

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

BRADLEY ALBERT,

Plaintiff,

v.

FIDELITY BROKERAGE SERVICES
LLC,

Defendant.

CIVIL ACTION FILE NO.

1:24-cv-5249-MLB-JKL

NON-FINAL REPORT AND RECOMMENDATION

This employment discrimination case is before the Court on Plaintiff Bradley Albert's motion for recusal [Doc. 23] and Defendant Fidelity Brokerage Services LLC's ("Fidelity") motion to dismiss for failure to state a claim [Doc. 24] and motion for sanctions [Doc. 26]. For the reasons set out below, it is **RECOMMENDED** that Plaintiff's motion for recusal [23] be **DENIED**, that Defendant's motion to dismiss [24] be **GRANTED** as to Plaintiff's Title VII race discrimination but otherwise **DENIED**, and that Defendant's motion for sanctions [26] be **DENIED**.

I. BACKGROUND

A. Procedural Background

Plaintiff filed this *pro se* complaint against his employer Fidelity on November 14, 2024, asserting claims for discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Age Discrimination in Employment Act (“ADEA”), violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and the Taxpayer First Act (“TFA”), and breach of contract under O.C.G.A. § 13-3-1. [Doc. 1 at 15-17.] Plaintiff stated in the complaint that he filed these claims to “correct [Defendant’s] illegal discrimination program based off of race, sex, and age” and in response to alleged retaliation against Plaintiff after he “reported potential securities fraud and tax fraud issues.” [*Id.* at 2.]

Defendant moved to dismiss Plaintiff’s complaint under Federal Rule 12(b)(6) for failure to state a claim, and the undersigned issued a Report and Recommendation (“R&R”) concluding that the motion should be granted. [Doc. 15.] As explained in the R&R, the complaint in its initial form was a shotgun pleading that did not comply with Federal Rules 8 and 10 nor include sufficient facts to state a plausible claim for relief as required to survive a motion to dismiss under Federal Rule 12(b)(6). [*See id.* at 10-25.] Specifically, it: (1) failed to allege

that Plaintiff reported Defendant's misconduct to the Securities and Exchange Commission ("SEC") as required to state a claim under the Dodd-Frank Act, (2) did not allege that he filed a timely complaint with the United States Secretary of Labor as required to state a claim under the TFA, (3) provided only conclusory allegations that Defendant breached any contract, and (4) contained insufficient facts to support a plausible inference of either discrimination or retaliation in violation of the Title VII or the ADEA. [*See id.*] Despite these issues and given his *pro se* status, the undersigned recommended that Plaintiff be given an opportunity to file an amended complaint. [*Id.* at 26-28.]

The District Court adopted the R&R, granted Defendant's motion to dismiss, and ordered Plaintiff to file an amended complaint. [Doc. 19.] The Court determined in its order that the R&R was unopposed, noting that although Plaintiff had supposedly served objections on Defendant, he had not filed those objections with the Court until weeks after the objection period closed. [*Id.* at 1 n.1.] But even if considered, the Court concluded that Plaintiff's "frivolous, conclusive, and general" objections did not change the result, finding "no error — much less clear error — in the" R&R. [*Id.* at 2.] The Court then advised Plaintiff that his filings, especially his repeated requests for "guidance" in the form of legal advice, displayed a "misunderstanding of his role as a plaintiff in federal

court.” [*Id.* at 3.] Plaintiff was warned that although the Court would “liberally construe his filings” it could not “serve as his *de facto* counsel.” [*Id.*]

Plaintiff responded by filing a first amended complaint (“FAC”) [Doc. 22] and a motion for recusal [Doc. 23]. As discussed in more detail below, Plaintiff asserts claims in the FAC for race and sex discrimination and retaliation in violation of Title VII (Count I) and age discrimination and retaliation in violation of the ADEA (Count II). [Doc. 22.] As for his motion to recuse, Plaintiff cites purported evidence of “legal bigotry” on the part of the District Judge, as well as the undersigned and another Magistrate Judge who is no longer assigned to the case, and he argues that recusal is thus warranted. [*See generally* Doc. 23.]

