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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14784
Non-Argument Calendar

D.C. Docket No. 2:16-cv-00561-WKW-WC

CHARLES J. GREENE,

Plaintiff-Appellant,

versus

ALABAMA DEPARTMENT OF REVENUE,
ALABAMA DEPARTMENT OF PUBLIC HEALTH,
d.b.a. Children's Health Insurance Program,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(September 5, 2018)

Before MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

Charles Greene, proceeding pro se, appeals the district court's dismissal of his amended complaint against his former employers, the Alabama Department of Revenue ("ADR") and the Alabama Department of Public Health ("ADPH"). In his complaint, Greene purported to assert a claim for employment retaliation, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 ("Title VII"). No reversible error has been shown; we affirm.

Greene alleged these facts in his complaint. Greene was employed by the ADPH from April 2003 to August 2014. During that time, Greene filed with the Equal Employment Opportunity Commission ("EEOC") three complaints against the ADPH for gender-based discrimination and for retaliation.

Then in August 2014, Greene left voluntarily his job at the ADPH to begin working at the ADR. In October 2014, Greene filed a fourth charge with the EEOC, alleging gender-based discrimination and retaliation against the ADPH.

The ADR terminated Greene's employment on 4 June 2015. Greene was told the reason he was fired was that he had removed improperly confidential documents from the premises: a reason Greene says was pretext for retaliation.

On 13 October 2015, Greene filed a charge of retaliation with the EEOC against the ADR and the ADPH. Greene alleged that the ADR terminated his

employment in retaliation for Greene having filed earlier EEOC charges against the ADPH. The EEOC issued Greene notices of his right to sue.

Greene then filed this civil action, purporting to allege against both the ADR and the ADPH a claim for retaliation in violation of Title VII based on a single event: the termination of Greene's employment with the ADR. About each defendant's involvement in the alleged retaliation, Greene contends that the ADR either retaliated against him "of its own volition" or was "influenced or persuaded" by the ADPH to terminate Greene's employment. In the alternative, Greene also asserted that the ADR and the ADPH acted as a single integrated employer and, thus, shared in the decision to terminate Greene's employment. The district court dismissed Greene's complaint, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim.

We review de novo a district court's dismissal for failure to state a claim, accepting all properly alleged facts as true and construing them in the light most favorable to the plaintiff. Butler v. Sheriff of Palm Beach Cnty., 685 F.3d 1261, 1265 (11th Cir. 2012). We construe liberally pro se pleadings. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In addition to containing well-pleaded factual allegations, a complaint must also meet the

"plausibility standard" set forth by the Supreme Court in Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007), and in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). Under that rule, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949 (quotations omitted). To state a plausible claim for relief, a plaintiff must go beyond pleading merely the "sheer possibility" of unlawful activity by a defendant and must offer "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. In other words, the plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." Twombly, 127 S. Ct. at 1965. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" Iqbal, 129 S. Ct. at 1949. "Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." Id. (quotations and alteration omitted).

To state a cause of action for retaliation under Title VII, Greene must allege (1) that he engaged in protected activity under Title VII, (2) that he suffered an adverse employment action; and (3) a causal connection between the protected activity and the adverse employment decision. See Shannon v. BellSouth Telecomms., Inc., 292 F.3d 712, 715 (11th Cir. 2002). That Greene alleged

sufficiently the first two elements is undisputed; only the causation element is at issue on appeal.

"To establish a causal connection, a plaintiff must show that the decision-makers were aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated." Id. at 716. A causal connection may be inferred when there is a close temporal proximity between the protected activity and the adverse action. Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007). "But mere temporal proximity, without more, must be 'very close.'" Id.

The district court committed no error in dismissing Greene's complaint for failure to state a claim. Accepting the allegations in the complaint as true and construing them in Greene's favor, Greene has failed to allege facts demonstrating plausibly a causal connection between his EEOC charges against the ADPH and the termination of his employment from the ADR. In his complaint, Greene alleged that the ADR "knew" of his EEOC charges either because that information "was provided by [the ADPH], or, alternatively, was gained by [the ADR] through its own inquiry."

