

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CARSHEILA T. SIMMONS,

Plaintiff,

v.

DAVID STEINER, *Postmaster General*,
UNITED STATES POSTAL SERVICE,

Defendants.

CIVIL ACTION FILE NO.

1:23-cv-5863-MLB-JKL

ORDER AND NON-FINAL REPORT AND RECOMMENDATION

This employment discrimination case is before the Court on Defendant David Steiner's motion for partial dismissal under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction and failure to state a plausible claim for relief.¹ [Doc. 54.] For the reasons set out

¹ There is some confusion about whether Steiner is the sole named defendant, or whether the United States Postal Service itself is named as an additional defendant. Steiner treats the complaint as if both he and the agency are named defendants, and refers to Defendants (plural). But as will be discussed below, Plaintiff's claims against the agency must be brought against Steiner in his official capacity as Postmaster General. Thus, for the sake of simplicity, the Court will refer to Steiner as either "Defendant" or the "the Postal Service," since the agency itself is not a proper party.

below, the undersigned **RECOMMENDS** that the motion for partial dismissal be **GRANTED** as to the claims asserted in Counts III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the amended complaint and that those claims be dismissed in their entirety. The undersigned further **RECOMMENDS** that the motion be granted with respect to any allegedly discriminatory discrete acts asserted in support of the claims asserted in Counts I and II that occurred on or before August 20, 2021. The undersigned **RECOMMENDS** that the motion be **DENIED** as to the claim asserted in Count I to the extent that claim is based on conduct that occurred after August 20, 2021, and that the motion likewise be **DENIED** as to the claim asserted in Count II both with respect to conduct that occurred after August 20, 2021 and conduct that may ultimately be determined to be part of a retaliatory hostile work environment that began prior to that date and continued beyond it.²

² Also pending before the Court is Defendant's motion to stay all discovery and pretrial deadlines pending resolution of the motion to dismiss. [Doc. 58.] Plaintiff opposes the request on various grounds, including that Defendant has not shown good cause for a stay and that she will suffer substantial prejudice if discovery is delayed. [Doc. 59.] Defendant has the better of the arguments. The scope of discovery often bears on what claims a plaintiff asserts. Here, the motion to dismiss addresses the merits of a substantial portion of the claims, and resolution of the motion will likely narrow the scope of permissible discovery. Indeed, the Eleventh Circuit has:

warned of the dangers of allowing a case to proceed through the pretrial processes with a potentially invalid claim, stating "[t]hus, when faced with a motion to dismiss a claim for relief that

I. BACKGROUND

A. Procedural History

Plaintiff Carsheila Simmons filed a *pro se* employment discrimination complaint on December 20, 2023, asserting claims against her employer, the Postal Service, for discrimination, harassment, and retaliation based on her disability in violation of the Americans with Disabilities Act (“ADA”). [See Doc. 1 at 6.] Because the complaint was accompanied by a motion to proceed *in forma pauperis* (“IFP”), the undersigned conducted a frivolity review as required by 28 U.S.C. § 1915(e). [See Doc. 2.] After concluding that her allegations were conclusory and failed to plausibly assert a claim for relief under the ADA, the

significantly enlarges the scope of discovery, the district court should rule on the motion before entering discovery orders, if possible.”

Lawrence v. Governor of Ga., No. 17-11564, 2018 WL 259213, at *2 (11th Cir. Jan. 2, 2018) (quoting *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997)). Plaintiff, meanwhile, has not shown undue prejudice. Her generalized concerns that evidence might be lost or that witnesses’ memories may fade does not outweigh the reasons for granting a stay. Accordingly, to preserve both the Court’s and the parties’ resources, the Court exercises its discretion to stay all discovery and pretrial deadlines in this case until a final ruling on the pending motion to dismiss is issued. Defendant’s motion to stay [Doc. 58] is therefore **GRANTED**, and discovery and pretrial deadlines are **STAYED** as to all parties pending further Court order.

undersigned gave Plaintiff leave to replead her claims and specific instructions for doing so. [*See id.* at 4-8.]

Plaintiff responded by filing two amended complaints, the second of which [Doc. 25] is the operative complaint (the “complaint”) in the case. The complaint asserts federal claims for disability discrimination (failure to accommodate and other unspecified discrimination), retaliation, disability-based hostile work environment, and unlawful disclosure in violation of the Rehabilitation Act (“Rehab Act”) (Counts I, II, III, VI, and X), age discrimination and age-based hostile work environment in violation of the Age Discrimination in Employment Act (“ADEA”) (Counts IV and V), “intersectional discrimination” and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) (Counts VII and VIII), unlawful disclosure of medical information in violation of the United States Constitution (Count IX), and state claims for intentional infliction of emotional distress (“IIED”), assault, and battery (Counts XI and XII). [*Id.*] After conducting a second frivolity review, the undersigned determined that the amended complaint was not “entirely frivolous or malicious” and directed service in the case. [Doc. 26.] Defendant then filed the motion for partial dismissal that is now before the Court. [Doc. 54.]

B. Factual Allegations in the Amended Complaint

Plaintiff is and was at all relevant times employed by the Postal Service as a mail carrier. [Doc. 25 ¶ 1.] She is “an individual over the age of 40 with a documented disability” arising from a job-related injury. [*Id.* ¶¶ 25, 27.] Specifically, she suffered from a “lumbar/pelvic sprain and sacroiliitis” at some point in 2020 that resulted in “medically documented restrictions and accommodation requests.” [*See id.* ¶¶ 30, 33.] She was hired by the Postal Service in 2017 and, prior to the events underlying this lawsuit, consistently met performance expectations there. [*Id.* ¶ 27.]

When Plaintiff returned to work from her injury in September or October of 2020, she provided medical documentation in support of various restrictions and requested accommodations from her supervisors, Gertrude McCray and Deva Greenfield. [Doc. 25 ¶¶ 33-34.] The restrictions included not lifting more than ten pounds and modified light duty consisting of four hours of “street work” and four hours of “inside station work.” [*See id.* ¶ 32.] Her request for accommodations was denied and she was “excluded . . . from workplace activities.” [*Id.* ¶¶ 33-34.] She subsequently was “harassed, retaliated against, and effectively placed on constructive enforced leave” because she was not

assigned work “despite her being medically cleared to perform modified duties.”
[*Id.* ¶ 35.]

The mistreatment escalated after Plaintiff submitted a light duty status report to McCray and Greenfield on August 6, 2021, followed by her providing a written request for accommodations on August 7, 2021 and additional substantiating medical documentation on August 10, 2021 establishing her need for modified duties. [See Doc. 25 ¶¶ 28-29, 43-46.] On August 9, 2021, McCray disclosed Plaintiff’s medical condition and restrictions to her coworkers without her consent. [*Id.* ¶¶ 36, 130.] McCray and Greenfield then denied her request for accommodations without explanation or further discussion. [*Id.* ¶¶ 45-46.]

