focused on his opposition to any challenge to his unspecified religious beliefs and how he was submitting his request "under duress and threats" and would not receive the vaccine even though he was being "challenged, coerced, and threatened[.]" (Compl. ¶ 93.) These allegations provide no plausible basis for understanding the conflict between Lovelady's beliefs and any vaccine.

In the Court's view, Lovelady's complaint lacks the factual enhancement necessary to cross the line between possibility and plausibility. *See Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1176 (9th Cir. 2021) ("Although a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable, plaintiffs must include sufficient factual enhancement to cross the line between possibility and plausibility." (quoting *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-97 (9th Cir. 2014)). Lovelady needed to provide "enough information" about his religious beliefs to "permit" Legacy to "understand the existence of a conflict between" his beliefs and Legacy's vaccine mandate. *See Heller*, 8 F.3d at 1439 (describing this requirement). Although Lovelady failed to do so, the Court is unable to conclude that Lovelady could not possibly cure his claim. The plaintiff in *Heller* relied on his supervisor's and/or the superior's knowledge of certain facts related to the plaintiff's conflict and

explanation why he needed to miss work. It is not clear if Lovelady could allege comparable facts here. (*See* Compl. ¶¶ 93-94, referring to vaccine-related conversations with unnamed members of management, who provided certain "assurances" and "reassur[ances]" and "broke[] promises").

For all of these reasons, the Court recommends that the district judge grant Legacy's motion to dismiss Lovelady's failure to accommodate claims but only grant Lovelady leave to amend his Title VII claim because, as explained below, Lovelady's state law claim is time-barred.

II. TIME-BARRED CLAIM

Legacy argues Lovelady's claim under ORS § 659A.030 is time-barred and subject to dismissal with prejudice because he did not file this claim within ninety days of receiving the Oregon Bureau of Labor and Industries' ("BOLI") right-to-sue letter. (Def.'s Mot. at 18-19.) The Court agrees.

Lovelady opposes Legacy's motion but does not dispute that he failed to file his state law claim within ninety days of BOLI's mailing of his right-to-sue notice. (*Compare* Decl. Rachel Gale Supp. Def.'s Mot. Dismiss ("Gale Decl.") Ex. 2 at 1, ECF No. 11-2, attaching Lovelady's BOLI notice dated May 22, 2023, warning that "[a]ny right to bring a civil action against [Legacy] under ORS 659A.885 will be lost if the civil action is not commenced within [ninety] days after the date of the mailing of this [ninety]-day notice," *and* Def.'s Mot. at 19 n.8, noting that the complaint refers to BOLI but only EEOC's notice, and Lovelady received his BOLI notice in "May 202[3]," over a year before filing this action, *with* Pl.'s Resp. at 3, arguing only that Lovelady's state claim is "still timely" under the five-year (not ninety-day) limitations period). In doing so, Lovelady relies on an argument that this Court and other judges in this district have rejected.

Specifically, Lovelady relies on the district court's decision in *Daniel v. Oregon Health & Science University*, 262 F. Supp. 3d 1079, 1086 (D. Or. 2017), and argues that he timely filed his claim under ORS § 659A.030 because the Oregon legislature extended the statute of limitations for such claims to five years or ninety days "following the issuance of a right to sue letter from BOLI, whichever is longer, not which is shorter." (Pl.'s Resp. at 3.) This Court rejected Lovelady's counsel's same argument in two recent opinions, which are pending further review. *See* Findings and Recommendation at 38-40, *Lancaster v. Or. Health & Sci. Univ.*, No. 3:24-cv-00916-SB (D. Or. filed Jan. 10, 2025), ECF No. 20; Findings and Recommendation at 24 n.6, *Stotts v. Shriners Hosps. Child.*, No. 24-cv-000-58-SB (D. Or. filed Jan. 13, 2025), ECF No. 21.

In these opinions, the Court observed that courts have consistently rejected Lovelady's counsel's argument that the ninety-day limitations period does not apply in situations like the one currently before the Court. *See Mikityuk v. Legacy Health*, No. 3:24-cv-01072-IM, 2024 WL 4950299, at *1-3 & n.3 (D. Or. Dec. 2, 2024) (rejecting the same arguments from Lovelady's counsel and explaining that "[c]ourts in this [d]istrict, including [the district judge in *Mikityuk*], have repeatedly applied the [ninety]-day limitation rather than the five-year limitation in similar circumstances and concluded in each instance that those claims were time-barred" (first citing *Miller v. Legacy Health*, No. 3:24-cv-01073-IM, 2024 WL 4892736, at *1-3 (D. Or. Nov. 26, 2024); then citing *Bowerman v. St. Charles Health Sys., Inc.*, No. 6:23-cv-01488-MC, 2024 WL 3276131, at *9 (D. Or. July 1, 2024), *appeal docketed*, No. 24-5002 (9th Cir. Aug. 15, 2024); then citing *Riser v. St. Charles Health Sys., Inc.*, No. 6:23-cv-01720-AA, 2024 WL 2864405, at *2-3 (D. Or. June 6, 2024); then citing *Craven v. Shriners Hosps. for Child.*, No. 3:22-cv-01619-IM, 2023 WL 5237698, at *4 (D. Or. Aug. 15, 2023); and then citing Opinion & Order at 10,

Leland v. Supervalu Wholesale Ops., Inc., No. 3:19-cv-02076-IM (D. Or. filed Apr. 15, 2020), ECF No. 13); *see also Mikityuk*, 2024 WL 4950299, at *2 (explaining that "ninety days means ninety days, and . . . complaints filed even a day or two past the ninety-day deadline are time-barred" (quoting *Chaffin v. Apple, Inc.*, No. 3:19-cv-00155-SB, 2019 WL 3432769, at *2 (D. Or. June 21, 2019), *findings and recommendation adopted*, 2019 WL 3451303, at *1 (D. Or. July 26, 2019))).

