

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

COURTNEY DAVIS,

Plaintiff,

v.

DELTA AIR LINES, INC.,

Defendant.

CIVIL ACTION FILE NO.

1:24-cv-5827-SDG-JKL

ORDER AND NON-FINAL REPORT AND RECOMMENDATION

This is an employment discrimination case arising under the Americans with Disabilities Act (the “ADA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and Georgia state law. The case is before the Court on Defendant Delta Air Lines Inc.’s (“Delta”) partial motion to dismiss [Doc. 14] and *pro se* Plaintiff Courtney Davis’s Motion for Extension of Time to File Amended Complaint [Doc. 23]. For the reasons that follow, it is **RECOMMENDED** that Delta’s motion be **GRANTED** and it is **ORDERED** that Davis’s motion be **DENIED**.

I. BACKGROUND

The Court provides this summary to give context to the legal analysis; the Court does not make any factual findings in ruling on the present partial motion to dismiss, and instead assumes the truth of Davis’s alleged facts.

A. Davis's Allegations

Davis, a Black woman, was hired by Delta as a flight attendant on September 12, 2022. [Doc. 4 at 8.] Davis suffers from "ADHD, MDD,^[1] Bipolar Disorder, Schizoaffective Disorder, and Anxiety." [*Id.* at 6.]

On September 15, 2022, three days into her employment, Davis emailed Delta's "accommodation department," asking for a schedule adjustment as an accommodation for one of her disabilities (she does not identify which one). [Doc. 4 at 8.] Delta responded that she could request an accommodation by having her doctor complete a medical questionnaire or by submitting "alternate documentation." Later that same day, she submitted medical forms as well as "alternate documentation." [*Id.*]

Four days passed with no response from Delta, so she sent a follow-up email. [Doc. 4 at 8.] In response, she was told that her medical questionnaire had not been received. She contacted her provider to complete the form and informed her instructors and upper management in the training department about the situation. She asked about a temporary accommodation based on the alternate documentation that she had submitted, but that request was denied. [*Id.*]

¹ Presumably attention deficit hyperactivity disorder and major depressive disorder.

Between September and October 2022, Davis met with instructors and management to discuss her disabilities, changes in medications, and effects on work performance. [Doc. 4 at 8.] According to Davis, her superiors did not take her disabilities seriously, which led to increased stress, anxiety, and multiple depressive episodes. Ultimately, on October 11, 2022, she was informed that her accommodation request had been “closed” due to the lack of medical documentation, despite the fact she had been told she could use “alternate documentation” to support her request.² [*Id.*]

During training, Davis experienced fluctuations in her physical and mental state, which she contends contributed to performance issues. [Doc. 4 at 8.] Rather than provide support, Delta subjected her to “multiple disciplinary actions” and placed her on an extended probationary period. [*Id.*]

Davis successfully completed training on October 26, 2022, and began working in Minnesota. [Doc. 4 at 9.] As a probationary employee, she was supposed to have monthly meetings with management to ensure satisfactory performance, but she was scheduled for only one such meeting in late December 2022. During that meeting Davis disclosed to her manager, Josh Fiene, that she

² Davis does not explain what the “alternative documentation” consisted of.

had “multiple disabilities” and described how they impacted her performance. She also raised concerns about inaccuracies in her attendance records. Fiene told her that her concerns would be investigated. But before that could happen, she was transferred to Atlanta and responsibility for the investigation was passed to a new manager who did not follow through on Fiene’s assurances. [*Id.*]

After transferring to Atlanta, in early January 2023, she shared with her new manager her concerns that her disabilities would continue to negatively affect her performance. [Doc. 4 at 8.] The manager rebuffed her concerns. Davis also continued to bring up that she thought there were inaccuracies in “performance accounting,” but still received no support or engagement. [*Id.*]

On February 5, 2023, Fiene issued Davis a Final Corrective Action Notice (“FCAN”) effective for six months (even though she was now working in Atlanta and reporting to a different manager). [Doc. 4 at 9.] Fiene claimed he was unaware of Davis’s disabilities or their effects. According to Davis, Fiene did not follow Delta’s progressive disciplinary policy, which sets out increasing sanctions of informal verbal coaching, formal written coaching, corrective action, and FCAN. Her discipline instead advanced from written coaching directly to FCAN. The FCAN required performance improvement (including with her attendance) as well as regular meetings every six months to monitor her

improvement. Even so, because she was still a probationary employee, she was supposed to have monthly meetings. [*Id.*]