As a result of these actions, Plaintiff filed an internal grievance against McCray on August 10, 2021. [Doc. 25 ¶¶ 59-60.] McCray responded by issuing Plaintiff an unwarranted disciplinary notice for attendance and threatening to write her up for an accident in a previously damaged vehicle. [*Id.*] Over the next few days, McCray and Greenfield shouted at Plaintiff in front of coworkers, repeated false accusations regarding her attendance and work performance, accused her of faking her disability, and sent her home when she refused to exceed her work restrictions. [*Id.* ¶¶ 60-61, 64.] On August 14, 2021, they again disparaged her in front of coworkers and sent her home after she refused to

exceed her work restrictions. [*Id.* ¶¶ 61, 75.] Two days later, on August 16, 2021, McCray snatched a mail tray from her hands, tried to make her carry more than her restrictions allowed, and “ended her tour” when she refused. [*Id.* ¶ 62.] Soon thereafter, on August 27, 2021, McCray commented that a younger male employee who had been taking Plaintiff’s route had “no problems” finishing it, in addition to making other unspecified remarks criticizing her ability to do her job while referencing her age and disability. [*Id.* ¶¶ 63, 85.]

Plaintiff responded to these actions by filing additional internal grievances and contacting union representatives and national leadership, but her concerns were not addressed. [Doc. 25 ¶¶ 6, 8, 14, 18-24.] On the contrary, beginning in mid-August and continuing through September 2021, McCray and Greenfield “repeatedly excluded” Plaintiff “from work hours and denied full-day assignments” despite her “full-time carrier status and medical clearance for modified duties.” [*Id.* ¶¶ 28-29.] They engaged in other retaliatory conduct as well, including denying Plaintiff meaningful work assignments, changing her job duties, initiating unwarranted adverse personnel actions against her, and discussing her private medical information with other employees in the workplace without her consent. [*Id.* ¶¶ 36, 54-58.] According to Plaintiff, she also experienced non-specific “age-based comments” and “age-based hostility”

during this time, which “isolated her from co-workers and assignments.” [*Id.* ¶¶ 86, 93.]

While continuing to seek redress through internal grievance procedures, Plaintiff initiated contact with the Postal Service Equal Employment Opportunity (“EEO”) office on October 4, 2021.³ [Doc. 25 ¶ 37, 63.] Following this contact, she was subjected to increased verbal harassment (including being yelled at, accused of malingering, and otherwise subjected to public humiliation and ridicule in front of coworkers), continued exclusion from work assignments, increased scrutiny and discipline, and denial of accommodations. [*Id.* ¶¶ 72-77, 85.] The mistreatment culminated in an incident on December 1, 2021, when a visibly angry McCray “intentionally made physical contact with Plaintiff by backing into and pushing her.” [*Id.* ¶¶ 38, 64, 72-77, 85.] She claims this and other conduct by her supervisors caused her emotional distress, financial loss, and reputational damage. [*Id.* ¶ 39.]

On April 6, 2022, Plaintiff filed a worker’s compensation claim with the United States Department of Labor’s Office of Worker’s Compensation Programs

³ Plaintiff alleges that she initiated EEO contact on October 7, 2021, but Defendant has produced EEO records indicating that she initiated contact on October 4, 2021. [Doc. 54-2 (“Essig Dec.”) ¶ 2.] The undersigned relies on the October 4 date, which is more favorable to Plaintiff.

“OWCP”) based on a “lumbar/pelvic sprain and sacroiliitis” suffered on the job. [Doc. 25 ¶ 30.] The OWCP accepted Plaintiff’s claim on January 9, 2023, identifying her condition as a “[s]prain of unspecified parts of lumbar spine and pelvis” and “[s]acroiliitis, not elsewhere classified.” [Id. ¶ 31.] Defendant accepted the worker’s compensation claim in January 2023. [Id.]

Plaintiff subsequently filed this lawsuit on December 20, 2023. [Doc. 1.] Based on the facts described above, she asserts claims in the complaint for: (1) disability discrimination (failure to accommodate and other unspecified discrimination) in violation of the Rehab Act (Counts I, VI), (2) retaliation and retaliatory harassment in violation of the Rehab Act (Count II), (3) disability-based hostile work environment in violation of the Rehab Act (Count III), (4) age-based discrimination and hostile work environment in violation of the ADEA (Counts IV, V), (5) “intersectional discrimination” and retaliation in violation of Title VII (Counts VII, VIII), (6) disclosure of medical information in violation of her constitutional right to privacy (Count IX), (8) disclosure of medical information in violation of the Rehab Act (Count X), and (9) IIED, assault, and battery under Georgia law (Counts XI, XII). [Doc. 25 ¶¶ 40-163.]

C. Record Facts Supplied by Defendant

In connection with its motion to dismiss, Defendant has filed documents from Plaintiff's EEO proceeding initiated in October 2021, along with the declaration of Teresa Essig, a Postal Service Law Department attorney with knowledge of the proceeding. [See Doc. 54-2.] The Court may consider these materials in ruling on Defendant's motion to dismiss, because they are referenced in the amended complaint and essential to determine whether Plaintiff exhausted her administrative remedies, as required to prevail on many of the claims asserted therein. *See Bryant v. Rich*, 530 F.3d 1368, 1376 (11th Cir. 2008) (explaining that a court may consider facts outside the pleadings as necessary to resolve an issue like exhaustion, which does not address the merits); *see also Jenkins v. Ga. Dep't of Public Health*, No. 1:23-CV-3038-SEG-JKL, 2024 WL 6981180 at *6 (N.D. Ga. Sep. 18. 2024) ("[T]his and other courts have considered EEOC charges, right-to-sue letters, and similar, EEOC-related documents in analyzing exhaustion at the motion-to-dismiss stage.").

Based on Essig's declaration, Plaintiff first initiated EEO contact with the Postal Service on October 4, 2021. [Doc. 54-2 ¶ 2.] She then filed a formal EEO complaint on December 28, 2021. [*Id.* at Attachment 1.] Plaintiff did not check any of the boxes on the EEO complaint form indicating that she was alleging

either retaliation or discrimination based on sex, age, disability, or any other protected characteristic. [*Id.*] Instead, she attached a narrative to the complaint stating that she had been subjected to “adverse actions . . . that created a stressful and hostile work environment” after providing her supervisor McCray with documentation for work restrictions on August 6, 2021, culminating in a “simple assault” by McCray on December 1, 2021. [*Id.*] The narrative also indicated that Plaintiff’s supervisors had not provided or adhered to the work restrictions required by her medical condition. [*See id.*]

Describing the alleged assault in more detail, the narrative provided in support of Plaintiff’s EEO complaint stated that she was texting an area manager on December 1, 2021 to complain about her work restrictions being exceeded when McCray “bumped” Plaintiff “on her way out of the door” and “pushed” her “with her but[t].” [Doc. 54-2 at Attachment 1.] The narrative further alleged that McCray and Greenfield had yelled at and disrespected Plaintiff, given her unwarranted discipline, reduced her shifts and hours, and sent her home on some days since she had requested work restrictions. [*Id.*] It also included a reference to the August 16, 2021 tray snatching incident and McCray’s statement on August 27, 2021 that a “male mail carrier” could carry Plaintiff’s route. [*Id.*]

On January 19, 2022, the Postal Service National EEO Investigative Services Office (“NEEOISO”) notified Plaintiff of the issues it had accepted for investigation based on the allegations made in her EEO complaint. [Doc. 54-2 at Attachment 2.] Citing the facts provided by Plaintiff in her narrative attached to the complaint, the NEEISO’s notice defined the scope of its investigation to include “discriminatory harassment/hostile work environment since August 2021 and ongoing based on [r]etaliation” as supported by several specific incidents that occurred between August and December 2021, including being denied “work within [her] medical restrictions.” [Id.] The notice advised Plaintiff that she must provide a written response within seven days if she disagreed with the accepted issues. [Id.] She did not respond, either within seven days or anytime thereafter.