In *Mikityuk*, the district judge explained why Lovelady's counsel's argument failed in these situations:

> Plaintiff, relying on *Daniel*, . . . argues that this Court should apply either the five-year limitation or [ninety]-day period following a right-to-sue letter from BOLI, "whichever is longer, not whichever is shorter." . . . In *Daniel*, the court read the [ninety]-day limitation in O.R.S. 659A.875(2) as allowing the employee "an additional [ninety] days to file a civil action after BOLI issues its notice." 262 F. Supp. 3d at 1086 (emphasis in original) (quoting *Bieker v. City of Portland*, No. 3:16-cv-00215-BR, 2016 WL 3769753, at *6 (D. Or. July 14, 2016)). The *Daniel* court concluded that "ORS 659A.875 provides a statute of limitations of one year . . . or [ninety] days after the mailing of a BOLI right-to-sue letter, whichever is longer." *Id.* (emphasis in original).
>
> This Court concludes that the text of O.R.S. 659A.875 "instruct[s], without ambiguity, that when someone files a complaint with BOLI, the limitations in subsection (2) apply, requiring a lawsuit to be filed within [ninety] days after BOLI mails its right-to-sue notice." *Leland v. Supervalu Wholesale Ops.*, Inc., No. 3:19-cv-02076-IM, slip op. at 8 (D. Or. Apr. 15, 2020). O.R.S. 659A.875(1) specifies that subsection (2) is an "except[ion]" to the five-year statute of limitations. An employee who files a BOLI complaint "must commence a civil action . . . within [ninety] days after a [ninety]-day notice is mailed." O.R.S. 659A.875(2) (emphasis added). O.R.S. 659A.875(2) speaks in mandatory terms and does not suggest that it only tolls or extends the limitations period. This reading of the statute is the only interpretation that can be reconciled with O.R.S. 659A.880(3), which requires that BOLI's [ninety]-day notice state that "any right to bring a civil action against the respondent under ORS 659A.885 will be lost if the action is not commenced within [ninety] days after the date of the mailing of the [ninety]-day notice." While this Court acknowledges that *Daniel* supports a different conclusion, that opinion did not address the additional context provided by O.R.S. 659A.880(3).
>
> O.R.S. 659A.875(2) creates an exception to the statute of limitations for an employee who files a BOLI complaint. This may shorten or lengthen the time

> to file suit relative to the general five-year statute of limitations, depending on the length of the BOLI investigation and the date the BOLI complaint was filed. Courts in this [d]istrict, including this [c]ourt, have repeatedly applied the [ninety]-day limitation rather than the five-year limitation in similar circumstances and concluded in each instance that those claims were time-barred. . . .
>
> Plaintiff filed a BOLI complaint. . . . A right-to-sue letter was mailed to Plaintiff on May 19, 2023. . . . That letter explicitly informed Plaintiff that "[a]ny right to bring a civil action against the Respondent under ORS 659A.885 will be lost if the civil action is not commenced within [ninety] days after the date of the mailing of this [ninety]-day notice." . . . The [ninety]-day period ran on August 17, 2023. This action was commenced on July 1, 2024, beyond the [ninety] days allowed by statute. This action is therefore time-barred, and Plaintiff offers no justification for equitably tolling the limitations period.

2024 WL 4950299, at *2-3 (footnote omitted).

The district judge's decision in *Mikityuk* is persuasive, and Lovelady's counsel does not present any argument warranting a different outcome here. (*See* Pls.' Resp. at 3-6.) BOLI mailed a ninety-day right-to-sue letter to Lovelady on May 22, 2023, warning him that if Lovelady did not file suit within ninety days, his "right to bring a civil action against [Legacy] . . . under ORS 659A.885 will be lost[.]" (Gale Decl. Ex. 2 at 1.) Despite this warning, Lovelady did not file his state law claim against Legacy until June 24, 2024. (Compl. at 13.) Accordingly, the Court recommends that the district judge dismiss with prejudice Lovelady's time-barred claim under ORS § 659A.030.

CONCLUSION

For the reasons stated, the Court recommends that the district judge GRANT Legacy's motion to dismiss (ECF No. 10), dismiss with prejudice Lovelady's time-barred claim under ORS § 659A.030, and grant Lovelady fourteen days' leave to amend his Title VII claim.

SCHEDULING ORDER

The Court will refer its Findings and Recommendation to a district judge. Objections, if any, are due within fourteen (14) days. If no objections are filed, the Findings and

Recommendation will go under advisement on that date. If objections are filed, a response is due within fourteen (14) days. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 14th day of February, 2025.

Stacie F. Beckerman

HON. STACIE F. BECKERMAN
United States Magistrate Judge