

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10860
Non-Argument Calendar

D.C. Docket No. 0:16-cv-60652-JJC

CELESTINE G. THOMPSON,

Plaintiff-Appellant,

versus

SECRETARY OF HOMELAND SECURITY,
John F. Kelly,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(January 31, 2018)

Before TJOFLAT, NEWSOM and BLACK, Circuit Judges.

PER CURIAM:

EXH A

Celestine Thompson, a *pro se* litigant, appeals the district court's dismissal of her action alleging employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16; bribery of public officials under 18 U.S.C. § 201(b)(A); the making of false statements under 18 U.S.C. § 1001; and judicial bias under 28 U.S.C. § 144. The district court dismissed Thompson's second amended complaint on alternative grounds. First, the district court determined it lacked subject-matter jurisdiction over Thompson's claims because she failed to identify any applicable waiver of federal sovereign immunity. Second, the district court held that Thompson failed to adequately plead facts suggesting a plausible claim for relief. On appeal, Thompson contends she has, in fact, suffered racial discrimination, harassment, and intimidation at the hands of various agents of the Department of Homeland Security. After review,¹ we affirm.

Although we liberally construe *pro se* briefs, arguments not raised on appeal, even by *pro se* litigants, are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008); *see also* Fed. R. App. P. 28(a)(8) (requiring appellants to argue "contentions and the reason for them, with citations to the authorities and parts of the record on which the appellant relies"). Thompson's brief, even

¹ We review de novo a district court's ruling on a motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Thacker v. Tenn. Valley Auth.*, 868 F.3d 979, 981 (11th Cir. 2017). Likewise, we review de novo a district court's grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6), accepting as true all factual allegations in the complaint and considering them in the light most favorable to the plaintiff. *Ironworkers Local Union 68 v. AstraZeneca Pharm., LP*, 634 F.3d 1352, 1359 (11th Cir. 2011).

construed liberally, presents no arguments concerning the primary basis for the district court's dismissal—sovereign immunity. In fact, Thompson's brief fails to even mention sovereign immunity. Likewise, Thompson makes no arguments concerning the district court's dismissal of her claims for bribery, false statements, and judicial bias. Thompson has therefore abandoned any arguments on those issues. *See Timson*, 518 F.3d at 874.

But even if we were to assume Thompson did not abandon her arguments on sovereign immunity, and even if we were to ignore the fact that Thompson's operative second amended complaint made no factual allegations concerning racial discrimination,² her appeal would fail. Despite receiving multiple opportunities to amend her complaint, as well as instruction from the district court as to her complaints' legal deficiencies, Thompson failed to plead facts plausibly elevating her claims above the speculative level. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007).

AFFIRMED.

² Thompson's allegations of racial discrimination were made in prior complaints that were dismissed by the district court for failure to state a claim. *See Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1215 (11th Cir. 2006) ("An amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary." (quotation omitted)). It appears Thompson intended her second amended complaint as a supplement to her previously dismissed complaints.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60652-CIV-COHN

CELESTINE GREEN THOMPSON,

Plaintiff,

v.

JOHN F. KELLY, Secretary,
Department of Homeland Security,

Defendant.¹

/

FINAL ORDER OF DISMISSAL

THIS CAUSE is before the Court upon the filing of Plaintiff's Second Amended Complaint [DE 12] ("SAC") and Defendant's Motion to Dismiss [DE 14] ("Motion"). The Court has carefully reviewed the SAC, the Motion, and Plaintiff's Response [DE 16],² and is otherwise fully advised in the premises.

I. Background

This case generally involves Plaintiff's former employment with the United States Department of Homeland Security ("DHS"). Because Plaintiff seeks to proceed *in forma pauperis*, the Court earlier conducted screenings of her original Complaint [DE 1] and

¹ The Court takes judicial notice that John F. Kelly has succeeded Jeh Charles Johnson—the original Defendant in this action—as Secretary of Homeland Security. See Fed. R. Evid. 201. Secretary Kelly is therefore automatically substituted as the new Defendant. See Fed. R. Civ. P. 25(d).

² This pro se filing is titled "Plaintiff Motion to Deny Dismissal of Case By Defendant Motion to Dismiss Dated December 22, 2016." DE 16 at 1. But the substance of the document makes clear that it is a Response opposing the Motion. The Court notes, however, that Plaintiff filed the Response five days after the extended, show-cause deadline of January 13, 2016. See DE 15 at 1 (Order to Show Cause). Regardless, as discussed herein, the Response does not address the dispositive issues raised in Defendant's Motion.