Defendant has filed a motion to dismiss the FAC on the ground that it fails to cure the deficiencies in the initial complaint. [*See* Doc. 24-1 at 1.] Defendant also has filed a motion for sanctions, arguing that Plaintiff should be sanctioned for repeatedly flouting this Court’s orders and asserting a frivolous recusal motion. [Doc. 26.] Both these motions, as well as Plaintiff’s motion for recusal [Doc. 23], are before the Court and ripe for review.

B. Factual Allegations in the FAC

The FAC makes the following relevant allegations, which the undersigned assumes are true and construes in the light most favorable to Plaintiff for the

purpose of analyzing the motions now before the Court.¹ See *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010) (explaining that on a motion to dismiss, the court must “accept as true the facts set forth in the complaint and draw all reasonable inferences in the plaintiff’s favor”).

Defendant is a privately owned company that provides investing and other financial services to the public. [Doc. 22 ¶¶ 3-4.] Plaintiff, a 53-year-old white male, began working for Defendant in February 2022 as a Wealth Management Services representative (“WMS rep”). [*Id.* ¶ 5.] Notwithstanding his claims against Defendant, Plaintiff still holds this position, where his duties include answering inbound and making outbound calls to assist customers, resolve customer cases, and support Defendant’s sales staff. [*Id.* ¶¶ 5, 10.]

¹ The FAC is peppered with facts that are irrelevant to the Court’s analysis because they are repetitive, cite and purport to discuss case law, criticize Defendant for reasons unrelated to his claims, do not contradict but also do not support Plaintiff’s claims, and complain about the Court’s previous orders in the case. [Doc. 22 ¶¶ 41, 60-61, 63-80.] As will be discussed below, this extraneous material does not obfuscate the essential facts underlying Plaintiff’s claims and its inclusion does not warrant dismissal of the FAC in its entirety. See *Tweedie v. Waste Pro of Fla., Inc.*, Case No. 8:19-cv-01827-T-60AEP, 2020 WL 1492873 at *2 (M.D. Fla. 2020) (noting that improper case citations and the like only warrant dismissal under the federal rules “where the complaint is so mired in extraneous facts, legal arguments, legal citations, and unnecessary legalese that it fails to comply with Rule 8(a).” (quotation marks omitted)). Nevertheless, the undersigned does not consider it in analyzing the motions before the Court.

WMS reps are paid according to a tiered schedule that begins at “Level 3” and goes up to “Level 5” with significant pay and bonus differences between the different levels. [Doc. 22 ¶ 11.] WMS reps are entitled to receive automatic “monetary promotions” – essentially, raises – from one level to the next based on an evaluation of the rep’s leadership, production, and quality scores as compared to other reps at the same pay level. [*Id.*] Leadership refers to a rep’s participation in meetings and self-development activities, production to the number of customer calls handled and cases resolved by the rep, and quality to the accuracy of the rep’s calls based on a review. [*Id.* ¶¶ 12-15.] Bonuses are similarly determined by comparing a rep’s leadership, production, and quality scores to those of his peers at the same pay level. [*Id.* ¶ 16.] Reps can compare their own production and quality scores to those of other reps by viewing Defendant’s operational dashboard, but the dashboard does not contain leadership data. [*Id.* ¶ 17.]

After an initial training period, WMS reps are assigned to a supervisor and given a mentor whose task is to provide institutional knowledge about Defendant’s internal policies, among other things. [Doc. 22 ¶¶ 21-22.] Plaintiff completed his initial training in November 2022 under the supervision of Chris Lirot, a 33-year-old white male. [*Id.*] He subsequently was supervised by (1)

Sherry Edwards, a black female of unspecified age, from November 2022 to August 2023, (2) Bruce Davis, a “young” black male, from August 2023 to June 2024, (3) Danielle Cappelle, a young white female, from June to September 2024, and (4) Peter Bacilo, a white male of unspecified age, beginning in September 2024. [*Id.*]