Greene, however, alleged no specific facts in support of his theory. For instance, he identified no person at either the ADR or the ADPH who knew about his EEOC complaints. Greene also provided no particulars about how or when

decision-makers at the ADR supposedly learned of his protected activities or were otherwise influenced or persuaded by persons at the ADPH to terminate Greene's employment. We also cannot infer a causal connection based solely on the timing of Greene's protected activity and the adverse employment act, given that nearly eight months elapsed between the filing of Greene's last EEOC charge in October 2014 and the termination of his employment in June 2015. See Thomas, 506 F.3d at 1364 (noting that three to four months between the protected activity and the adverse employment act is not enough, by itself, to establish a causal connection).

Without additional factual enhancement, Greene's "naked assertions" that the ADR "knew" about his EEOC charges or was otherwise "persuaded" or "influenced" by the ADPH to terminate Greene's employment is too speculative to state a plausible claim for retaliation against either defendant. See Iqbal, 129 S. Ct. at 1979.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHARLES GREENE, Plaintiff, v. ALABAMA DEPARTMENT OF REVENUE and ALABAMA DEPARTMENT OF PUBLIC HEALTH, d/b/a CHILDREN'S HEALTH INSURANCE PROGRAM, Defendants.	)	CASE NO. 2:16-CV-561-WKW

FINAL JUDGMENT

In accordance with the prior proceedings, opinions, and orders of the court, it is the ORDER, JUDGMENT, and DECREE of the court that this action is DISMISSED without prejudice.

The Clerk of the Court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE this 25th day of September, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHARLES GREENE, Plaintiff, v. ALABAMA DEPARTMENT OF REVENUE and ALABAMA DEPARTMENT OF PUBLIC HEALTH, d/b/a CHILDREN'S HEALTH INSURANCE PROGRAM, Defendants.	)	CASE NO. 2:16-CV-561-WKW [WO]

MEMORAND OPINION AND ORDER

In this retaliation action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, Plaintiff Charles Greene alleges that Defendant Alabama Department of Revenue ("ADR") fired him either in retaliation for engaging in protected conduct or after being influenced or persuaded by Defendant Alabama Department of Public Health ("ADPH"), his prior employer, to fire him. On August 18, 2017, the Magistrate Judge filed a Recommendation (Doc. # 34) that Defendants' separate motions to dismiss (Docs. # 24, 25) be granted. Plaintiff timely objected to the Recommendation. (Doc. # 35.) Upon an independent and *de novo*

review of the record and the Recommendation, Plaintiff's objections are due to be overruled, and the Magistrate Judge's Recommendation is due to be adopted.

I. JURISDICTION AND VENUE

The court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331. The parties do not contest personal jurisdiction or venue.

II. STANDARD OF REVIEW

A motion to dismiss pursuant Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the sufficiency of the complaint against the legal standard set forth in Rule 8: "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2). In ruling on a motion to dismiss, courts "must accept the well pleaded facts as true and resolve them in the light most favorable to the plaintiff." *Paradise Divers, Inc. v. Upmal*, 402 F.3d 1087, 1089 (11th Cir. 2005) (citation omitted); *see also Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) ("We have held many times when discussing a Rule 12(b)(6) motion to dismiss, that the pleadings are construed broadly, and that the allegations in the complaint are viewed in the light most favorable to the plaintiff." (internal citations and quotation marks omitted)).

To survive Rule 12(b)(6) scrutiny, however, "a complaint must contain 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)). "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679 (citation omitted). If there are "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" to support the claim, there are "plausible" grounds for recovery, and a motion to dismiss should be denied. *Twombly*, 550 U.S. at 556. The claim can proceed "even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Id.* (citation and internal quotation marks omitted). But the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* at 555.