First Amended Complaint [DE 9]. See 28 U.S.C. § 1915(e)(2)(B). Even construing these pro se pleadings liberally, the Court determined, neither came close to stating a plausible claim for relief. See DE 8 (Order of July 10, 2016); DE 11 (Order of Oct. 13, 2016); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Both Complaints string-cited various federal statutes and then described events allegedly showing that Plaintiff's supervisor and other DHS employees treated her unfairly. Yet neither pleading explained how its factual allegations supported a claim under any of the cited laws. See DE 8 at 2; DE 11 at 3. Still, the Court twice allowed Plaintiff to amend her Complaint in order to correct these pleading defects. See DE 8 at 3; DE 11 at 4 (both citing Fed. R. Civ. P. 15(a)(2)).

Plaintiff thereafter filed her SAC. Before the Court screened that Complaint, Defendant entered a limited appearance and filed its Motion.³ Defendant chiefly argues that (1) the Court lacks subject-matter jurisdiction because Plaintiff has not identified an applicable waiver of sovereign immunity, and (2) the SAC fails to state any claim upon which relief may be granted. See Fed. R. Civ. P. 12(b)(1), 12(b)(6). Plaintiff's Response does not address these arguments. Instead, Plaintiff generally reasserts that DHS employees mistreated her and that this case should be allowed to proceed.

II. Discussion

A. Lack of Subject-Matter Jurisdiction

Regarding Defendant's first argument, the United States is immune from suit "unless it expressly consents to be sued." EEOC v. First Nat'l Bank, 614 F.2d 1004,

³ Defendant maintains that Plaintiff has not effected timely service of process and therefore that personal jurisdiction is lacking. Because dismissal is warranted on the other grounds raised by Defendant, the Court need not address the arguments concerning service and personal jurisdiction.

1007 (5th Cir. 1980).⁴ This sovereign immunity “extends to [federal] agencies . . . and the officers of these agencies.” Simons v. Vinson, 394 F.2d 732, 736 (5th Cir. 1968).⁵ Plaintiff thus “bears the burden of establishing that the federal government has waived its sovereign immunity with respect to her claim.” Thompson v. McHugh, 388 F. App’x 870, 872 (11th Cir. 2010) (per curiam); see Ishler v. IRS, 237 F. App’x 394, 398 (11th Cir. 2007) (per curiam).

When sovereign immunity applies, it deprives a court of subject-matter jurisdiction to hear a plaintiff’s claim. See Bennett v. United States, 102 F.3d 486, 488 n.1 (11th Cir. 1996). Subject-matter jurisdiction “involves the court’s competency to consider a given type of case,” so it “cannot be waived or otherwise conferred upon the court by the parties.” Jackson v. Seaboard Coast Line R.R. Co., 678 F.2d 992, 1000 (11th Cir. 1982). If a court lacks jurisdiction over the subject matter of a case, it must be dismissed. See Fed. R. Civ. P. 12(b)(1), (h)(3).

Again, in her Response to the Motion, Plaintiff does not address Defendant’s contention that she has failed to establish a relevant waiver of sovereign immunity. Nor does the SAC substantially allege any waiver of that immunity. Thus, dismissal for lack of subject-matter jurisdiction is appropriate here.⁶

⁴ Decisions of the former Fifth Circuit issued before October 1, 1981, are binding precedent in the Eleventh Circuit. See Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

⁵ It is clear that Plaintiff is suing Defendant in his official capacity only; she does not allege that he personally committed any unlawful act against her.

⁶ The only possible basis the Court sees for a waiver of sovereign immunity is the provision of Title VII banning unlawful discrimination in federal employment. See 42 U.S.C. § 2000e-16. In reviewing Plaintiff’s First Amended Complaint, the Court noted that this statute—which Plaintiff included in string citations—“could conceivably apply in this case.” DE 11 at 3. The Court further observed, however, that “Plaintiff has

B. Failure to State a Claim

Even if the SAC could be read as invoking a valid waiver of sovereign immunity, see infra note 6, Plaintiff still has not stated a plausible claim for relief. To withstand a Rule 12(b)(6) dismissal motion, a complaint must contain factual allegations that are “enough to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The complaint therefore must plead “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 Twombly, 550 U.S. at 570). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555 (alteration, citations & internal quotation marks omitted). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557 (alteration in original)).

The SAC first alleges that this Court is biased against Plaintiff, apparently since Defendant is a United States agency. See DE 12 at 1 (citing 28 U.S.C. § 144). But that does not show bias—indeed, the Court handles many cases in which the United States is a party. More, despite the major shortcomings of her prior Complaints, the Court has

not pleaded the elements of a claim under that law.” Id. (citing Ramirez v. Sec’y, U.S. Dep’t of Transp., 686 F.3d 1239, 1244 (11th Cir. 2012)). Likewise, the SAC cites § 2000e-16 in passing but does not allege the elements of a Title VII claim. But to the extent this pleading could be read as substantially invoking § 2000e-16, the Court—in an abundance of caution—will address Defendant’s second argument that Plaintiff has failed to state a claim.

granted Plaintiff two chances to remedy those deficiencies. The Court therefore rejects Plaintiff's claim that she has been "treated totally unfair[ly] in this matter." Id.