Plaintiff’s EEO complaint proceeded with the Equal Employment Opportunity Commission’s (“EEOC”) Office of Federal Operations Division as a claim for “hostile workplace discrimination on the basis of reprisal” with respect to the specific incidents set out in the complaint. [See Doc. 3 at 10-11.] On November 22, 2023, following an investigation of Plaintiff’s claims, the EEOC affirmed summary judgment to the Postal Service as to all the claims asserted, finding that she “failed to prove unlawful retaliation as alleged.” [See Doc. 3 at

11.] Her administrative appeal was denied, and she was issued notice of her right to sue. [*Id.* at 14-15.]

II. DISCUSSION

A. Arguments of the Parties

As an initial matter, Defendant argues that David Steiner, in his official capacity as the Postmaster General, is the only proper defendant as to Plaintiff's employment claims, and that the United States Postal Service as well as McCray and Greenfield should be dismissed. [*See* Doc. 54-1 at 9-10.] Next, Defendant argues that eleven of the twelve claims asserted in the complaint should be dismissed in their entirety either for lack of jurisdiction under Rule 12(b)(1) or for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. [*See* Doc. 54-1 at 10-24.] Specifically, Defendant contends that Plaintiff failed to exhaust the non-retaliation employment discrimination claims asserted in Counts I, III, IV, V, VI, VII, VIII, and X, meaning those claims are not viable. [*Id.* at 10-12.] As to the Rehab Act retaliation claim asserted in Count II, Defendant argues that the claim should be dismissed as untimely to the extent it is based on conduct that occurred more than 45 days prior to Plaintiff's initiating EEO contact on October 4, 2021 – that is, conduct that occurred on or before August 20, 2021. [*Id.* at 12-13.] Finally, Defendant argues that Plaintiff's constitutional privacy

(Count IX) and state IIED, assault, and battery claims (Counts XI and XII) should be dismissed for failure to state a plausible claim for relief. [*Id.* at 13-14, 21-24.]

Plaintiff responds that the pleadings show her claims are exhausted, and that the Court cannot rely on matter “outside the pleadings” to establish otherwise. [*See* Doc. 55 at 3.] She argues further that she raised numerous disability claims during “EEO counseling” including discrimination based on disability, race, religion, sex, and national origin, and she says that her failure to object to the NEEOISO’s framing of the issues to be investigated does not waive her claims. [*Id.* at 3-5.]

As discussed below, Defendant correctly acknowledges that Count II of the complaint states a plausible claim for relief under the Rehab Act for retaliation and retaliatory harassment that allegedly occurred after Plaintiff requested accommodations and complained about their denial. The undersigned further concludes that Count I the complaint states a plausible claim for failure to accommodate in violation of the Rehab Act, albeit that claim is only exhausted and thus actionable as to conduct that occurred after August 20, 2021. However, the undersigned agrees with Defendant that the Rehab Act hostile work environment, unlawful disclosure, and unspecified discrimination claims, as well as the ADEA, Title VII, constitutional unlawful disclosure, and state law claims,

asserted in Counts III, IV, V, VI, VII, VIII, IX, X, XI, and XII, are factually unsupported, unexhausted, untimely, and/or not based on a legally valid theory of recovery, and should therefore be dismissed. In addition, all defendants except the Postmaster General, sued in his official capacity, should be dismissed from the case.

B. Governing Legal Standards

Defendant invokes both Federal Rule 12(b)(1) and 12(b)(6) in support of its motion to dismiss. [See Doc. 54-1 at 8-9.] Federal Rule 12(b)(1) provides for dismissal when the Court lacks subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). Defendant argues jurisdiction is lacking here as to Plaintiff's unexhausted claims. [See Doc. 54-1 at 10-12.] The Supreme Court has held that the exhaustion requirement is not jurisdictional. See *Fort Bend Cnty., Tx. v. Davis*, 587 U.S. 541, 543 (2019). Although *Fort Bend* did not arise in the federal employment context, the Eleventh Circuit has confirmed that its rule applies to federal sector claims. See *Hogan v. Sec'y, U.S. Dep't of Veterans Affairs*, 121 F.4th 172, 174 (11th Cir. 2024) (applying *Fort Bend* in a Title VII case involving a federal employee). The undersigned thus analyzes all of Defendant's arguments for dismissal under the standards of Federal Rule 12(b)(6) rather than Federal Rule 12(b)(1).

Federal Rule 12(b)(6) provides for dismissal based on “failure to state a claim upon which relief can be granted.” *See* Fed. R. Civ. P. 12(b)(6). A claim is subject to dismissal under Rule 12(b)(6) if it is not supported by “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)). Detailed factual allegations are not required to avoid dismissal under rule 12(b)(6), but mere “labels and conclusions” are insufficient and “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Moreover, dismissal is warranted if a dispositive legal issue precludes relief or if the complaint is based on a meritless legal theory. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989).

A *pro se* complaint is “liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers.” *Erikson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted). But this lenient standard does not shield a *pro se* litigant from complying with the minimum requirements of the Federal Rules of Civil Procedure. *Collins v. Fulton Cnty. Sch. Dist.*, No. 1:12-CV-1299-ODE-JSA, 2012 WL 7802745, at *6 (N.D. Ga. Dec. 26, 2012) (citing *Trawinski v. United Techs.*, 313 F.3d 1295, 1297 (11th Cir. 2002) and *Montgomery v. Huntington Bank*, 346 F.3d 693, 698 (6th Cir. 2006)). As such, the

Court need not accept as true legal conclusions or unwarranted factual inferences in a *pro se* complaint. *See id.* Further, a *pro se* complaint, like any other, must “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quotation marks omitted).

C. Analysis

1. Improper Defendants

The undersigned first addresses Defendant’s argument that the United States Postal Service, McCray, and Greenfield are not proper defendants for the employment discrimination claims. The caption of this case identifies the defendant as “David Steiner, Postmaster General, United States Postal Service.” [See Doc. 25.] Defendant assumes that those are two separate parties: Steiner and the agency. Meanwhile, paragraph 2 of the complaint indicates that Plaintiff intended to name four defendants, because it alleges:

The Defendants in this action are: the United States Postal Service (USPS); Postmaster General David Steiner, in his official capacity; Manager Gertrude Regina McCray; and Supervisor Deva Greenfield.

[*Id.* ¶ 2.] Confusingly, however, Plaintiff does not respond to Defendant’s arguments about the improper parties in her response brief. [See Doc. 55.] In fact, she refers to a singular defendant throughout her brief. As a result, the Court deems this issue unopposed.

But even addressing the merits, Defendant's arguments are persuasive. First, Plaintiff's federal employment discrimination claims—that is, her claims under the ADEA, Title VII, and the Rehab Act—can only be asserted against the head of the agency in which the unlawful employment action occurred in his official capacity. 42 U.S.C. § 2000e-16(c). *See also Canino v. E.E.O.C.*, 707 F.2d 468, 472 (11th Cir. 1983) (holding that “the head of the agency involved is the only appropriate defendant” in a federal sector employment discrimination action); *Bell v. Potter*, No. CV 110-031, 2010 WL 5376318, at *2 (S.D. Ga. Nov. 10, 2010) (holding in context of Rehab Act claim by postal service employee, the only proper party-defendant is the Postmaster General as the head of the United States Postal Service), *report and recommendation adopted*, 2010 WL 5388449 (S.D. Ga. Dec. 21, 2010); *Knight v. Mueller*, No. 08-23478-CIV, 2010 WL 11504340, at *3 (S.D. Fla. Jan. 26, 2010) (“The proper defendant in a federal employment discrimination action under Title VII and the ADEA is the head of the agency, not his employees in their official or individual capacities.”). Thus, David Steiner in his official capacity as the Postmaster General, is the sole proper-party defendant for Plaintiff's Title VII, ADEA, and Rehab Act claims. Plaintiff's employment claims should therefore be dismissed to the extent they are asserted against any

defendant other than the David Steiner in his official capacity as the Postmaster General.