III. DISCUSION

Plaintiff systematically objects to almost every word of the Discussion section of the Recommendation (Doc. # 34, at 7–13), generally using the same formula. Each of the twelve numbered paragraphs of Plaintiff's objection starts with "Plaintiff objects to the magistrate's legal conclusion," followed by a parenthetical citation to the Recommendation that includes the page number and often a more specific part of the cited page. After the parenthetical, every numbered paragraph (except for the first) in Plaintiff's objection continues with "that the allegations of the Amended Complaint are insufficient because," (Doc. # 35, at 2–4) (the first paragraph continues with "that the Amended Complaint fails to present factual allegations

concerning," (Doc. # 35, at 1)). In fact, this formula constitutes the entirety of paragraphs seven and eight, which purport to object to pages ten through eleven and the bottom of page eleven, respectively, but offer no hint as to the grounds of the objection. (Doc. # 35, at 3.)

After this formulaic start, paragraphs three through six and nine through twelve vary based on the specific part of the Recommendation to which they object and the explanation of the objection. But those objections (with the exception of paragraph ten, discussed separately below) fit into one of two buckets, as they each incorporate Plaintiff's arguments in either paragraph one or paragraph two.

Paragraphs one and two are consequently the heart of Plaintiff's Objection. The arguments therein, along with the other arguments in Plaintiff's Objection, are unavailing.

A. Plaintiff's objection in paragraph one is without merit because *Twombly* and *Iqbal* apply.

In paragraph one, Plaintiff objects to the Recommendation's conclusion that the allegations in Plaintiff's Amended Complaint (Doc. # 32) as to the causation element of his retaliation claim under Title VII "consist of only the sort of labels and conclusions that, under the standard of *Twombley* [sic] and *Iqbal*, are insufficient to state a claim." (Doc. # 35, at 1 (quoting Doc. # 34, at 7).) Plaintiff argues that his case is distinguishable from *Twombly* and *Iqbal*, with the implication being that *Twombly* and *Iqbal* therefore do not apply to Plaintiff's Amended Complaint. (Doc.

35, at 1–2.) Plaintiff made a similar argument in his responses to Defendants' motions to dismiss. (Doc. # 27, at 5–6; Doc. # 28, at 5.)

The Magistrate Judge correctly rejected this argument in the Recommendation (Doc. # 34, at 9 n.1). As the Magistrate Judge put it, "*Twombly* and *Iqbal* merely interpret Rule 8 [of the Federal Rules of Civil Procedure], and Rule 8 is applicable to all federal complaints. *Twombly* and *Iqbal*'s interpretation of Rule 8 is routinely applied in assessing the sufficiency of Title VII retaliation complaints like Plaintiff's." (Doc. # 34, at 9 n.1 (citing *Uppal v. Hosp. Corp. of Am.*, 482 F. App'x 394, 395 (11th Cir. 2012) (per curiam).) Plaintiff's objection in paragraph one is thus without merit. To the extent Plaintiff incorporates paragraph one's reasoning in paragraphs four, nine, and eleven, the objections in those paragraphs are similarly without merit.

B. Plaintiff's objection in paragraph two is without merit because identifying the employee who made the decision to fire Plaintiff is necessary to determine whether Plaintiff's firing was retaliatory.

In paragraph two, Plaintiff objects to the Recommendation's conclusion that the allegations in his Amended Complaint are insufficient because they do not identify specific employees involved. (Doc. # 35, at 2.) In support of his objection, Plaintiff cites *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998), for the proposition that an employer can be held vicariously liable for the actions of one of its supervisory employees. (Doc. # 35, at 2 (citing *Ellerth*, 524 U.S. at 762).) But

the Recommendation did not question whether Defendants could be liable for the actions of their respective employees. To the contrary, the Recommendation highlighted Plaintiff's failure to identify any specific employee of either Defendant to emphasize Plaintiff's failure to identify the person who decided to fire him. (Doc. # 34, at 10.)

That pleading failure is fatal to Plaintiff's retaliation claim. As the Recommendation noted, where allegations of temporal proximity are lacking—as they are here (Doc. # 34, at 7–8)—in order to establish the necessary causation element of a Title VII -retaliation claim, "a plaintiff must show that the decision-makers were aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated." (Doc. # 34, at 7 (quoting *Shannon v. BellSouth Telecomms., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002)).) Without identifying the employee who made the decision to fire him, Plaintiff could not sufficiently allege that the decision-maker was aware of Plaintiff's protected conduct. *See Enadeghe v. Ryla Teleservices, Inc.*, No. 1:08-CV-3551-TWT, 2010 WL 481210, at *9 (N.D. Ga. Feb. 3, 2010).