Plaintiff claims he was not assigned a mentor at the end of his initial training period and was thus denied the same “mentorship training as other[s] of different race, sex, [and] age” such as Bridget Gbant, a black female of unspecified age, and Amy Lange, a white female who is less than 40 years old. [Doc. 22 ¶ 23.] Plaintiff asked his then-supervisor Davis for “mentorship training” in September 2023 but was “refused compared to other WMS reps of different race, sex, and age” such as Gbant and Lange. [*Id.* ¶ 24.] He raised the mentor issue again in March 2024, advising Defendant that if it wanted to “assign [him] a mentor to fill in the gaps” in his knowledge he “would be more than agreeable.” [*Id.*] He was assigned Katie Tomaszewski as a mentor in September 2024, but Tomaszewski told Plaintiff she was “not here to answer questions.” [*Id.* ¶ 25.] Plaintiff claims the lack of mentorship has negatively affected his job performance by causing gaps in knowledge central to his work. [*Id.* ¶¶ 26-28.]

In addition to the lack of mentorship, Plaintiff alleges in the FAC that Defendant has refused to elevate him from the Level 3 pay and bonus tier to Level 4 or 5, although he has had the best production and quality scores of all Level 3 WMS reps on Defendant's operational dashboard "month, after month, after month" and his supervisors have acknowledged his "fun and positive attitude" in leadership meetings. [Doc. 22 ¶¶ 29-32.] Plaintiff claims that Ghant and Lange, the two female employees mentioned above, have been elevated from the Level 3 tier and received more pay and higher bonuses than him despite their consistently lower production and quality scores. [*Id.* ¶¶ 29, 31, 33.] He concludes that the disparity is based on his race, sex, and age. [*Id.* ¶ 33.]

Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on September 19, 2023 alleging race, sex, and age discrimination in violation of Title VII and the ADEA based on the facts set out above. [Doc. 22 ¶ 34.] Plaintiff advised Defendant about his EEOC charge the same day he filed it, using an electronic system for employees to report legal and policy violations called the Chairman's line. [*Id.* ¶ 35.]

Human Resources ("HR") Director Mikio Anderson was assigned to investigate Plaintiff's EEOC charge. [Doc. 22 ¶ 36.] Anderson acknowledged in his meetings with Plaintiff the importance of mentorship training in Defendant's

organization. [*Id.*] Anderson also stated that “there were many management level discussions about [Plaintiff’s] EEOC” charge. [*Id.*] Plaintiff confirms as well that he had conversations with management about the EEOC charge shortly after he filed it. [*Id.*]

According to Plaintiff, Defendant retaliated against him for filing the EEOC charge, first by advising him in an October 31, 2023 meeting that he would need to meet “additional ambiguous leadership activity hurdles” to qualify for advancement through the tiered pay and bonus levels.² [Doc. 22 ¶¶ 37-40.] Specifically, management told Plaintiff that he needed to adopt a positive attitude, be proactive rather than reactive in addressing customer cases, receive more positive recognitions from customers and branch representatives, and show a commitment to “proactively and positively” pursuing personal development efforts.” [*Id.* ¶ 38.] Plaintiff claims Ghant and Lange did not have to meet these additional requirements. [*Id.* ¶ 37.] In addition, Plaintiff says he was not elevated from the Level 3 pay tier and did not receive higher bonuses

² Plaintiff states variously in the FAC that this meeting occurred on “10/31/23” and on “10/31/24.” [*Compare* Doc. 22 ¶ 37 *with id.* ¶ 40.] The undersigned assumes from the context and the surrounding allegations that the meeting occurred on October 31, 2023, and that Plaintiff’s citation to “10/31/24” is a typographical error.

despite achieving the additional hurdles, while Ghant and Lange continued to receive higher pay and bonuses. [*Id.* ¶ 39.]