Around two months later, in mid-April 2023, Davis, her sister, and their mother attempted standby travel from Las Vegas to Atlanta using Davis's travel benefits. [Doc. 4 at 10.] Her sister managed to board the aircraft, but just before takeoff, another passenger had a medical emergency that required the plane to return to the gate. Meanwhile, her sister realized that she had her mother's daily medication in her possession, and told the flight attendants she also needed to get off the plane due to a "serious emergency." At first, the flight attendants (and perhaps a gate agent) questioned Davis's sister about the validity of the "emergency" and pressured her to provide the name of the employee she was traveling under (Davis). They also warned that deplaning would lead to reporting Davis and consequences. Davis asserts conclusorily that the flight attendants and gate agent did not follow proper procedures for deplaning. [*Id.*]

From April 2023 to July 2023, Davis took short-term disability leave. [Doc. 4 at 10.] In late October 2023, she was called into a meeting (it is unclear with whom she met) about the April incident involving her sister. She was asked to provide a verbal statement, which she did. She was also pressured to have her sister provide a statement, which made Davis feel uncomfortable. During the

meeting, Davis raised concerns about the flight attendants' and gate agent's conduct, but she was told the investigation focused on whether the plane had to return to the gate a separate time based specifically on her sister's request. [*Id.*]

After giving her statement and expressing discomfort about having her sister do so as well, she was suspended without pay. [Doc. 4 at 10.] According to Davis, she felt "isolated and stonewalled for two weeks following [her] suspension," and she "attempted suicide after realizing that my manager had no actual intention of helping me and that the letter she requested I write was only to be used negatively against me." [*Id.* at 4.³]

At some point, Davis was told that an investigation found the plane had returned specifically at her sister's request. [Doc. 4 at 10.] Delta used this to justify her termination from employment in December 2023. Davis contests the veracity of Delta's explanation and contends instead that Delta terminated her to prevent her "from participating in a grievance process" for reinstatement. In January 2024, an assigned company representative sought to appeal the termination decision, but Delta upheld the decision. [*Id.*]

³ Presumably, the "letter" refers to the verbal statement that she was asked to provide, although it is not entirely clear what "letter" she is referring to.

On May 30, 2024, Davis filed a charge of discrimination with the EEOC. [Doc. 14-2 at 5-6.]⁴ In it, she alleged that her employment was terminated on December 2, 2023 (exactly 180 days prior to filing the charge) and that on December 10, 2023, her general manager told her that her “accommodations were not possible.” [*Id.* at 5.] She conveyed that she believed she had been discriminated against on the basis of color, disability, race, and sex, and that she had been retaliated against. [*Id.*] The full narrative explanation Davis provided in support of the charge is as follows:

I began my employment with the above-named employer on or about September 12, 2022. My most recent position was flight attendant. I have disabilities, of which Respondent is aware. During my employment, I continually requested accommodations for my disabilities, which were denied.

⁴ Davis attached an undated, unsigned charge to her amended complaint. [See Doc. 4 at 15-16.] Meanwhile, Delta attached a copy of the signed charge to its motion to dismiss. [See Doc. 14-2 at 5-6.] Because the signed and dated charge is central to the complaint and its authenticity is not challenged, the Court may properly consider it on a motion to dismiss without converting the motion to one for summary judgment. See *Speaker v. U.S. Dep’t of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010); *Harris v. Ivax Corp.*, 182 F.3d 799, 802 n.2 (11th Cir. 1999) (“[A] document central to the complaint that the defense appends to its motion to dismiss is also properly considered, provided that its contents are not in dispute.”); *Chesnut v. Ethan Allen Retail, Inc.*, 971 F. Supp. 2d 1223, 1228 (N.D. Ga. 2013) (“In discrimination cases, the EEOC charge is a document that courts routinely consider when ruling on motions to dismiss, even if it was not attached to a pleading.”) (citations omitted).

During my employment, I was also subjected to different terms and conditions of employment than coworkers not in my protected classes, including but not limited to, increased scrutiny and lack of support. On or about December 2, 2023, I was discharged. On or about December 10, 2023, after appealing the discharge, the general manager told me my accommodations were not possible.

The reason I was given for my discharge was a travel incident involving my sister.

I believe I have been discriminated against because of my sex (female) race (Black) color (dark-skinned) in violation of Title VII of the Civil Rights Act of 1964, as amended.

I also believe I have been discriminated against because of my disabilities, and in retaliation for engaging in protected activity, in violation of Title I of the Americans with Disabilities Act.

[*Id.* at 5-6.]