Someone at both ADR and ADPH may have been aware of Plaintiff's protected conduct, but that awareness cannot be imputed to ADR or ADPH. *See Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 800 (11th Cir. 2000). Even if it could be, it could not be plausibly imputed to every one of ADR's and ADPH's

employees. And if the employee who made the decision to fire Plaintiff was not personally aware of Plaintiff's protected conduct or otherwise influenced by someone who was, that employee could not have decided to fire Plaintiff in retaliation to Plaintiff's protected conduct. *Brungart*, 231 F.3d at 799 ("A decision maker cannot have been motivated to retaliate by something unknown to him.").

The question, then, is whether the ADR employee who made the decision to fire Plaintiff was aware of (or was influenced by someone who was aware of) Plaintiff's protected conduct. That question remains unanswered because Plaintiff has failed to identify the decision-maker. As long as that question remains unanswered, Plaintiff cannot satisfy the causation element of a Title VII retaliation claim. *See Enadeghe*, 2010 WL 481210, at *9.

Plaintiff's failure to identify the person who decided to fire him belies the speculative nature of his claim. Plaintiff has clearly alleged at two least facts. First, he engaged in protected conduct by submitting multiple charges with the Equal Employment Opportunity Commission against ADPH. (Doc. # 32, at 5.) Second, Plaintiff was later fired by ADR. (Doc. # 32, at 5.) But Plaintiff has not alleged anything to connect his protected conduct to his firing beyond mere speculation. Such speculation is insufficient to state a Title VII retaliation claim upon which relief can be granted. *See Twombly*, 550 U.S. at 555.

In sum, Plaintiff's objection to paragraph two is without merit. To the extent Plaintiff incorporates paragraph two's reasoning in paragraphs three, five, six, and twelve, the objections in those paragraphs are similarly without merit.

C. Plaintiff's other objections are without merit.

The only other objection that warrants discussion is in paragraph ten, which offers a distinct objection focusing on the second footnote in the Recommendation. (Doc. # 35, at 4.) In that footnote, the Magistrate Judge noted that Plaintiff's earlier lawsuit against ADPH—which is one of the protected acts Plaintiff engaged in, satisfying the first element of a Title VII retaliation claim—had been referred to the same Magistrate Judge as the instant case. (Doc. # 34, at 11 n.2.) Plaintiff's earlier action was so trivial, the Recommendation reasoned, that "it is simply implausible" that the earlier action led ADR to terminate Plaintiff, "with or without ADPH's alleged cajoling." (Doc. # 34, at 12 n.2.)

Plaintiff offers no argument and cites no authority to support his claim that the triviality of Plaintiff's earlier claims is irrelevant. Moreover, this finding was by no means essential to the Magistrate Judge's overall conclusion. Indeed, it appears only in a footnote in the Recommendation at the end of its discussion of Plaintiff's primary theory of liability. Even assuming for the sake of argument that Plaintiff is correct that "the viability, or lack thereof, of claims underlying a Title VII retaliation claim are irrelevant" (Doc. # 35, at 4), the Recommendation would withstand the

deletion of that footnote. In short, Plaintiff's objection in paragraph ten is without merit.

To the extent that Plaintiff objects on any other grounds, those grounds are without merit and warrant no discussion.

IV. CONCLUSION

Accordingly, it is ORDERED as follows:

1. The Magistrate Judge's Recommendation (Doc. # 34) is ADOPTED;

2. Plaintiff's objections (Doc. # 35) are OVERRULED;

3. Defendants' Motions to Dismiss (Docs. # 24, 25) are GRANTED;

A final judgment will be entered separately.