Plaintiff further claims that after his EEOC filing, Defendant insisted on higher production numbers from him and led him to believe (falsely) that he would receive additional pay and bonuses if he embraced the extra work. [Doc. 22 ¶¶ 40-43.] Specifically, Plaintiff says that Defendant pushed his target production numbers to 50 cases, although management was aware that WMS reps become stressed at 35 cases and Ghant and Lange received additional pay and bonuses after working only 10 to 25 cases. [*Id.*] According to Plaintiff, Defendant refused to lower his production numbers to those of Ghant and Lange and otherwise “overworked” him, in retaliation for filing the EEOC charge. [*Id.* ¶¶ 43, 60-61.]

Finally, Plaintiff claims that from December 2023 to May 2024, Mikio, Bruce, and other managers used coaching notes, inaccurate quarterly reviews, a change in the outbound/inbound call policy, and a false April 2024 expectations memo to unfairly discipline him, all in retaliation for his EEOC charge. [Doc. 22 ¶¶ 48-57.] Ultimately, Plaintiff says, he was transferred to a less favorable WMS position on a different team, resulting in the removal of his leadership and quality review duties, the termination of his weekly leadership meetings, and the

denial of future opportunities to receive monetary promotions and valuable stock compensation, also in retaliation for his EEOC filing.³ [*Id.* ¶¶ 58-59, 62.]

Based on the above facts, the FAC asserts claims for: (1) race and sex discrimination and retaliation under Title VII, alleging that Plaintiff as a white male was “targeted for adverse employment actions compared to other WMS teammates of different [r]ace and [s]ex” such as Ghant and Lange, and then retaliated against for filing an EEOC charge by being overworked, given false additional hurdles to receive promotions and bonuses, subjected to unwarranted disciplinary memos and reviews, and transferred to a less favorable (and less remunerative) position (Count I), and (2) age discrimination and retaliation under the ADEA, alleging that he was similarly targeted for adverse actions as

³ Plaintiff cites as an additional incident of retaliation Help Desk employee Zach Crow’s “retaliatory” compliance report to management on “9/10” after Plaintiff complained about Defendant’s possible tax fraud and securities violations. [Doc. 22 ¶¶ 44-47.] The FAC does not include any facts from which it might reasonably be inferred that the help desk employee’s complaint constituted an instance of retaliation by Defendant, nor is it clear that the “retaliatory” complaint occurred after Plaintiff filed his EEOC charge, which is logically necessary for it to constitute retaliation. *See Martin v. Fin. Asset Mgmt. Sys., Inc.*, 959 F.3d 1048, 1053 (11th Cir. 2020) (“As a starting point for any retaliation claim, a plaintiff needs to show (among other things) that the decisionmaker actually knew about the employee’s protected expression.”). Accordingly, the undersigned does not consider these allegations in analyzing the viability of Plaintiff’s retaliation claim.

an employee over the age of 50 and subjected to further adverse actions after he filed an EEOC charge (Count II). [Doc. 22 ¶¶ 82-102.]

II. DISCUSSION

A. Defendant's Motion to Dismiss

Defendant argues in its motion to dismiss that the FAC is yet another shotgun pleading that violates Federal Rules 8 and 10. [See Doc. 24-1 at 1-2.] While Defendant acknowledges that the FAC improves upon the initial complaint by using numbered paragraphs, it contends that some of its paragraphs “contain extended and confusing lists of bullet points” and others “are duplicative” or “contain no factual content at all.” [*Id.* at 8.] According to Defendant, the FAC also deviates from the font requirements of this Court’s local rules. [*Id.*] Regarding the substance of Plaintiff’s allegations, Defendant argues that the FAC does not supply sufficient factual details to state a plausible claim for relief under Title VII or the ADEA as required to avoid dismissal under Federal Rule 12(b)(6). [*Id.* at 10-21.]

1. Federal Pleading Standards and Standard for Dismissal under Federal Rule 12(b)(6)

Rule 8 of the Federal Rules of Civil Procedure requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 10 additionally requires that the

statement be made “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). A complaint that violates these rules—or that otherwise fails to identify claims “with sufficient clarity to enable the defendant to frame a responsive pleading”—may be subject to dismissal as a shotgun pleading. See *Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1323 n. 15 (11th Cir. 2015) (citation and quotation marks omitted).