Meanwhile, Defendant concedes that Plaintiff's non-employment claims could conceivably be asserted against McCray or Greenfield. [Doc. 54-1 at 3.] But Defendant points out that Plaintiff has made no attempt to serve them even though the case has been pending for more than two years, and the operative complaint was filed approximately eight months ago. [Doc. 54-1 at 2, 7, 21.] Defendant requests that they be dismissed because more than 90 days have passed. Plaintiff, meanwhile, does not object to the dismissal of the individual defendants in her responsive briefing. [See generally Doc. 55.] Accordingly, the undersigned recommends that McCray and Greenfield be dismissed from the case entirely for lack of service. See Fed. R. Civ. P. 4(m) (authorizing the dismissal of a defendant who "is not served within 90 days after the complaint is filed").⁴

In sum, then, the sole defendant in this case is Defendant Steiner in his official capacity. All other defendants – assuming that Plaintiff intended to name

⁴ Although Rule 4(m) requires notice prior to dismissal for lack of service, this report and recommendation provides sufficient notice. *Nelson v. Barden*, 145 F. App'x 303, 310 (11th Cir. 2005) (notice to plaintiff of deficient service in magistrate judge's report and recommendation satisfied notice requirements of Rule 4(m), as objection period was provided to plaintiff prior to dismissal by district court).

them—should be dismissed. The undersigned now turns to the substantive claims.

2. Plaintiff's ADEA and Title VII Claims

In Counts IV, V, VII, and VIII of the complaint, Plaintiff purports to assert claims for age discrimination and hostile work environment in violation of the ADEA and “intersectional” discrimination and retaliation in violation of Title VII. [Doc. 25 ¶¶ 83-98, 108-128.] All these claims are subject to dismissal under Federal Rule 12(b)(6) because they are not supported by sufficient factual allegations to state a plausible claim for relief and they have not been properly exhausted as required by the governing statutes.

The ADEA's federal sector provision, which applies to the Postal Service, requires that a “personnel action” affecting an employee over the age of 40 must be “made free from any discrimination based on age.” 29 U.S.C. § 633a(a)). *See Babb v. Wilkie*, 589 U.S. 399, 402 (2020) (discussing the differences between the federal and private-sector provisions of the ADEA). Title VII's federal-sector provision similarly requires that “personnel actions affecting employees . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-16(a). The prohibition of discrimination in these statutes “by its own terms” forbids retaliation for complaining about

discrimination. *Babb v. Sec’y, Dep’t of Veterans Affairs*, 992 F.3d 1193, 1203 (11th Cir. 2021). It also encompasses claims based on a hostile work environment related to age or a Title VII protected characteristic, as well as claims based on a retaliatory hostile work environment. *See Buckley v. Sec’y of the Army*, 97 F.4th 784, 796-800 (explaining the analytical differences between a federal employee’s race-based hostile work environment claim and her retaliatory hostile work environment claim).

The phrase “free from any discrimination” as used in federal-sector discrimination laws means that a personnel action “must be made in a way that is not tainted by differential treatment based on a protected characteristic” – age in the case of the ADEA or race, color, religion, sex, or national origin in the case of Title VII. *See Terrell v. Sec’y, Dep’t of Veterans Affairs*, 98 F.4th 1343, 1351-52 (11th Cir. 2024) (quotation marks omitted). As such, a federal employer violates the ADEA and/or Title VII if it allows age, race, color, religion, sex, or national origin “to contribute” in any way to a “personnel action.” *Id.* at 1352 (quotation marks omitted).

The complaint does not plausibly allege that such a violation occurred here, either with respect to Plaintiff’s age as prohibited by the ADEA or any characteristic protected by Title VII. The closest it comes to alleging an ADEA or

Title VII violation is in the assertion that McCray “stated that a younger male mail carrier . . . had no problem finishing [Plaintiff’s] route.” [Doc. 25 ¶ 84.] Without more, this statement simply does not suggest any discrimination against Plaintiff based on her age, sex, or any other protected characteristic, and it certainly does not rise to the level of an age or sex-based hostile work environment. *See Buckley*, 97 F.4th at 796 (noting that a federal sector hostile work environment claim requires a showing of harassment “severe or pervasive enough to alter the terms and conditions of [the plaintiff’s] employment” (quotation marks omitted)). The complaint also vaguely asserts that Plaintiff “experienced repeated age-based comments and treatment” that “occurred frequently over several months” and that “gender [and] age . . . appeared to be factors in how she was treated at work” but those are exactly the sort of “formulaic recitations” that do not suffice to state a plausible claim for relief. *See Twombly*, 550 U.S. at 555.

As for the other allegations purportedly made in support of Plaintiff’s ADEA and Title VII claims, they generally relate to her disability and request for medical accommodations rather than discrimination based on age or any characteristic protected by Title VII. [See Doc. 25 ¶¶ 109-113, 122.] None of the allegations suggest that age or a Title VII protected characteristic “played *any*

part” in the mistreatment Plaintiff claims to have experienced. *See Buckley*, 97 F.4th at 795 (emphasis in original, quotation marks omitted) (clarifying the legal standard that applies to a federal sector disparate treatment claim under Title VII).

Further, and even assuming the complaint included sufficient factual allegations to assert a plausible claim for relief under the ADEA or Title VII, any such claim would be barred for lack of exhaustion. Before litigating a claim under either statute, a federal employee “must pursue and exhaust her administrative remedies” by (1) initiating EEO contact “within 45 days” of the alleged discriminatory conduct and then (2) filing a formal EEO complaint with her employing agency within 15 days after the EEO counselor has issued a notice of final interview.⁵ *Hendrix v. Snow*, 170 F. App’x 68, 76 (11th Cir. 2006) (citing 29 C.F.R. §§ 1614.105(a) (providing that an “aggrieved person” who believes she has been discriminated against based on race, sex, age, disability, or any other protected characteristic “must initiate contact with [an EEO] Counselor within 45

⁵ There is an alternative to this process available to federal employees alleging age discrimination under the ADEA, which involves filing a suit directly in district court after providing timely notice to the EEOC “within 180 days of the occurrence of the alleged unlawful practice.” *See* 29 C.F.R. § 1614.201(a). However, there is no indication Plaintiff availed herself of this alternative.

days of the date of the matter alleged to be discriminatory”) and 1614.106 (describing the EEO complaint process)). *See also Shiver v. Chertoff*, 549 F.3d 1342, 1344 (11th Cir. 2008) (“[F]ederal employees are required to initiate administrative review of any alleged discriminatory or retaliatory conduct with the appropriate agency within 45 days of the alleged discriminatory act.”). “Generally, when the [plaintiff] does not initiate contact within the 45-day . . . period, the claim is barred for failure to exhaust administrative remedies.” *Shiver*, 549 F.3d at 1344.