DONE this 25th day of September, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHARLES J. GREENE, Plaintiff, v. ALABAMA DEPARTMENT OF REVENUE and ALABAMA DEPARTMENT OF PUBLIC HEALTH, Defendants.	)	Case No. 2:16cv561-WKW-WC

RECOMMENDATION OF THE MAGISTRATE JUDGE

This matter is before the court on the motions to dismiss (Docs. 24 & 25) filed by Defendants Alabama Department of Public Health ("ADPH") and Alabama Department of Revenue ("ADR"), respectively. Plaintiff filed responses (Docs. 27 & 28) in opposition to the motions, and Defendants filed replies (Docs. 29 & 30). The District Judge referred this case to the undersigned Magistrate Judge "for all pretrial proceedings and entry of any orders or recommendations as may be appropriate." Order (Doc. 5). After a review of the parties' filings and supporting materials, and for the reasons that follow, the undersigned RECOMMENDS that the motions to dismiss be granted and Plaintiff's Amended Complaint (Doc. 32) be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I. BACKGROUND

On July 8, 2016, Plaintiff, proceeding *pro se*, filed his original Complaint (Doc. 1), alleging that Defendants retaliated against him in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. On August 3, 2016, Defendants filed motions to dismiss (Docs. 8 & 11) Plaintiff's complaint for failing to state any claim upon which relief could be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On August 26, 2016, Plaintiff filed a motion to amend his complaint, to which he attached his Amended Complaint. Doc. 19. On February 14, 2017, the undersigned entered an Order (Doc. 31) instructing the Clerk's Office to enter the Amended Complaint on the docket with a filing date of August 26, 2016. On September 8 & 9, 2016, respectively, Defendants ADPH and ADR filed the instant motions to dismiss (Doc. 24 & 25). On October 11, 2016, Plaintiff filed his responses (Docs. 27 & 28) in opposition, and on October 24 & 25, 2016, Defendants filed their replies.

The well-pleaded factual allegations of Plaintiff's Amended Complaint are as follows: Plaintiff was employed by ADPH from April 7, 2003, through August 16, 2014. Doc. 32 at ¶ 10. Plaintiff was employed by ADR from August 16, 2014, through June 4, 2015. *Id.* at ¶ 11. During his employment with ADPH, Plaintiff filed charges of unlawful employment-related discrimination and/or retaliation against ADPH with the Equal Employment Opportunity Commission ("EEOC") on the following dates: October 3, 2013, March 25, 2014, and June 19, 2014. *Id.* at ¶ 14. On August 16, 2014, Plaintiff "voluntarily left his employment" with ADPH "in order to begin employment" with ADR. *Id.* at ¶ 15.

After beginning his employment with ADR, on October 10, 2014, Plaintiff filed another EEOC charge against ADPH alleging unlawful gender discrimination and retaliation during his time as an employee of ADPH. *Id.* at ¶ 16. On June 4, 2015, Plaintiff's employment was terminated by ADR. *Id.* at ¶ 17. Plaintiff was advised that his termination was due to his purported "remov[al of] confidential documents from Defendant's premises." *Id.* at ¶ 18.

II. PLAINTIFF'S CLAIMS

From the above pool of allegations, Plaintiff alleges that his termination of employment with ADR "was done by [ADR] of its own volition in retaliation for Plaintiff's participation in protected activity . . . or, alternatively, [ADPH] influenced or persuaded [ADR] to discharge Plaintiff in retaliation for Plaintiff's prior participation in the protected activity" described in the Amended Complaint, in violation of Plaintiff's rights under Title VII. Doc. 32 at ¶ 21. As an "alternative" claim for relief, Plaintiff claims that ADPH and ADR "operate together as a single integrated enterprise within the meaning of Title VII . . . with regard to their shared decision to discharge Plaintiff" in violation of the anti-retaliation provisions of Title VII. *Id.* at ¶¶ 43, 44. Plaintiff seeks declaratory and injunctive relief, an award of "back pay and interest," "front pay," compensatory damages, and an award of costs and attorney's fees." *Id.* at 12.