A complaint likewise may be dismissed under Federal Rule 12(b)(6) for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In evaluating a motion to dismiss under Rule 12(b)(6), the Court must determine whether the complaint contains “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)). A complaint need not provide “detailed factual allegations” to survive dismissal under Rule 12(b)(6), but it must provide factual allegations sufficient to set forth the plaintiff’s entitlement to relief. *Twombly*, 550 U.S. at 555. Providing only “labels and conclusions” is insufficient, “and a formulaic recitation of the elements of a cause of action will not do.” *Id.* 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.* And 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).

2. Dismissal is not warranted under Rules 8(a) and 10(b) or on shotgun pleading grounds.

The FAC is not perfect by any means, but it substantially complies with the pleading standards set out in Federal Rules 8 and 10. It contains a comprehensible and relatively “plain statement” of Plaintiff’s claims against Defendant, with supporting facts set out “in numbered paragraphs” that are for the most part limited to “a single set of circumstances.” *See* Fed. R. Civ. P. 8(a)(2), 10(b). And although it does contain some irrelevant facts, grievances, and

discussions of case law that should not have been included, their presence does not obfuscate or unduly complicate the factual bases of the claims legitimately asserted. Most importantly, the FAC suffices “to give [Defendant] adequate notice of the claims against [it] and the grounds upon which each claim rests.” *See Weiland*, 792 F.3d at 1323. Accordingly, the undersigned recommends that Defendant’s motion to dismiss be denied to the extent it seeks dismissal of the FAC as a shotgun pleading or for failure to comply with Federal Rules 8 and 10.

3. The FAC states plausible Title VII sex discrimination, ADEA age discrimination, and retaliation claims, as required to avoid dismissal of those claims under Rule 12(b)(6), but its allegations preclude a claim for race discrimination.

As noted, the FAC asserts claims against Defendant for: (1) sex and race discrimination and retaliation in violation of Title VII, and (2) age discrimination and retaliation in violation of the ADEA. Title VII makes it unlawful for an employer “to fail or refuse to hire or . . . otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race . . . [or] sex.” 42 U.S.C. § 2000e-2(a)(1). The ADEA similarly forbids employment discrimination “because of [an] individual’s age.” 29 U.S.C. § 623(a)(1). Both Title VII and the ADEA prohibit an

employer from retaliating against an employee for opposing or filing a charge of discrimination. *See* 42 U.S.C. § 2000e-3(a) (Title VII); 29 U.S.C. § 623(d) (ADEA).

To state a claim for unlawful discrimination under Title VII or the ADEA, a complaint must contain facts sufficient to plausibly suggest that the plaintiff was subjected to an adverse employment action because of his membership in a protected class. *See Arafat v. Sch. Bd. of Broward Cnty.*, 549 F. App'x 872, 874-75 (11th Cir. 2013) (applying Rule 12(b)(6) in the context of a Title VII and ADEA discrimination claim). Adverse action in this context means “some disadvantageous change in an employment term or condition.” *Muldrow v. City of St. Louis, Mo.*, 601 U.S. 346, 354 (2024) (quotation marks omitted). As the Supreme Court recently clarified, a plaintiff “must show some harm respecting an identifiable term or condition of employment” but the harm need not be “significant.” *Id.* at 355 (explaining further that the relevant harm does not have to be “serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar”).

