

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

HELEN FERGUSON,

Plaintiff,

v.

Case No. 8:24-cv-1500-MSS-LSG

CAREERSOURCE SUNCOAST,
SAMANTHA ZAGAME, KARIMA
HABITY, and ALDONA DZIWOSZ,

Defendant.

REPORT AND RECOMMENDATION

The *pro se* plaintiff Helen Ferguson files a renewed motion to proceed *in forma pauperis*. Doc. 8. Because this Court dismissed an earlier lawsuit by Ferguson against the defendants, which raised the same claims in virtually identical pleadings, I recommend denying Ferguson's motion and dismissing her amended complaint with prejudice.

I. Background

This is Ferguson's second lawsuit against the defendants Careersource Suncoast and its employees Samantha Zagame, Karima Habity, and Aldona Dziwosz. Ferguson sues for employment discrimination and claims failure to hire and retaliation under Title VII of the Civil Rights Act. In her original lawsuit, Ferguson alleged that the defendants discriminated against Ferguson based on her race, color, gender, sex, religion, and national origin and requested \$250,000 in

compensatory damages and \$50,000 in punitive damages. *Ferguson v. Careersource Suncoast et al.*, No. 8:24-cv-1267 (M.D. Fla. 2024) (“*Ferguson I*”), Doc. 1 at 6. After providing Ferguson three opportunities to file a viable complaint, this Court dismissed the operative complaint in her second amended complaint as a shotgun pleading. *Ferguson I*, Doc. 7. Ferguson failed to separate her claims into different causes of action and failed to delineate against which defendant she alleged each claim. *Ferguson I*, Doc. 7 at 2-3 (citing *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015)). Ferguson denied that her pleadings were non-compliant and alleged that this Court’s prior orders “contained false information.” *Ferguson I*, Doc. 7. Ultimately, this Court dismissed her case without prejudice. *Id.*

Ten days later, Ferguson filed this action and moved to proceed *in forma pauperis*. Docs. 1, 2. Ferguson’s initial complaint here is virtually identical to her deficient second amended complaint in *Ferguson I*. Ferguson admits that “[d]ue to the circumstances surroundiing [sic] Case 8:24-CV-01267-KKM-AEP, Plaintiff is refiling the Complaint for Employment Discrimination and Summons (Lawsuit) against Defendants, Careersource Suncoast, to a new case and judge.” Doc. 1 at 8. Because Ferguson’s complaint mirrors the complaint in her original lawsuit, the Court found that Ferguson failed to allege facts showing jurisdiction and a viable federal claim. Doc. 6 at 4-5. The order explains that her complaint is an impermissible shotgun pleading, denies Ferguson’s motion to proceed *in forma pauperis*, and grants Ferguson leave to amend. Doc. 6.

Ferguson filed an amended complaint and renewed her motion to proceed *in forma pauperis*. Docs. 7, 8. Despite Ferguson’s four attempts at filing a suitable pleading between this lawsuit and *Ferguson I*, Ferguson’s amended complaint remains deficient.

II. Legal Standard

Under 28 U.S.C. § 1915, a court may authorize the commencement of a civil action without requiring the prepayment of fees or security upon a finding of indigency. The statute permits a litigant to commence an action in federal court “by filing in good faith an affidavit stating . . . that he [or she] is unable to pay the costs of the lawsuit.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). After reviewing the affidavit to determine the economic status of the litigant, the court must review and dismiss if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *Martinez v. Kristi Cleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004) (citation omitted); *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997).

To state a claim, a complaint must contain a short and plain statement of the grounds for the court’s jurisdiction, a short and plain statement of the claim showing the pleader is entitled to relief, and a demand for the relief sought. Fed. R. Civ. P. 8(a)(1)-(3); *McCurry v. Metro. Life Ins. Co.*, 208 F. Supp. 3d 1251, 1255 (M.D. Fla. 2016). A pleading must “state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances,” and that “each claim founded on a

separate transaction or occurrence . . . be stated in a separate count.” Fed. R. Civ. P. 10(b). These pleading requirements “work together to require the pleader to present his [or her] claims discretely and succinctly, so that his [or her] adversary can discern what he [or she] is claiming and frame a responsive pleading, [and so that] the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted.” *Fikes v. City of Daphne*, 79 F.3d 1079, 1082 (11th Cir. 1996). Dismissal for failure to state a claim is appropriate if the facts, as pleaded, fail to state a claim for relief that is “plausible on its face.” *Aschcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must allege facts supporting an entitlement to relief, which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted).

If the court determines that the complaint’s factual allegations are clearly baseless or the legal theories are without merit, the court may dismiss the complaint before service of process. *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (per curiam). Although *pro se* pleadings receive a liberal construction, a *pro se* plaintiff must comply with the Federal Rules of Civil Procedure and the Middle District of Florida’s Local Rules. *McNeil v. United States*, 508 U.S. 106, 113 (1993); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

III. Discussion

A. The complaint fails to state a claim.

Despite four attempts at filing a sufficient pleading against the defendants, Ferguson’s amended complaint fails to state a claim. Ferguson neither separates her claims into different causes of action nor “specif[ies] which of the defendants are responsible for which acts or omissions or which of the defendants the claim is brought against.” Doc. 6 at 5; *see also Ferguson I*, 8:24-cv-01267, Doc. 7 at 2 (citing *Weiland*, 792 F.3d at 1323). These defects deprive the defendants of “fair notice” of the nature of the claims and the “grounds” upon which they are predicated. *Twombly*, 550 U.S. at 555 & n.3; *Weiland*, 792 F.3d at 1323.