III. STANDARD OF REVIEW

As noted previously, Defendants move to dismiss the Amended Complaint for failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6) of the

Federal Rules of Civil Procedure. "In deciding a Rule 12(b)(6) motion to dismiss, the court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff, but [l]egal conclusions without adequate factual support are entitled to no assumption of truth." *Dusek v. JPMorgan Chase & Co.*, 832 F.3d 1243, 1246 (11th Cir. 2016) (quotations and citations omitted). In order to state a claim upon which relief could be granted, a complaint must satisfy the pleading standard of Rule 8 of the Federal Rules of Civil Procedure.

Rule 8 requires that a plaintiff submit a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In application, the Rule requires that a plaintiff plead "enough facts to state a claim to relief that is plausible on its face," in that the well-pleaded factual matter in the complaint "nudge[s] [the plaintiff's] claims across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While "the pleading standard Rule 8 announces does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). Accordingly, the court may "insist upon some specificity in [the] pleading before allowing" the complaint to survive a motion to dismiss. *Twombly*, 550 U.S. at 558.

To adequately state a claim under Rule 8(a), and survive a motion to dismiss pursuant to Rule 12(b)(6), the complaint must plead sufficient "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged." *Iqbal*, 556 U.S. at 678. "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 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (citations omitted). Thus, a pleading is insufficient if it offers only mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action[.]" *Twombly*, 550 U.S. at 555. *See also Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557) (a complaint does not suffice under Rule 8(a) "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'"). In other words, in order to survive a motion pursuant to Rule 12(b)(6), "a plaintiff [must] include factual allegations for each essential element of his or her claim." *GeorgiaCarry.Org., Inc. v. Georgia*, 687 F.3d 1244, 1254 (11th Cir. 2012).

In assessing the sufficiency of the complaint, a reviewing court is to look at the complaint as a whole, considering whether all of the facts alleged raise a claim that is plausible on its face. *See Speaker v. U.S. Dep't of Health & Human Servs. Ctrs. for Disease Control and Prevention*, 623 F.3d 1371, 1382 (11th Cir. 2010). Thus, the court reads the complaint "holistically," taking into account all relevant context. *El-Saba v. Univ. of S. Ala.*, Civ. No. 15-00087-KD-N, 2015 WL 5849747, at *15 (S.D. Ala. Sept. 22, 2015) (citing *Garayalde-Rios v. Municipality of Carolina*, 747 F.3d 15, 25 (1st Cir. 2014)). As such, "[d]etermining whether a complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

Although district courts must apply a "less stringent standard" to the pleadings submitted by a *pro se* plaintiff, such "'leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.'" *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (quoting *GJR Invs., Inc. v. Cty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998)). Accordingly, even as a *pro se* litigant, Plaintiff is obliged to provide sufficient factual detail in his complaint to support his claims, and the court is not permitted to sustain a facially deficient complaint in light of his *pro se* status.

IV. DISCUSSION

Title VII prohibits retaliation against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a).

> To state a claim for retaliation under Title VII, a plaintiff must allege the following elements: (1) she participated in an activity protected by Title VII; (2) she suffered an adverse employment action; and (3) there is a causal connection between the participation in the protected activity and the adverse action.

Arafat v. Sch. Bd. of Broward Cty., 549 F. App'x 872, 874 (11th Cir. 2013) (citing *Pipkins v. City of Temple Terrace*, 267 F.3d 1197, 1201 (11th Cir. 2001)).

Here, in describing the charges Plaintiff filed with the EEOC, the complaint sufficiently alleges that Plaintiff participated in activity protected by Title VII. Furthermore, the complaint sufficiently alleges an adverse employment action in the form

of Plaintiff's termination by ADR. However, the undersigned finds that Plaintiff has failed to state a claim upon which relief could be granted because Plaintiff has failed to present sufficient factual allegations concerning the third required element of his claim—the causal connection between his protected activity and the adverse employment action. Rather, at most, Plaintiff's allegations respecting this essential element consist of only the sort of labels and conclusions that, under the standard of *Twombly* and *Iqbal*, are insufficient to state a claim.