To state a claim for retaliation under Title VII or the ADEA, a complaint must plausibly allege that the plaintiff: (1) engaged in activity protected by those statutes, (2) suffered an adverse action, and (3) there is a causal connection between the two. *Arafat*, 549 F. App'x at 874. Adverse action is not defined

precisely the same for purposes of a retaliation claim as it is for a discrimination claim. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006) (rejecting “the standards applied in the [courts] that have treated the antiretaliation provision as forbidding the same conduct prohibited by the antidiscrimination provision and that have limited actionable retaliation to so-called ultimate employment decisions” (quotation marks omitted)). In the retaliation context, an adverse action is one that “well might have dissuaded a reasonable worker from supporting a charge of discrimination.” *Id.* at 68 (quotation marks omitted).

a. Title VII and ADEA Discrimination Claims

The FAC satisfies the above standards with respect to his Title VII sex discrimination and his age discrimination claim asserted under the ADEA, but it falls short as to his Title VII race claim. As explained below, although the FAC sufficiently alleges adverse action with respect to all these claims, its allegations—assuming they are true—preclude any reasonable inference of race discrimination.

First as to adverse action, the undersigned is unpersuaded by Defendant’s argument that the FAC fails to plausibly allege this required element of Plaintiff’s discrimination claims. [See Doc. 24-1 at 10-14.] The FAC states that Plaintiff was

denied specific training opportunities, and also that he was denied raises and bonuses to which he was entitled by virtue of having the highest production and quality scores of all comparable WMS reps. [Doc. 22 ¶¶ 24, 26, 28-33.] Those allegations easily meet the definition of adverse action set out in *Muldrow*.⁴ Defendant suggests that a claim based on these actions might be time-barred because Plaintiff “completed training and was eligible for a mentor in November 2022” – more than 180 days prior to filing his EEOC charge – and “no dates are provided for the alleged denials” of raises. [Doc. 24-1 at 11-13.] Depending on the evidence, a statute of limitations defense might prove fruitful on summary judgment. But dismissal on the ground of timeliness would not be appropriate at this juncture because: (1) Plaintiff specifically alleges that he asked for and was denied mentorship training just days prior to filing his EEOC charge, and (2) the FAC indicates that the raises and bonuses Plaintiff is complaining about were

⁴ Defendant inexplicably – and without citation – states that “the alleged denial of promotions to Level 4 or 5 are not actionable adverse employment actions.” [See Doc. 24-1 at 13 n.4.] Plaintiff makes it clear in the FAC that a “promotion” to the Level 4 and 5 tier pay scale is accompanied by a substantial pay raise and additional bonuses. The undersigned is thus at a loss as to why the denial of such a promotion would not constitute an “actionable adverse employment action” under the reasoning of *Muldrow*.

quarterly, meaning at least some of the alleged denials occurred within the relevant 180-day time- period. [Doc. 22 ¶¶ 11, 24.]

Defendant next argues that the FAC fails to sufficiently assert a causal connection between the alleged adverse actions and Plaintiff's race, sex, or age. [See Doc. 24-1 at 14.] As to Plaintiff's sex and age, that argument is a mischaracterization of the FAC, which specifically states that comparable female WMS reps Gkant and Lange, at least one of whom is younger than Plaintiff, received training opportunities, raises, and bonuses that he was better qualified for but nevertheless was denied.⁵ [Doc. 22 ¶¶ 22-24, 29-33.]

On the other hand, the undersigned agrees with Defendant that the FAC affirmatively shows that any disparity Plaintiff experienced was not based on his race. That is because it specifically alleges that Lange, a comparator who is white,

⁵ Defendant suggests that the Court should take judicial notice of the fact that Gkant is in fact older than Plaintiff based on "publicly available sources" on the internet. [See Doc. 24-1 at 5 n.3.] That would not be an appropriate use of the judicial notice procedure. See *Bryant v. Ford*, 967 F.3d 1272, 1275 (11th Cir. 2020) (explaining that taking judicial notice of facts is "a highly limited process" because it "bypasses the safeguards which are involved with the usual process of proving facts by competent evidence"). Although Defendant will have an opportunity to submit evidence of Gkant's age on summary judgment, it would be improper to consider such evidence at the pleading stage. See *Erickson*, 551 U.S. at 94 ("[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint.").