Based on these facts, Davis asserts claims under Title VII and the ADA, as well as state-law claims for negligence and intentional infliction of emotional distress. [Doc. 4 at 1-2.] She contends that she was retaliated against, terminated from employment, and denied an accommodation for her disability. [*Id.* at 6.]

B. Procedural Posture

On July 15, 2025, Delta filed its partial motion to dismiss the amended complaint. [Doc. 14-1.] It argues that (1) Davis's Title VII race, color, and sex discrimination claims fail because she does not allege any factual content that

plausibly suggests that any of those protected characteristics played a part in any adverse employment action; (2) her state-law claims for negligence and intentional infliction of emotional distress are also not plausibly pled; and (3) her ADA claims—whether based on discrimination, failure to accommodate, or retaliation—are time-barred to the extent that they are based on events that occurred more than 180 days before she filed her charge of discrimination. [*See generally id.*]

Davis failed to respond to the motion within the time contemplated by the applicable rules of procedure and this Court's Local Rules. So, on August 6, 2025, the Court entered an order directing Davis to show cause by August 20, 2025, why the motion should not be granted as unopposed. [Doc. 15.] On August 18, 2025, Davis moved for an extension of time to respond to the Court's order, explaining that she was caring for her sister during cancer recovery. [Doc. 18.] On August 20, 2025, the Court granted Davis's motion and extended the deadline for her to show cause why the motion should not be granted to September 19, 2025. [Doc. 19.]

On the same day the Court granted the extension, however, Davis filed her response to Delta's partial motion to dismiss and order to show cause. [Doc. 20.] In it, she contends that she has plausibly alleged claims under the ADA for

disability discrimination, failure to accommodate, and retaliation. [Doc. 20-1 at 2-3.] She also requests, alternatively, leave to amend the complaint should the Court find any aspect of her complaint deficient. [*Id.* at 4-5.] She did not respond to Delta's arguments for dismissal of the Title VII or state-law claims.

On September 2, 2025, Delta filed its reply in support of the partial motion to dismiss. [Doc. 21.] Delta argues that Davis abandoned her Title VII and state-law claims because she did not respond to Delta's arguments that those claims should be dismissed. [*Id.* at 3-4.] Delta also contends that Davis did not respond to its argument that any ADA claims based on events pre-dating her termination from employment are time-barred because she did not exhaust her administrative remedies. [*Id.* at 4.] Finally, Delta argues that allowing Davis to amend the complaint would be futile because an amendment would not cure the fact that she failed to exhaust administrative remedies with respect to the time-barred claims. [*Id.* at 6-9.]

On September 17, 2025, Davis filed a "Motion for Extension of Time to File Amended Complaint." [Doc. 23.] She contends that the Court's August 20, 2025 order gave her until September 19 to show cause why the case should not be dismissed, but she cannot meet that deadline because she continues to care for a family member recovering from cancer. [*Id.* at 1.] She makes no mention,

however, of the fact that she had already filed a response to the partial motion to dismiss and the show cause order on August 20. In any event, she asks for another thirty days “to file her Amended Complaint in response to the Order to Show Cause.” [*Id.* at 2.]

In the discussion that follows, the Court will first take up the motion for an extension of time to file an amended complaint, and then turn to the partial motion to dismiss.

II. MOTION FOR EXTENSION OF TIME TO FILE AMENDED COMPLAINT

In her request for an extension, Davis seeks an extension of time to respond to the motion to dismiss and the Court’s show cause order so that she can file an amended complaint. [Doc. 23 at 2.] But the Court did not order Davis to file an amended complaint; it ordered her to respond to the motion to dismiss and show cause why it should not be granted. Davis did so on August 20, 2025, the same day that it granted her an extension to do so. [See Doc. 20.] Plaintiff does not cite any rule or any other authority that permits amendment or supplementation of a brief after it has been filed. Because Davis has already complied with the show cause order, and at no point did the Court direct her to amend her complaint in response to the partial motion to dismiss, there is no need for an extension of time.

Accordingly, the motion for an extension of time to file an amended complaint is **DENIED**.

III. PARTIAL MOTION TO DISMISS

The Court now addresses the partial motion to dismiss.

