

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 30 2024

FOR THE NINTH CIRCUIT

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

BAHIG SALIBA,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC.; CHIP
LONG, Sr., VP of Flight; TIMOTHY
RAYNOR, Director of Flight; ALISON
DEVEREUX-NAUMANN, Chief Pilot,

Defendants-Appellees.

No. 23-15249

D.C. No. 2:22-cv-00738-SPL

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Submitted April 22, 2024**

Before: CALLAHAN, LEE, and FORREST, Circuit Judges.

Bahig Saliba appeals pro se from the district court's judgment dismissing his action alleging various federal and state law claims arising from his employment.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

* 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).

under Federal Rule of Civil Procedure 12(b)(6). *Puri v. Khalsa*, 844 F.3d 1152, 1157 (9th Cir. 2017). We affirm.

The district court properly dismissed Saliba’s claims challenging American Airlines’ COVID-19 masking and vaccination policies because Saliba failed to allege facts sufficient to show that American Airlines violated a contractual obligation, acted under color of state law, or violated any federal aviation law enforceable by a private right of action. *See Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1166-67 (9th Cir. 2021) (explaining that 42 U.S.C. § 1983 liability requires a defendant to act under color of state law, which is analyzed by “whether the defendant has exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law” (citation and internal quotation marks omitted)); *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 902 (9th Cir. 1992) (explaining that there is no private right of action under the Federal Aviation Act, “particularly where plaintiff’s claim is grounded in the regulations rather than the statute itself”); *Graham v. Asbury*, 540 P.2d 656, 657 (Ariz. 1975) (setting forth elements of contract claim under Arizona law).

The district court properly dismissed Saliba’s claim alleging a hostile work environment because Saliba failed to allege facts sufficient to show that defendants took any action against him on the basis of his national origin. *See Kang v. U. Lim*

Am., Inc., 296 F.3d 810, 817 (9th Cir. 2002) (setting forth elements of hostile work environment claim based on national origin).

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).

AFFIRMED.