As in the private sector, the exhaustion requirement is intended to facilitate informal resolution of federal employment matters. *Jimenez v. United States Att’y Gen.*, 146 F.4th 972, 988 (11th Cir. 2025). *See also Gregory v. Ga. Dep’t of Human Res.*, 355 F.3d 1277, 1279 (11th Cir. 2004) (explaining that exhaustion is intended to give the EEOC the “first opportunity to investigate the alleged discriminatory practices” and “perform its role obtaining voluntary compliance and promoting conciliation efforts” (quotation marks omitted)). Consistent with that intent, a plaintiff’s judicial complaint “is limited by the scope of the . . . investigation which can reasonably be expected to grow out of the charge of discrimination.” *Gregory*, 355 F.3d at 1280 (quotation marks omitted). While claims that “amplify, clarify, or more clearly focus” the allegations made in the charge are allowed, “new acts of discrimination are inappropriate.” *Id.* at 1279-80.

As noted, Plaintiff initiated EEO contact on October 4, 2021 and filed a formal EEO complaint on December 28, 2021. [Doc. 54-2 ¶ 2 and Attachment 1.] She did not check any of the boxes on the EEO complaint form indicating that she had been subjected to discrimination or retaliation based on sex, age, or any other characteristic protected by the ADEA or Title VII, and the narrative attached to the complaint focused almost entirely on the denial of, and harassment and adverse actions taken based on, her request for disability accommodations and her complaints about their denial. [*Id.*] One sentence of the narrative asserted that Plaintiff was “forty-eight years old” and that McCray at some point “compared [her] to a male mail carrier stating that he could carry [her] route” but those statements do not suggest discrimination or retaliation. Rather, as the NEEIOSO observed, they appear to have been provided by way of background. [See Doc. 54-2 at 11.]

In sum, the ADEA and Title VII claims asserted in Counts IV, V, VII, and VIII of the complaint are not supported by facts sufficient to state a plausible claim to relief under those statutes and, in any event, Plaintiff failed to exhaust any ADEA or Title VII claims she otherwise might have asserted. Accordingly, the undersigned recommends that Defendant’s motion be granted as to these claims, and that they be dismissed.

3. Plaintiff's Constitutional Privacy Claim

In Count IX of the complaint, Plaintiff asserts a claim based on an “unlawful disclosure” of her medical information that allegedly violated her rights under the United States Constitution. [See Doc. 25 ¶¶ 129-145.] This claim arises from McCray’s telling Plaintiff’s co-workers about her medical condition and restrictions on August 9, 2021, a few days after she requested accommodations. [*Id.* ¶ 130.] According to Plaintiff, she experienced “negative treatment and emotional distress” after the disclosure, and the timing of the disclosure suggests that she was “being targeted after asserting her medical needs and workplace rights.” [*Id.* ¶¶ 130-133.] In addition to other relief, she seeks a “declaration that [her] constitutional rights were violated” by the disclosure of her confidential medical information. [*Id.* ¶ 135.]

This claim is subject to dismissal for at least two reasons. First, it is unclear from the facts set out in the complaint what constitutional right was allegedly violated and who could be held legally responsible for any such violation. [Doc. 25 ¶¶ 129-133.] Plaintiff claims some sort of violation occurred when her “medical condition and restrictions were improperly disclosed by . . . McCray to [her] co-workers” on August 9, 2021, but she does not identify any source of the purported violation in the Constitution. [See *id.*] And while she states that

McCray is responsible for the violation, she has not sued McCray in her individual capacity or served her in the case.

In addition, to the extent Plaintiff intended to sue McCray individually, her suit would be barred by recent case law interpreting *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), which authorizes suit against an individual federal officer for redress of constitutional violations but only in limited circumstances not applicable here. *See Goldey v. Fields*, 606 U.S. 942, 944 (2025) (“This Court has repeatedly emphasized that recognizing a cause of action under *Bivens* is a disfavored judicial activity.” (quotation marks omitted)). Assuming Plaintiff intended to sue McCray in her official capacity, such a suit is akin to suing the Postal Service and is barred by sovereign immunity. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 473, 475 (1994) (refusing to “imply a [*Bivens*-type] cause of action directly against an agency of the Federal Government” based on an alleged constitutional violation and noting that “[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit”).

For both these reasons, the undersigned recommends that the Court grant Defendant’s motion as to the constitutional privacy claim asserted in Count IX of the complaint and dismiss that claim.

4. Plaintiff's State Law Claims

In Counts XI and XII of the amended complaint, Plaintiff asserts claims under state law for IIED, assault, and battery. [Doc. 25 ¶¶ 146-164.] These claims are primarily based on the December 1, 2021 pushing incident, as well as the public humiliation, false accusations, and other harassment Plaintiff claims to have experienced at the hands of McCray and Greenfield around that time. [See *id.*] According to Plaintiff, these actions caused her to suffer severe emotional distress and other psychological and physical symptoms. [See *id.* ¶¶ 148-150.]

These claims should be dismissed to the extent they are asserted against either McCray or Greenfield in their individual capacities because, as discussed in Part II.C.1., above, neither has been served. And to the degree that Plaintiff brings claims against either the Postal Service or McCray and/or Greenfield in their official capacities, the claims are governed by the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*, which imposes procedural requirements that Plaintiff has not satisfied and includes exceptions to liability that clearly apply to Plaintiff's claims.

The FTCA waives the federal government's sovereign immunity for "certain torts committed by federal employees acting with the scope of their employment" thereby allowing an individual "injured by federal employees to

sue the United States for damages” in some circumstances. *Martin v. United States*, 605 U.S. 395, 400 (2025). While the FTCA thus provides an avenue for recovery against the federal government on state tort claims, it imposes certain procedural requirements and is subject to several exceptions. *See id.*

First, like the employment discrimination laws discussed above, “[t]he FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.” *McNeil v. United States*, 508 U.S. 106, 113 (1993). Specifically, the FTCA states:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.

28 U.S.C. § 2675(a). This requirement is satisfied by timely presentation and denial of “an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain.” *See* 28 C.F.R. § 14.2(a). An FTCA claim that is not so presented to the “appropriate Federal agency within two years” after it accrues is “forever barred.” *United States v. Kwai Fun Wong*, 575 U.S. 402, 405 (2015) (quoting 28 U.S.C. § 2401(b)).

Plaintiff does not allege and there is no indication that she ever presented a Standard Form 95 or any other notification of an administrative tort claim to the Postal Service before she filed suit in this case. [See Doc. 25.] Nor does the Postal Service have any record of receiving such a claim. [Essig Dec. ¶ 6.] Further, the basis of both state claims asserted in the complaint is the December 1, 2021 pushing incident, which occurred more than two years before she filed suit in this action. [Doc. 25 ¶¶ 147, 157.] Recovery on these claims under the FTCA is thus barred, and the claims are subject to dismissal as unexhausted and untimely.