A. Standard of Review

In evaluating a Rule 12(b)(6) motion to dismiss, a court must determine whether a 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)). While it need not provide “detailed factual allegations,” a complaint must provide factual allegations sufficient to plausibly set forth a 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.* The court need not accept as true legal conclusions couched as factual statements, *Iqbal*, 556 U.S. at 678, and “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief,” as required by Rule 8(a)(2). *Id.* at 679 (internal quotation marks, bracket, and citation omitted). Furthermore, if assuming the truth of the factual allegations of the amended

complaint, there is a dispositive legal issue that precludes relief or a claim is based on a meritless legal theory, dismissal is warranted. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989); *Brown v. Crawford Cnty.*, 960 F.2d 1002, 1009-10 (11th Cir. 1992).

In the case of *pro se* litigants, a complaint is to be “liberally construed” and “must be 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 minimum requirements of the Federal Rules of Civil Procedure, and a court need not accept as true legal conclusions or unwarranted factual inferences in a *pro se* complaint. *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. 2003)).

B. Title VII Claims

Using the Court’s *pro se* employment discrimination complaint form, Davis indicated that she was asserting claims under Title VII based on her race/color and gender. [Doc. 4 at 1, 6.] Delta moves to dismiss those claims because the amended complaint is completely devoid of facts that connect any adverse

employment action (such as her termination) to her race, color, or sex. Davis does not respond to Delta's argument, much less suggest that there is additional information that she could add to support claims under Title VII. Even though it appears that Davis has abandoned those claims, the Court will still address the merits of Delta's arguments. *See Ervin v. Buddi U.S., LLC*, No. 1:22-cv-01466-LMM-RDC, 2023 U.S. Dist. LEXIS 132323, at *10-11 (N.D. Ga. July 31, 2023) (declining to deem a *pro se* plaintiff's claims abandoned simply because the plaintiff did not respond to specific arguments on a motion to dismiss).

Title VII makes it unlawful for an employer to discharge or otherwise discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment because of, among other things, her sex, race, or color. 42 U.S.C. § 2000e-2(a)(1). A plaintiff alleging discrimination under Title VII can survive a motion to dismiss only if she, "like any other plaintiff, . . . satisf[ies] the plausibility standard set forth in *Twombly* and *Iqbal*. *Horace v. ARIA*, No. 23-12414, 2024 WL 1174398, at *4 (11th Cir. Mar. 19, 2024). "To do so, an employment discrimination complaint must provide enough factual allegations that, taken as true, plausibly suggest that the plaintiff suffered an adverse employment action due to intentional racial discrimination." *Id.* (quotation and marks omitted). Courts frequently use the *McDonnell Douglas* framework to

assess whether the plaintiff has presented facts sufficient to establish an inference of discrimination. *See generally McDonnell Douglas v. Green*, 411 U.S. 792 (1973). Under that framework, absent direct evidence of discrimination, a plaintiff asserting a Title VII or § 1981 disparate treatment claim generally must show that she was a qualified member of a protected racial class and was subject to an adverse employment action in contrast to similarly situated employees outside the protected class (or otherwise establish a causal connection between her protected class and the adverse employment action). *See, e.g., Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1087 (11th Cir. 2004), *abrogation on other grounds recognized by Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1324 (11th Cir. 2023). Still, “*McDonnell Douglas’s* burden-shifting framework is an evidentiary standard, not a pleading requirement.” *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1246 (11th Cir. 2015). At the pleading stage, a plaintiff need only set forth facts sufficient to plausibly suggest intentional discrimination. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, 514 (2002).

Here, the amended complaint, which the Court has summarized in exhaustive detail above, contains zero allegations that suggest her race, color, or sex played any role whatsoever in any adverse employment action. Nor is there any reason to believe that she could assert discrimination claims based on those

characteristics, given the complete dearth of factual content. Thus, it is **RECOMMENDED** that Delta's partial motion to dismiss be **GRANTED** as to Davis's Title VII discrimination claims and that they be **DISMISSED**.

C. State-Law Claims

Davis asserts state-law claims for "negligence" and "intentional infliction of emotional distress and mental anguish." [Doc. 4 at 2, 6.] Delta argues that those claims should be dismissed because the amended complaint does not allege facts that support the essential elements of either claim. [Doc. 14-1 at 8-15.] With respect to negligence, Delta argues that the amended complaint does not plead that Delta owed her a legal duty, that there was causation between a breach of a duty and an injury, or that she sustained any physical injury. [*Id.* at 14-1 at 11-15.] As to intentional infliction of emotional distress, Delta contends that she does not allege conduct that could meet the threshold of "extreme and outrageous" required to sustain such a claim. [*Id.* at 10.] Davis does not respond to these arguments in her response brief. Even so, the Court will address the merits of Delta's arguments.