The SAC also tries to incorporate by reference the statutes cited in Plaintiff's earlier Complaints. See DE 12 at 1 ("All the Federal Statutes remain as I have noted in my Complaints."). This form of pleading, though, is improper. See S.D. Fla. L.R. 15.1 ("Any amendment to a pleading . . . must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference."). In any event, the Court has already found Plaintiff's prior statutory claims deficient, and nothing in the SAC alters that conclusion. Plaintiff further suggests that her former supervisor and another DHS employee violated a criminal statute prohibiting bribery of federal officials. See DE 12 at 1 (citing 28 U.S.C. § 201(b)). Yet Plaintiff nowhere explains how this unsupported charge pertains to her civil claims against Defendant.⁷

In sum, Plaintiff's third Complaint—like her first two—states no plausible claim for relief. The SAC presents bare legal citations and conclusory statements of wrongdoing without alleging the factual elements of any claim. See Twombly, 550 U.S. at 555; Iqbal, 556 U.S. at 678. And since Plaintiff has twice failed to remedy the serious defects in her pleadings, allowing her to amend the SAC further would be futile. See Foman v. Davis, 371 U.S. 178, 182 (1962). Therefore, even assuming that subject-matter jurisdiction exists here, the Court will dismiss this action on the alternative ground that Plaintiff has failed to state a proper claim for relief.

⁷ The balance of Plaintiff's SAC repeats generalized allegations from her prior Complaints, but again fails to tie those alleged facts to the elements of any legal claim. See DE 12 at 2.

C. Prior Dismissed Actions

Last, a review of this District's records shows that, over the past thirteen years, Plaintiff has filed at least eight similar pro se actions against the Secretary of DHS, including two prior cases before this Court. See Thompson v. Johnson, Case No. 15-cv-61868-WPD (S.D. Fla. filed Sept. 3, 2015); Thompson v. Johnson, Case No. 15-cv-61793-WPD (S.D. Fla. filed Aug. 26, 2015); Thompson v. Napolitano, Case No. 10-cv-61527-JJC (S.D. Fla. filed Aug. 19, 2010); Thompson v. Chertoff, Case No. 06-cv-61821-CMA (S.D. Fla. filed Dec. 5, 2006); Thompson v. Chertoff, Case No. 06-cv-61820-UU (S.D. Fla. filed Dec. 5, 2006); Thompson v. Ridge, Case No. 05-cv-60048-DTKH (S.D. Fla. filed Jan. 10, 2005); Thompson v. Ridge, Case No. 03-cv-62241-DTKH (S.D. Fla. filed Dec. 19, 2003); Thompson v. Ridge, Case No. 03-cv-62240-JJC (S.D. Fla. filed Dec. 19, 2003). All five presiding District Judges dismissed these lawsuits, at least in part because Plaintiff had failed to state a claim. Plaintiff's repeated filing of meritless lawsuits places an unnecessary burden on the Judges of this District. Thus, the Court will put Plaintiff on notice that filing any more baseless actions may subject her to sanctions. See Fed. R. Civ. P. 11.

III. Conclusion

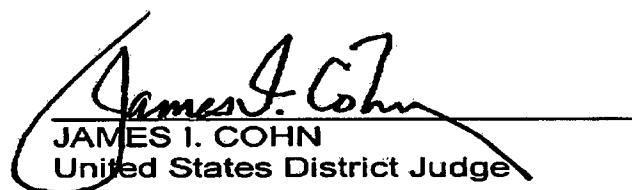
For the reasons discussed, it is hereby

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint [DE 14] is **GRANTED**;
2. The above-styled action is **DISMISSED** for lack of subject-matter jurisdiction and, alternatively, for failure to state a claim;

3. **Plaintiff Celestine Green Thompson is cautioned that if she continues to file actions lacking any reasonable basis in law or fact, the Court may impose sanctions against her. Those sanctions could include barring Thompson from filing new pleadings without prior Court approval; and**
4. The Clerk shall **CLOSE** this case and **DENY AS MOOT** all pending motions.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 27th day of January, 2017.



JAMES I. COHN
United States District Judge

Copies provided to:

Counsel of record

Celestine Green Thompson, pro se

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10860-GG

CELESTINE G. THOMPSON,

Plaintiff - Appellant,

versus

SECRETARY OF HOMELAND SECURITY,
John F. Kelly,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, NEWSOM and BLACK, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-42

EXH C

**Additional material
from this filing is
available in the
Clerk's Office.**

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from this filing is
available in the
Clerk's Office.**