In addition to the procedural bar, the state claims fall within an exception to the federal government's liability under the FTCA because they arise out of McCray's alleged assault and/or battery of Plaintiff on December 1, 2021. [See Doc. 25 ¶¶ 147, 157.] The exceptions to liability expressly set out in the FTCA include "[a]ny claim arising out of assault [or] battery." 28 U.S.C. § 2680(h). As the Eleventh Circuit has explained, the phrase "arising out of" as used here "is interpreted broadly to include all injuries that are dependent upon one of the listed torts having been committed." *Zelaya v. United States*, 781 F.3d 1315, 1333 (11th Cir. 2015). As such, "a claim will be deemed to have arisen from [an]

excepted tort if the governmental conduct that is essential to the plaintiff's cause of action is encompassed by that tort." *Id.*

The claim for "assault and battery" asserted in Count XII of the amended complaint expressly falls within an exception from liability under the FTCA. [See Doc. 25, Count XII.] Although the IIED claim asserted in Count XI is not a claim for assault or battery *per se*, it also falls within the same exception to liability under the FTCA because it is entirely dependent on McCray's alleged assault and/or battery of Plaintiff on December 1, 2021. [See Doc. 25 ¶ 147.] For this additional reason, the undersigned recommends that Defendant's motion be granted as to the state claims asserted in Counts XI and XII of the amended complaint and that these claims be dismissed.

5. Plaintiff's Rehab Act Claims

The remaining claims in the complaint all arise under the Rehab Act, and are based on alleged discrimination, retaliation, and other purportedly unlawful conduct under that Act. [See Doc. 25 ¶¶ 40-82, 99-106, 139-145.] The Rehab Act forbids federal agencies from discriminating against an otherwise qualified individual with a disability or from retaliating against such an individual for asserting her rights under the Act or complaining about their denial. *See Simone v. Sec'y of Homeland Sec., United States Dep't of Homeland Sec.*, 156 F.4th 1212, 1216

(11th Cir. 2025) (citing 29 U.S.C. § 794). Claims brought under the Rehab Act are governed by the same standards as those brought under the ADA, which prohibits disability discrimination in the private sector. *See id.*

To state a plausible claim for discrimination under the Rehab Act, a federal employee must allege that: (1) she has a disability, (2) she is otherwise qualified for the position at issue, and (3) she was subjected to unlawful discrimination based on her disability. *Mullin v. Sec’y, U.S. Dep’t of Veterans Affs.*, 162 F.4th 1296, 1303 (11th Cir. 2025). Discrimination prohibited by the Rehab Act includes the failure to reasonably accommodate an employee’s disability and less favorable treatment of any employee on account of her disability. *See id.* (explaining that disability discrimination can take the form of disparate treatment or failure to make a reasonable accommodation). Although the Eleventh Circuit has not expressly opined as to the availability of a Rehab Act claim based on a hostile work environment, the undersigned assumes such a claim is cognizable for purposes of this motion. *See Doe v. Directions for Mental Health, Inc.*, Case No.: 8:24-cv-2530-WFJ-LSG, 2025 WL 589044, at *4 (M.D. Fla. Feb. 24, 2025) (acknowledging that the Eleventh Circuit “has never held in a published opinion that a hostile work environment claim exists under the ADA” but noting that “several other circuits have concluded that the ADA provides a cognizable claim

for a disability-based hostile work environment” and that “several district courts within the circuit have assumed this claim exists” (quotation marks omitted)); *Ellison v. Northside Hosp.*, Civil Action No. 1:18-cv-3382-LMM, 2022 WL 18932818, at *3 (N.D. Ga. May 16, 2022) (“While the Eleventh Circuit has not expressly recognized a hostile-work-environment claim under the ADA, the Magistrate Judge appropriately followed Eleventh Circuit case law in presuming that such a claim is cognizable.”); *Gilliard v. Ga. Dep’t of Corr.*, 500 F. App’x 860, 868 (11th Cir. 2012) (“We have not addressed the availability of a claim for a hostile work environment under either the ADA or the Rehab Act.”).

To state a plausible retaliation claim under the Rehab Act, a plaintiff must allege that (1) she engaged in conduct protected by the Act, (2) some “materially adverse action” followed, and (3) there was a causal connection between the two events. *See Mullin*, 162 F.4th at 1315. “As to the second element, she must show that the adverse action” was one which “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Id.* (quotation marks omitted). Again, the Eleventh Circuit has “not opined on whether a retaliatory hostile work environment claim can be properly asserted under the Rehab[] Act or the ADA.” *Id.* at 1315-16. The undersigned nevertheless presumes that such a claim is cognizable. *See Ellison*, 2022 WL 18932818, at *3. As to this

claim, the undersigned notes that the retaliation standard (“whether the employer’s complained-of action well might have dissuaded a reasonable worker from making or supporting a charge of discrimination”) applies, rather than the hostile work environment standard requiring severe or pervasive harassment. *See Buckley*, 97 F.4th at 799 (“[W]e have recognized that retaliatory-hostile-work-environment claims are really retaliation claims.” (quotation marks omitted, alterations adopted)).

The complaint here includes every type of Rehab Act claim described above. Specifically, Count I asserts a failure to accommodate claim based on the denial of Plaintiff’s medically substantiated accommodation request for light duty limited to “four hours on the street and four hours inside the station” and the related denial of work opportunities on various dates in August and September, 2021. [*Id.* ¶¶ 41-45, 100-102.] Count II asserts a retaliation claim, alleging that Plaintiff’s hours were cut, her work assignments were changed, and she was subjected to unwarranted adverse discipline and harassment that included yelling and physical confrontation after she requested accommodations and complained about their denial. [*Id.* ¶¶ 54-64.] Count III asserts a disability-based hostile work environment claim based on “public ridicule, false accusations of malingering, verbal abuse” and “physical harassment” allegedly

inflicted by her supervisors following the accommodation request. [*Id.* ¶¶ 72-77.] Count VI asserts a claim for otherwise unspecified “discrimination” in violation of the Rehab Act that appears to be a duplicative amalgamation of Plaintiff’s failure to accommodate and retaliation claims. [*Id.* ¶¶ 99-102.] Finally, Count X asserts a claim under the Rehab Act for “unlawful disclosure of confidential medical information” based on McCray’s August 9, 2021 disclosure of Plaintiff’s condition and restrictions. [*Id.* ¶ 140.]

Defendant argues that all these claims except the retaliation claim asserted in Count II should be dismissed in their entirety as either insufficiently pled and/or unexhausted. [*See* Doc. 54-1 at 2.] As to Count II, Defendant concedes that it is sufficiently pled but argues that it was not timely exhausted and is thus barred to the extent it is based on conduct that occurred on or prior to August 20, 2021. [*See id.*] The undersigned addresses each of these arguments in turn.

i. Failure to Accommodate (Count I)

Defendant does not dispute that Plaintiff plausibly alleges a claim for failure to accommodate under the Rehab Act, nor could it. The amended complaint includes facts sufficient to show that: (1) Plaintiff is and was at all relevant times disabled as a result of a job-related injury that caused her to suffer a lumbar sprain and sacroiliitis, (2) she was qualified for her mail carrier job, as

evidenced by her successful performance of the job for approximately four years prior to her injury, (3) following her injury, she was able to perform the essential functions of the job with the reasonable accommodation of modified light duty work limiting her to “four hours [of work] on the street and four hours inside the station,” (4) she requested those accommodations and submitted medical documentation of their necessity, and (5) her supervisors “denied the request without explanation and refused to engage in any discussion about accommodations despite receiving [her] detailed medical documentation.” [Doc. 25 ¶¶ 1, 7, 25, 27-30, 32-34, 41-45.]