To establish causation, "a plaintiff must show that the decision-makers were aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated." *Shannon v. BellSouth Telecomm., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002). One method of establishing such causation is temporal proximity between the protected activity and the adverse employment action. *See, e.g., Thomas v. Cooper Light., Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). "But mere temporal proximity, without more, must be 'very close.'" *Id.* (quoting *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001)). "A three to four month disparity between the statutorily protected expression and the adverse employment action is not enough." *Id.* (citations omitted).

Here, the Amended Complaint alleges that Plaintiff's various expressions of protected activity for which he believes he suffered retaliation occurred between October 3, 2013, and October 10, 2014. Doc. 32 at ¶¶ 14, 16. The adverse employment action about which he complains occurred on June 4, 2015, more than eight months after the last instance in which Plaintiff engaged in protected activity, and nearly two years after the first

instance of such activity. Thus, pursuant to the authority discussed previously, Plaintiff cannot sustain his claim based only upon the temporal proximity between his protected activity and the adverse employment action. The court must therefore carefully scrutinize the Amended Complaint for well-pleaded factual allegations showing that "the decision-makers were aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated." *Shannon*, 292 F.3d at 716.

Unfortunately, the Amended Complaint lacks such allegations. The Amended Complaint only alleges that, "[a]t the time of Plaintiff's discharge from employment . . . , Defendant Alabama Department of Revenue knew that Plaintiff had engaged in the protected activity" described in the Amended Complaint. Doc. 32 at ¶ 22. This knowledge, according to Plaintiff, "was provided by Defendant Alabama Department of Public Health, or, alternatively, was gained by Defendant Alabama Department of Revenue through its own inquiry." *Id.* at ¶ 23. There are no allegations addressing the particulars of how this information was obtained by or provided to ADR. The Defendant state agencies are not sentient beings capable of exercising "volition," or "influencing," or "persuading," or "providing" information, or making "inquiries." As such, Plaintiff's allegations that these agencies somehow performed such mental operations are not well-pleaded allegations in support of a viable claim. Rather, they are, at most, "naked assertions devoid of further factual enhancement" that do not suffice under Rule 8(a). *Iqbal*, 556 U.S. at 678. In other

words, Plaintiff's vague and conclusory recitations of the constituent parts of one of the elements of his claim are insufficient to defeat the motions to dismiss.[1]

While Plaintiff is not required to plead detailed factual allegations in support of his claim, as discussed previously, the court may "'insist upon some specificity in [the]

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[1] Plaintiff's response to the motions to dismiss suggests either a failure to fully grasp Rule 8's pleading standard or a conscious effort to prosecute a claim that he knows is lacking factual support. First, he appears to argue that *Twombly* and *Iqbal*'s more rigorous demand for fact pleading was tailored for "legally complex" cases unlike an ordinary Title VII case. *See* Doc. 28 at 5. Of course, this is not the law. *Twombly* and *Iqbal* merely interpret Rule 8, and Rule 8 is applicable to all federal complaints. *Twombly* and *Iqbal*'s interpretation of Rule 8 is routinely applied in assessing the sufficiency of Title VII retaliation complaints like Plaintiff's. *See, e.g., Uppal v. Hosp. Corp. of Am.*, 482 F. App'x 394, 395 (11th Cir. 2012).

Next, Plaintiff argues as follows:

> Plaintiff's simple Title VII retaliation claim can be, and is, plead directly in terms of *concrete factual elements* including employee charge-filing, employer knowledge of charge-filing, persuasion or influence exerted by a former employer upon a subsequent employer, and employer discharge for charge-filing, all of which can be directly alleged without the use of any additional facts to explain those concrete elemental concepts.

Pl.'s Resp. (Doc. 28) at 5 (emphasis in original). But, Plaintiff's assertion that he may simply plead "concrete factual elements" ignores the fundamental rule of *Twombly* and *Iqbal*—that "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 (internal quotations and citations omitted). In other words, Plaintiff may not simply plead the elements of his cause of action.