received the very training opportunities, raises, and bonuses Plaintiff claims he was discriminatorily denied. [Doc. 22 ¶¶ 22, 29.] Plaintiff's allegation that Lange, who is white, received all the benefits he claims to have been denied, forecloses any plausible inference that the denial was motivated by racially discriminatory animus. *See Surtain v. Hamlin Terrace Found.*, 789 F.3d1239, 1246 (11th Cir. 2015) (noting that a complaint must "provide enough factual matter (taken as true) to suggest intentional race discrimination" to state a race-discrimination claim under Title VII).

b. Retaliation Claims

The FAC also plausibly alleges Title VII and ADEA retaliation claims. As with the discrimination claims, the undersigned is unpersuaded by Defendant's lack of adverse action argument. [See Doc. 24-1 at 17-20.] The FAC states that shortly after Plaintiff filed an EEOC charge in September 2023, his managers imposed additional work requirements, subjected him to unwarranted disciplinary actions, removed his leadership duties, denied him stock compensation, and ultimately transferred him to a less favorable position. [Doc. 22 ¶¶ 37-40, 49, 54-56, 58, 62.] Especially when considered in concert, these alleged actions "might have dissuaded a reasonable worker from supporting a

charge of discrimination” and thus satisfy the *Burlington* standard for showing adverse action in the retaliation context. *See Burlington*, 548 U.S. at 68.

Defendant also argues that the FAC does not sufficiently allege a causal connection between his protected conduct and the alleged adverse action, but again the undersigned does not agree. [Doc. 24-1 at 16-17, 20-21.] Specifically, the FAC asserts numerous adverse actions that allegedly began shortly after Defendant was notified that Plaintiff had filed an EEOC charge and following multiple conversations among management about the charge. *See Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007) (“The burden of causation can be met by showing close temporal proximity between the statutorily protected activity and the adverse employment action.”). Defendant points out that some of the adverse actions alleged in the FAC could not be retaliatory because they preceded Plaintiff’s protected conduct, and it is true that Plaintiff cannot recover for retaliation based on such preceding actions. *See Debe v. State Farm Mut. Auto. Ins. Co.*, 860 F. App’x 637, 640 (11th Cir. 2021) (“Obviously, if the alleged retaliatory conduct occurred before the employee engaged in protected activity, the two events cannot be causally connected.”). But that does not warrant dismissal of his retaliation claims based on adverse action alleged to have begun shortly after the protected conduct.

Based on the foregoing, the undersigned concludes that the FAC states a plausible sex discrimination claim under Title VII and age discrimination claim under the ADEA and recommends that Defendant's motion to dismiss be denied with respect to these claims. Likewise, the undersigned recommends that the motion to dismiss be denied as to Plaintiff's Title VII and ADEA retaliation claims. However, because the FAC affirmatively precludes any reasonable inference of race discrimination, the undersigned recommends that Plaintiff's Title VII race discrimination claim be dismissed.

B. Plaintiff's Motion for Recusal

In his motion for recusal, Plaintiff seeks recusal of the District Judge – and possibly also the undersigned, and another Magistrate Judge who is no longer assigned to this case – pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 144. [*See* Doc. 23 at 1-3.] As an initial matter, § 1983 does not provide a procedure for recusal. *See* 42 U.S.C. § 1983 (creating a cause of action in favor a person deprived of constitutional or other federal rights “under color” of law). Plaintiff's request for recusal under § 1983 is thus facially meritless.

As for 28 U.S.C. § 144, that statute provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of

any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

As Defendant points out, Plaintiff's motion for recusal fails at the outset because he has not filed the "timely and sufficient affidavit" that is specifically required by the statute. *See id.*

Furthermore, Plaintiff's motion for recusal is patently frivolous on the merits. As best the undersigned can tell, Plaintiff seeks recusal of the federal judges who have been involved in this case on the ground of "legal bigotry." [See Doc. 23 at 8-9.] Plaintiff does not explain what he means by that term, nor provide any other support for its application here besides complaining that the judges have spoken to him using "incoherent legalese" instead of "plain English" and that the District Judge warned him in a previous order that he could be sanctioned if he did not comply with the Federal Rules of Civil Procedure.⁶ [See *id.* at 1-3.] Plaintiff also suggests that the judges may be liable to him under state and federal racketeering statutes because his mail was subjected to a security check by the U.S. Marshals. [*Id.* at 5-8.]