First up, the negligence claim. "Under Georgia law, the elements of a negligence claim are: (1) a legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risks of harm; (2) a

breach of this standard; (3) a legally attributable causal connection between the conduct and the resulting injury; and (4) some loss or damage flowing to the plaintiff's legally protected interest as a result of the alleged breach of the legal duty." *Smith v. United States*, 873 F.3d 1348, 1351 (11th Cir. 2017) (cleaned up). Here, as best the Court can tell, Davis's only allegations that support her negligence claims read as follows:

After being isolated and stonewalled for two weeks following my suspension, I attempted suicide after realizing that my manager had no actual intention of helping me and that the letter she requested I write was only to be used negatively against me. It was negligent of her to know my mental state and force information out of me, via the form of a written statement, under the guise of wanting to help me.

[Doc. 4 at 4.]

Davis does not explain—either in the amended complaint or her response brief—what “legal duty” Delta purportedly owed her. Indeed, it appears that she is attempting to piggyback her negligence claim on alleged violations of the ADA. But “federal discrimination claims cannot support the negligence-related claim, because negligence claims can only arise from common law duties, and there is no common law duty to prevent discrimination in employment.” *Bahrami v. Maxie Price Chevrolet-Oldsmobile, Inc.*, No. 1:11-CV-4483-SCJ-AJB, 2014 WL 11517837, at *27 (N.D. Ga. Aug. 4, 2014) (quotation marks omitted). Thus, it is

RECOMMENDED that the partial motion to dismiss be **GRANTED** as to Davis's state law negligence claim.

The Court turns next to Davis's claim for intentional infliction of emotional distress. Under Georgia law, in order to prevail on a claim of intentional infliction of emotional distress, a plaintiff must allege conduct that was: "(1) intentional or reckless; (2) extreme and outrageous; and (3) the cause of severe emotional distress." *Wilcher v. Confederate Packaging, Inc.*, 287 Ga. App. 451, 453 (2007). The burden on the plaintiff "to prevail in this cause of action is a stringent one." *Racette v. Bank of Am., N.A.*, 318 Ga. App. 171, 179 (2012) (citation omitted). Liability for intentional infliction of emotional distress has been found "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Farrell v. Time Serv., Inc.*, 178 F. Supp. 2d 1295, 1299 (N.D. Ga. 2001) (quoting *Biven Software, Inc. v. Newman*, 222 Ga. App. 112, 113-14 (1996)). The "issue of whether the allegations rise to the requisite level of outrageousness is a question of law for the court to decide." *Id.* at 1299 (quoting *Biven*, 222 Ga. App. at 114).

"Generally, Georgia law does not consider adverse employment actions 'extreme or outrageous.'" *Pierri v. Cingular Wireless, LLC*, 397 F. Supp. 2d 1364,

1381 (N.D. Ga. 2005); *see also* *Roddy v. City of Villa Rica, Ga.*, 536 F. App'x 995, 1003 (11th Cir. 2013) ("Georgia courts have held that an employer's termination of an employee—however stressful to the employee—generally is not extreme and outrageous conduct."); *Fernandez v. SITA Info. Networking Computing USA, Inc.*, No. 1:18-CV-4705-LMM-CCB, 2019 WL 13268672, at *10 (N.D. Ga. July 11, 2019) (collecting cases for the proposition that employment actions generally cannot support an intentional infliction of emotional distress claim), *report and recommendation adopted*, 2019 WL 13268625 (N.D. Ga. Aug. 6, 2019). Here, the amended complaint makes clear that Davis's intentional infliction of emotional distress claim is predicated entirely on employment actions, which even if unpleasant, are not sufficiently extreme or outrageous to support such a claim.⁵

Accordingly, it is **RECOMMENDED** that Delta's motion to dismiss Davis's claims of negligence and intentional infliction of emotional distress under Georgia law be **GRANTED** and that those claims be **DISMISSED**.

⁵ In light of this recommendation, the Court need not—and does not—address Delta's alternative bases for dismissal of the intentional infliction of emotional distress claim.