Beyond these procedural deficiencies, the amended complaint fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

Ferguson’s initial complaint contained only conclusory claims of failure to hire and retaliation under Title VII of the Civil Rights Act. Doc. 6 at 4-5. Ferguson’s amended complaint fails to cure these defects.

For example, the amended complaint alleges that Ferguson received approval for reemployment assistance through a WIOA grant following Hurricane Ian. Doc. 7 at 9-11, 17-19. As part of the program, Ferguson alleges that the defendant CareerSource Suncoast was required to assist Ferguson in securing new employment which would compensate her from the grant funding. However, Ferguson alleges that neither CareerSource Suncoast nor its employees – the defendants Samantha Zagame as the Grants Project Coordinator, Karima Habity as the Director of Business and Economic Development, and Aldona Dziwosz as the Career Coach – assisted Ferguson in obtaining new employment. Ferguson filed a claim with the

EEOC maintaining that the defendants discriminated against her based on her race, and Ferguson received a right to sue letter on March 15, 2024. Doc. 7 at 12-13.

Although the amended complaint asserts at the outset that the defendants discriminated against Ferguson based upon her race, color, gender, sex, religion, and national origin, the documents attached to the amended complaint reveal that the plaintiff's EEOC discharge was only for race discrimination. *Gaston v. Home Depot USA*, 129 F.Supp. 2d 1355, 1366 (S.D. Fla. 2001) (ruling that a plaintiff could not maintain a Title VII claim alleging discrimination based upon national origin because “nothing in Plaintiff's EEOC filing reflects an intention to pursue a claim of national origin discrimination”); *see also Hillemann v. Univ. of Cent. Fla.*, 167 F. App'x 747, 749-50 (11th Cir. 2006) (barring race and sex discrimination claims because the plaintiff only alleged and provided facts regarding age discrimination in an EEOC complaint). Furthermore, the amended complaint contains no factual allegation—describing either words or conduct or both—supporting a claim of race discrimination.

The amended complaint further alleges that the defendants retaliated against Ferguson in response to EEOC complaint by fraudulently filing further grant applications under Ferguson and her son's names. Doc. 7 at 6. Yet, the allegations in the amended complaint fail to describe how the defendants' actions were discriminatory in nature. *Iqbal*, 556 U.S. at 677–78; *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1262 (11th Cir. 2004) (explaining that “conclusory allegations,

unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal”).

Taken together, these factual allegations are too vague and conclusory for Ferguson to raise her employment discrimination claims under Title VII in a manner that satisfies the pleading requirements of Rule 8, Federal Rules of Civil Procedure. *Holbrook v. Castle Key Ins. Co.*, 405 F. App'x 459, 460 (11th Cir. 2010) (per curiam) (“Although Holbrook referenced many people and many legal terms, she did not describe how each defendant injured her or point to the laws under which she was asserting a cause of action. And she failed to remedy these deficiencies even upon explicit instruction by the district court.”).

The amended complaint also sues CareerSource Suncoast’s employees Zagame, Habity, and Dziwosz in their individual capacity under Title VII, which is impermissible. *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991). “The relief granted under Title VII is against the employer, not individual employees whose actions would constitute a violation of the Act.” *Id.* For this reason, Ferguson’s claims under Title VII against the defendants Zagame, Habity, and Dziwosz as alleged in the amended complaint fail to state a claim upon which relief may be granted.

Accordingly, dismissal is warranted because further amendment would be futile. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (“A district court need not, however, allow an amendment . . . where there has been . . . repeated failure to cure deficiencies by amendments previously allowed . . . or (3) where

amendment would be futile.”); *Harold v. Univ. of Colorado Hosp.*, 680 F. App'x 666, 673 (10th Cir. 2017) (affirming the district court’s dismissal of a complaint reviewed under a motion to proceed *in forma pauperis* and the district court’s conclusion “that further amendment would be futile” since the plaintiff had “multiple chances to amend his Complaint”).

B. Ferguson’s Title VII claims are untimely.

Even if Ferguson raised sufficient claims under Title VII, her claims would likely be time barred. Once a party receives the notice of rights, the party has ninety-days to file a civil action. 42 U.S.C. § 2000e-5(f)(1); *see also Santini v. Cleveland Clinic Fla.*, 232 F.3d 823, 825 (11th Cir. 2000) (“Title VII . . . may not be brought more than 90 days after a complainant has adequate notice that the EEOC has dismissed the Charge.”). Ferguson’s amended complaint alleges that she received her right to sue letter on March 15, 2024. She sued on June 20, 2024, which is ninety-seven days later. Doc. 1 at 6-7. Accordingly, her Title VII claims against the defendants are timed-barred, which further supports dismissal.

IV. Conclusion

I **RECOMMEND** that the District Court:

1. **DENY** the plaintiff’s motion to proceed *in forma pauperis*, Doc. 8;
2. **DISMISS WITH PREJUDICE** the plaintiff’s amended complaint, Doc. 7; and
3. Direct the Clerk to enter a judgment of dismissal with prejudice, to terminate any pending motion, and to close this case.

REPORTED in Tampa, Florida, on this 5th day of November, 2024.



LINDSAY S. GRIFFIN
United States Magistrate Judge

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the report and recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1. To expedite resolution, parties may file a joint notice waiving the 14-day objection period.