Defendant nevertheless argues that Plaintiff’s failure to accommodate claim is subject to dismissal because she failed to exhaust it. [See Doc. 54-1 at 10-12.] Again, a federal employee must exhaust her administrative remedies before filing suit under the Rehab Act and her judicial claims are “limited by the scope” of the facts asserted in her administrative charge of discrimination. *Gregory*, 355 F.3d at 1280. However, the Eleventh Circuit has instructed that the administrative charge “should not be strictly interpreted” when conducting the exhaustion analysis, as courts are “extremely reluctant to allow procedural technicalities to bar claims brought under” employment discrimination statutes.

Id. The “proper inquiry” is simply whether the complaint “was like or related to, or grew out of, the allegations contained” in the charge. *Id.*

Applying that inquiry here, the undersigned concludes that Plaintiff exhausted her failure to accommodate claim. Although she did not check any boxes in her EEO complaint to indicate the type of discrimination she was alleging or use the specific words “failure to accommodate,” that is not fatal to her claim. *See Gregory*, 355 F.3d at 1280 (holding that plaintiff’s “retaliation claim was not administratively barred by her failure to mark the retaliation space on the EEOC template form”). In the narrative attached to the EEO complaint, she alleged that she had a “medical condition” that necessitated work restrictions, that she had “provided [her supervisors] with documentation” supporting those restrictions in August 2021, and that she subsequently had not been allowed to work within her restrictions on several days. [See Doc. 54-2 at 7-9.] These allegations reasonably encompass a failure to accommodate claim, both in their own rite and because they are “inextricably intertwined” with other allegations in the EEO complaint about harassment and adverse actions Plaintiff experienced after her request for accommodation was denied. *See id.* Stated differently, an investigation into Plaintiff’s EEO complaint “could have reasonably been

extended” to include an inquiry into Defendant’s failure to accommodate her disability. *See id.*

Defendant argues that the NEEIOSO expressly limited its investigation to Plaintiff’s “discriminatory harassment/hostile work environment” claims based on retaliation, and that Plaintiff is stuck with that characterization of her claim because she failed to dispute it in writing. [See Doc. 54-1 at 11.] Defendant does not cite any authority to support its argument that the scope of an EEO complaint is limited by the agency’s characterization of it. [See *id.*] And in any case, the NEEIOSO’s notice is not as circumscribed as Defendant suggests, as it includes in its list of accepted issues that, “On dates to be specified since August 6, 2021, [Plaintiff had] not been provided with 8 hours work within [her] medical restrictions.” [Doc. 54-2 at 11.] Although the NEEIOSO characterized this issue as subsumed within more general allegations of “discriminatory harassment/hostile work environment” it also indicates a failure to accommodate in language similar to that used in the complaint. [See Doc. 25 ¶ 41.]

Although the undersigned concludes that Plaintiff exhausted her Rehab Act failure to accommodate claim, Defendant correctly notes that she did not timely do so with respect to any conduct that occurred on or prior to August 20,

2021. [See Doc. 54-1 at 12-13.] As discussed, a federal employee must initiate EEO contact “within 45 days” of allegedly discriminatory conduct to timely exhaust her administrative remedies as to that conduct. *See Shiver*, 549 F.3d at 1344. Further, “discrete discriminatory acts are not actionable if time-barred, even when they are related to acts alleged in timely filed charges.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002); *see also Perry v. Emory Healthcare, Inc.*, No. 1:23-cv-3036-VMC-CMS, 2024 WL 846309, at *4 (N.D. Ga. Jan. 22, 2024) (explaining that “discrete acts” are “easy to identify, and each therefore constitutes a separate actionable unlawful employment practice that starts a new clock for limitations purposes”). Plaintiff did not initiate EEO contact until October 4, 2021, meaning her claim as to any discrete act of discrimination, such as a failure to accommodate, that occurred on or before August 20, 2021 is time barred. *See Shiver*, 549 F.3d at 1344.

Plaintiff alleges conduct that occurred on and before August 20, 2021, as well as conduct that occurred after that date in support of her failure to accommodate claim asserted in Count I of the amended complaint. [See Doc. 25 ¶ 41.] As to the former, the undersigned recommends that Defendant’s motion be granted and the claim asserted in Count I dismissed, but as to the latter the claim should proceed.

ii. Retaliation/Retaliatory Harassment (Count II)

Defendant does not dispute that Count II of the complaint plausibly alleges a Rehab Act retaliation claim that is exhausted with respect to conduct that occurred after August 20, 2021. [See generally Doc. 54-1.] Specifically, Plaintiff asserts in the complaint that she requested disability accommodations from her supervisors and filed grievances based on their denial, after which her supervisors reduced her work hours, denied her meaningful work assignments, changed her job duties, issued unwarranted discipline, increased their monitoring of her, yelled at her, accused her of faking her disability, and otherwise verbally humiliated her in front of her coworkers. [Doc. 25 ¶¶ 53-64.] That is sufficient to state a claim for both retaliation and retaliatory harassment under the Rehab Act. See *Burlington N. & Santa Fe R.R. Co. v. White*, 548 U.S. 53, 70-72 (2006) (concluding that the plaintiff's reassignment of duties and suspension without pay were sufficiently material to sustain her retaliation claim).

Defendant nevertheless contends, based on the same reasoning as set forth above with respect to the untimely portion of Plaintiff's failure to accommodate claim, that any retaliation claim based on conduct that occurred on or before August 20, 2021 should be dismissed. [See Doc. 54-1 at 12-13.] It is true that

Plaintiff cannot recover for “discrete” retaliatory acts that occurred on or prior to August 20, 2021, given her failure to initiate EEO contact within 45 days of those acts. *See Morgan*, 536 U.S. at 113. The retaliation claim should be dismissed to the extent it is based on such discrete acts. However, the allegations in the complaint assert a plausible basis for Plaintiff to recover for retaliatory harassment that occurred outside the 45-day window, to the extent such harassment “is composed of a series of separate acts that collectively constitute” the “one unlawful employment practice” of retaliatory harassment. *See id.* at 116-117 (explaining that “the entire hostile work environment encompasses a single unlawful employment practice”) (quotation marks omitted). As the complaint asserts a plausible retaliatory harassment claim, the undersigned concludes that it would be premature at this juncture to dismiss any part of that claim as untimely.

iii. Hostile Work Environment (Count III)

Defendant contends that Plaintiff’s disability-based hostile work environment claim asserted in Count III of the complaint is both insufficiently pled and unexhausted. [*See* Doc. 54-1 at 10-12, 17-21.] The undersigned agrees with Defendant as to the former point and thus does not address the latter.

As noted, the disability-based hostile work environment claim asserted in Count III of the complaint is distinct from, and governed by a different legal standard than, the retaliatory harassment claim asserted in Count II. *See Buckley*, 97 F.4th at 799. To prevail on the hostile work environment claim, Plaintiff must prove, among other things, that (1) she experienced unwelcome harassment based on a protected characteristic (here, disability) and (2) the harassment was sufficiently severe or pervasive to alter the terms of her employment. *Yelling v. St. Vincent's Health Sys.*, 82 F.4th 1329, 1334 (11th Cir. 2023). At the pleading stage, a plaintiff must allege specific facts plausibly suggesting both elements are met. *See Edwards v. Prime, Inc.*, 602 F.3d 1276, 1300 (11th Cir. 2010) (observing that to plead a hostile work environment claim post-*Iqbal*, employee “was required to allege” support for all necessary elements); *see also Woods v. Lockheed Martin Corp.*, No. 1:18-CV-3501-LMM-CCB, 2019 WL 13078831, at *4 (N.D. Ga. Sept. 4, 2019) (dismissing hostile work environment claim where plaintiff provided nothing more than vague allegations of forced isolation at work and being pressured to quit in support of severe or pervasive element), *aff'd*, No. 21-13882, 2022 WL 2972852 (11th Cir. July 27, 2022); *cf. Equal Emp. Opportunity Comm'n v. Jomar Transp., Inc.*, No. 1:13-CV-3143-ODE, 2014 WL 12069843, at *4 (N.D. Ga. Aug. 12, 2014) (finding general allegations that sexual comments were “regular

throughout the course of her four-year employment” and that there was an email “campaign” about her breasts to be plausibly severe or pervasive when supported by allegations regarding “ten specific encounters”).