D. Exhaustion of ADA Claims

Finally, the Court addresses the timeliness of Davis's ADA discrimination and retaliation claims. To obtain judicial consideration of an ADA employment discrimination or retaliation claim in a non-deferral state such as Georgia, a plaintiff must first file an administrative charge with the EEOC within 180 days of the date of the alleged unlawful employment practice. *Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001); *see also* 42 U.S.C. § 2000e-5(e)(1); 42 U.S.C. § 12117(a).⁶ For discrete discriminatory or retaliatory acts (such as demotion, termination, and the failure to grant requested accommodations, to name a few) the 180-day clock in a non-deferral jurisdiction like Georgia starts on the date the discrete act occurred. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); *Abram v. Fulton Cnty. Gov't*, 598 F. App'x 672, 676 (11th Cir. 2015) (stating that each specific instance of an employer's denial of a requested accommodation is a discrete act of discrimination); *see also Jimenez v. U.S. Att'y Gen.*, 146 F.4th 972, 992 (11th Cir. 2025) ("Each discrete adverse employment decision, such as 'termination, failure to promote, denial of transfer, or refusal to

⁶ "It is settled law that, under the ADA, plaintiffs must comply with the same procedural requirements to sue as exist under Title VII of the Civil Rights Act of 1964." *Zillyette v. Cap. One Fin. Corp.*, 179 F.3d 1337, 1339 (11th Cir. 1999). Thus, the Court cites cases arising under Title VII.

hire,’ is ‘a separate actionable unlawful employment practice’ that starts ‘a new clock for filing charges alleging that act.’”) (quoting *Morgan*, 536 U.S. at 113-14). Along these lines, when a defendant raises a defense that the plaintiff has not administratively exhausted his claims (as Delta has done here), the plaintiff bears the burden of proving that she has met all conditions precedent to filing suit, including that she met the timely filing and exhaustion requirements. *Roberts v. Archbold Med. Ctr.*, 220 F. Supp. 3d 1333, 1344-45 (M.D. Ga. 2016).

As discussed, Davis filed her charge of discrimination on May 30, 2024. [Doc. 14-2 at 5.] Thus, to be actionable, the alleged discriminatory or retaliatory acts that form the basis of her ADA claims cannot have occurred earlier than December 2, 2023. The only adverse action that allegedly occurred around or after that date was her discharge and, possibly, the denial of an accommodation. All the other employment-related incidents, which the Court has painstakingly summarized above, are time-barred because they fall outside the 180-day limitations period.⁷

⁷ In her response brief, Davis generally argues that she has alleged enough factual content to support plausible claims for relief under the ADA. [Doc. 20-1 at 2-3.] But the issue with the ADA claims is not the sufficiency of the allegations, but their timeliness.

Accordingly, it is **RECOMMENDED** that Delta’s motion to partially dismiss Davis’s ADA discrimination and retaliation claims be **GRANTED** and that those claims be **DISMISSED** to the extent they are based on conduct that allegedly occurred before December 2, 2023. ADA claims based on alleged actions that occurred on or after that date—with respect to which Delta has not sought dismissal—should be **ALLOWED TO PROCEED**.⁸

IV. CONCLUSION

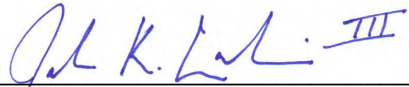
For the foregoing reasons, it is **RECOMMENDED** that Delta’s partial motion to dismiss [Doc. 14] be **GRANTED**, that Davis’s Title VII claims and state-law claims for negligence and intentional infliction of emotional distress be **DISMISSED**, and that Davis’s ADA claims be **DISMISSED** to the extent they

⁸ Davis’s request in her response to file a second amended complaint is procedurally improper because a request for leave must be made in a separate motion. *See Rance v. Winn*, 287 F. App’x 840, 841 (11th Cir. 2008) (stating in context of *pro se* case that “[t]he proper method for requesting leave to amend a complaint is by filing a motion”); *see also Pignato v. PHH Mortg. Corp.*, No. 2:19-CV-261-SCJ-JCF, 2020 WL 7382307, at *21 (N.D. Ga. Apr. 17, 2020) (declining *pro se* plaintiff’s request to amend complaint raised in response brief), *report and recommendation adopted*, 2020 WL 7382322 (N.D. Ga. July 13, 2020). But even considering the request, it is due to be denied because Davis does not even begin to explain how a proposed amended complaint would—or could—remedy any of the issues discussed above. In any event, this case will proceed beyond the motion-to-dismiss stage, so if Davis believes that she can present a viable argument for amendment, she may do so via an appropriately-filed motion.

are based on actions that occurred before December 2, 2023. Davis's ADA claims based on actions allegedly occurring on or after December 2, 2023 should be **ALLOWED TO PROCEED**.

It is **ORDERED** that Davis's motion for an extension of time to file an amended complaint [Doc. 23] be **DENIED**.

SO RECOMMENDED AND ORDERED this 9th day of October, 2025.



JOHN K. LARKINS III
United States Magistrate Judge