⁶ As an example of the incoherent legalese, Plaintiff directly quotes language from several decisions of the United States Supreme Court. [See Doc. 23 at 3-4.]

Quite simply, none of the above states even a colorable ground for recusal, which is only warranted when a judge is “personally biased” in a manner that might affect the case or when the judge’s “impartiality might reasonably be questioned.” See *In re Walker*, 532 F.3d 1304, 1310 (11th Cir. Cir. 2008). The governing standard is “whether an objective, fully informed lay observer would entertain significant doubt about the judge’s impartiality.” *Id.* (quotation marks omitted). Plaintiff does not come close to meeting that standard here. In addition, Plaintiff’s complaints are primarily about statements made by the District Judge in a previous order. Those statements provide no ground for recusal because “bias sufficient to disqualify a judge must stem from extrajudicial sources” rather than unfavorable orders or rulings. *Id.* (quotation marks omitted). See also *Liteky v. United States*, 510 U.S. 540, 555 (1994) (noting that “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion”). Accordingly, the undersigned recommends that Plaintiff’s motion for recusal be denied.

C. Defendant’s Motion for Sanctions

Finally, Defendant has filed a motion for sanctions against Plaintiff pursuant to both 28 U.S.C. § 1927 and the Court’s inherent authority. [Doc. 26.] Defendant seeks in its motion to recover the fees and expenses incurred in

responding to Plaintiff's frivolous filings, including his motion for recusal. [*Id.* at 1.]

The undersigned notes that the Court would be within its discretion to sanction Plaintiff given the patently frivolous recusal motion just discussed. *See* 28 U.S.C. § 1927 (providing for the recovery of “excessive costs”—including expenses and attorney’s fees reasonably incurred—against a litigant who “multiplies the proceedings in any case unreasonably and vexatiously”); *see also Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1335 (11th Cir. 2002) (“Courts have the inherent authority to control the proceedings before them, which includes the authority to impose reasonable and appropriate sanctions.” (quotation marks omitted)) and *Petrano v. Old Republic Nat’l Title Ins. Co.*, 590 F. App’x 927, 929 (11th Cir. 2014) (concluding that the district court acted within its discretion “when it awarded more than \$40,000 in costs and attorney’s fees” to defendants who were required to respond to the plaintiff’s frivolous claims and motions). Nevertheless, it is significant that: (1) Defendant was not required to respond to the recusal motion (or at least not devote substantial resources to do so given its obvious failings), as the motion was directed to the Court and did not involve any substantive issue in the case, and (2) Plaintiff has in the FAC, for the most part, complied with the Court’s instructions as to

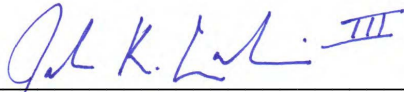
amending his complaint. Accordingly, the undersigned recommends that Defendant's motion for sanctions be denied at this time, and that Plaintiff be given **one final warning** against any similarly frivolous filings in the future.

In accordance with the above discussion, **the undersigned warns Plaintiff that any additional frivolous filings, particularly filings that require a response from Defendant or otherwise cause Defendant to unnecessarily incur attorney's fees, WILL result in a recommendation that Plaintiff be required to reimburse Defendant in the amount of the fees incurred, in addition to the fees and other expenses incurred seeking sanctions, and MAY result in a recommendation that this case be dismissed with prejudice.**

III. CONCLUSION

For the foregoing reasons, the undersigned **RECOMMENDS** that Plaintiff's motion for recusal [23] be **DENIED**, that Defendant's motion to dismiss [24] be **GRANTED** as to Plaintiff's Title VII race discrimination claim and otherwise **DENIED**, and that Defendant's motion for sanctions [26] be **DENIED**.

IT IS SO RECOMMENDED this 19th day of November, 2025.



JOHN K. LARKINS III
United States Magistrate Judge