Importantly, the severe or pervasive requirement has a subjective and an objective component. *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1153 (11th Cir. 2020). That is, the employee must subjectively perceive “the harassment as sufficiently severe or pervasive to alter the terms or conditions of employment, and this subjective perception must be objectively reasonable.” *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 809 (11th Cir. 2010) (quotation marks omitted). See also *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (explaining that harassment must be “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment” to be actionable under Title VII); accord *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002).

Objective severity is “judged from the perspective of a reasonable person in the plaintiff’s position, considering ‘all the circumstances.’” *Yelling*, 82 F.4th at 1335 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998)). Relevant factors include: (1) the frequency of the conduct, (2) its severity, (3) whether the conduct was physically threatening or merely an offensive utterance,

and (4) whether the conduct “unreasonably interfere[d] with the employee’s job performance.” *Fernandez*, 961 F.3d at 1153 (quotation and marks omitted). Ultimately, conduct “must be extreme . . . to amount to a change in the terms and conditions of employment” and thus give rise to a hostile work environment claim. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

Liberalizing Plaintiff’s complaint, many of the allegations made in support of her disability-based hostile work environment claim involve discrete employment actions such as having her hours cut and being subjected to unwarranted discipline. [See Doc. 25 ¶¶ 72, 74, 75.] Such discrete acts are not actionable under a hostile work environment theory but must instead be challenged “as separate statutory discrimination and retaliation claims.” *McCann v. Tillman*, 526 F.3d 1370, 1378 (11th Cir. 2008). And while repeated conduct such as “discriminatory intimidation, ridicule, and insult” can support a hostile work environment claim, Plaintiff alleges such conduct only in the most conclusory way. [See *id.* ¶¶ 73-77.] For example, Plaintiff vaguely claims that she was subjected to “public ridicule and humiliation” as well as “false accusations of malingering, verbal abuse targeting disability, and physical harassment.” [*Id.* ¶¶ 73-74, 76.] These “formulaic recitations” of the elements of a hostile work

environment claim are insufficient to state a plausible claim for relief. *See Twombly*, 550 U.S. at 555.

The only specific incidents of disability-based harassment cited by Plaintiff are: (1) being publicly accused of faking her disability on August 14, 2021, (2) unspecified “false accusations regarding attendance and work performance,” and (3) the tray snatching incident on August 16, 2021. [*Id.* ¶ 75.] These three incidents do not amount to “extreme” conduct sufficient to “change . . . the terms and conditions of [Plaintiff’s] employment. *See Faragher*, 524 U.S. at 788. *See also Yelling*, 82 F.4th at 1337 (emphasizing that harassment must be “so objectively offensive as to alter the conditions of the victim’s employment” to be actionable). Accordingly, the undersigned recommends that Defendant’s motion be granted as to the hostile work environment claim asserted in Count III of the complaint, and that the claim be dismissed.

iv. General Discrimination (Count VI)

The claim asserted in Count VI of the complaint for unspecified discrimination in violation of the Rehab Act appears to simply be a mishmash of allegations made elsewhere in the complaint. [*See* Doc. 25, Count VI.] Plaintiff vaguely alleges in support of this claim that she was “treated less favorably” but she does not explain what she means by that or identify any non-disabled

employee (or any employee) who was treated more favorably. [*Id.* ¶ 100.] Restating her failure to accommodate claim, she alleges in this Count that she was “denied access to available work, despite being medically cleared” and that her supervisors “did not provide the accommodations [she] requested for her disability.” [*Id.* ¶¶ 100, 102.] Referring to certain aspects of her retaliation claim, she then states that she “experienced negative treatment” from her supervisors after requesting accommodations, “including exclusion and criticism.” [*Id.*]

As evidenced by the above summary, Count VI of the complaint is materially indistinguishable from and simply a restatement of other substantive counts of the complaint. To the extent it was intended to assert a separate claim under the Rehab Act, it is entirely too conclusory to do so as it is unclear from its allegations what the legal or factual basis of that claim would be. The undersigned thus recommends that Count VI be dismissed as duplicative and for failure to state a plausible claim for relief. *See Watkins v. Sullivan*, No. 21-12396, 2022 WL 10792955, at *2 (11th Cir. 2022) (affirming the district court’s dismissal of a count in the plaintiff’s complaint as “impermissibly duplicative”); *see also St. Luke’s Cataract and Laser Institute, P.A. v. Sanderson*, 578 F.3d 1186, 1203 (11th Cir. 2009) (observing that a plaintiff may recover only once for a single injury).

v. Unlawful Disclosure (Count X)

Finally, Count X of the complaint purports to assert a claim under the Rehab Act for unlawful disclosure of medical information. [Doc. 25, Count X.] The Rehab Act “incorporates the confidentiality provisions of the ADA.” *Mullin*, 162 F.4th at 1308. As such, a federal employer may be subject to liability for violating certain confidentiality requirements imposed by the Act. *See id.* at 1309. However, Plaintiff’s claim is based entirely on McCray’s allegedly unlawful disclosure of her condition and work restrictions to her co-workers on August 9, 2021. [See *id.* ¶ 130.] That conduct indisputably occurred more than 45 days prior to Plaintiff initiating EEO contact on October 4, 2021. [See *id.*] Accordingly, the undersigned recommends that Defendant’s motion be granted as to Count X of the complaint, and that the claim asserted therein be dismissed.

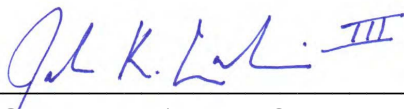
III. CONCLUSION

For the foregoing reasons, the undersigned **RECOMMENDS** that Defendant’s motion to dismiss [54] be **GRANTED** as to the claims asserted in Counts III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the amended complaint and that those claims be dismissed in their entirety. The undersigned further **RECOMMENDS** that the motion be **GRANTED** as to any discrete act underlying the claims asserted in Counts I and II of the complaint that occurred

on or before August 20, 2021. As to acts occurring after August 20, 2021 alleged in Counts I and II, and as to acts that may be considered part of one unlawful retaliatory hostile work environment as asserted in Count II, the undersigned **RECOMMENDS** that Defendant's motion be **DENIED** and that those claims be allowed to proceed. Finally, it is **RECOMMENDED** that to the extent Plaintiff asserts claims against the United States Postal Service, McCray, or Greenfield, they be **DISMISSED**.

Finally, it is **ORDERED** that Defendant's motion to stay be **GRANTED**. [Doc. 58.] All discovery and pretrial deadlines are **STAYED** pending further Court order.

IT IS SO ORDERED and RECOMMENDED this 8th day of April, 2026.



JOHN K. LARKINS III
United States Magistrate Judge