Elsewhere in the Amended Complaint, it appears Plaintiff grasps this rule. For instance, with respect to the first element of his cause of action, he does not simply allege that he engaged in protected activity. He alleges that he filed EEOC charges complaining of discrimination and/or retaliation, and gives the dates of each such filing. Likewise, Plaintiff does not merely allege that he suffered some adverse employment action. He alleges that he was terminated, and he provides a date for the termination as well as contextual information about the reason he was given for the termination. It is only with respect to the third element—causation—that Plaintiff indulges his apparent belief that he need not plead "additional facts to explain" the "concrete elemental concepts" of his claim.

pleading'" before allowing the case to proceed to discovery. *Uppal*, 482 F. App'x at 395 (quoting *Twombly*, 550 U.S. at 558). Plaintiff need only plead sufficient facts to make his claim plausible. Here, the Amended Complaint is devoid of allegations respecting the actions of any decisionmaker or any other individual Plaintiff believes had a hand in his termination. Who made the decision to terminate Plaintiff? When did that person learn of Plaintiff's protected activity? How did that person learn of such activity? Who influenced or persuaded the decision-maker? How did they do so? And when? Because the complaint bears no allegations respecting any of these important considerations, the undersigned must conclude that there is insufficient factual detail alleged in the Amended Complaint to nudge Plaintiff's claim over the line from merely conceivable to plausible. *See, e.g., Enadeghe v. Ryla Teleservices, Inc.*, Civ. No. 1:08-cv-3551-TWT, 2010 WL 481210, at *9 (N.D. Ga. Feb. 3, 2010) ("Plaintiff fails to allege sufficient facts showing causation because she does not identify the individual who made the decision to terminate her in the Complaint, and she does not allege that the decisionmaker was aware that she complained about any discriminatory conduct.").

Furthermore, considering the abject lack of any temporal proximity that would allow the court to reasonably infer causation, as well as the absence of any allegations respecting any decisionmaker's knowledge of Plaintiff's protected activity, the omission of any other well-pleaded factual allegations permitting a reasonable inference of causation is particularly damning. For instance, the Amended Complaint is devoid of any allegations suggesting any sort of "retaliatory campaign" that culminated in Plaintiff's termination that

would thus lend plausibility to Plaintiff's claim of retaliation. There are no allegations about perceived slights or employment actions by ADR that, even if not materially adverse in their own right, connote an ADR decisionmaker's animosity toward Plaintiff because of his protected activity. Indeed, Plaintiff does not allege that the topic of his protected activity was broached in any capacity, by anyone, during his time with ADR. In other words, the Amended Complaint fails to "plausibly paint a mosaic of retaliation and an intent to punish [Plaintiff] for complaining of discrimination" by his former employer. *Vega v. Hempstead Union Free Schl. Dist.*, 801 F.3d 72, 92 (2d Cir. 2015). Instead, the Amended Complaint merely describes protected activity targeting a former employer, a termination by a subsequent employer occurring eight months after Plaintiff's last filing of an EEOC charge against the former employer, and attempts to link the two with vague and conclusory allegations that either the subsequent employer was motivated to act by its supposed discovery of the prior protected activity or that there was some supposed collusion between the two employers resulting in the termination. Reading the complaint holistically, and applying common sense and judicial experience, the undersigned finds that, without any additional "factual enhancement," such allegations amount to an implausible hunch and, therefore, are insufficient to satisfy Rule 8.[2]

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[2] This is especially so considering the subject matter of the various EEOC charges that, Plaintiff alleges, caused ADR to terminate him. Plaintiff filed a prior Title VII action against ADPH based upon the alleged discriminatory and retaliatory acts that were the subject of the EEOC charges for which he alleges ADR retaliated against him. *See Greene v. Ala. Dep-t of Pub. Health*, Civ. No. 2:15-cv-892-MHT-WC. That case was referred to the undersigned for pretrial proceedings and for recommendation on any dispositive motions. ADPH moved for summary judgment and the undersigned entered a Recommendation that the motion be granted. *See id.* at Doc. 46. Plaintiff did not object to the Recommendation and summary judgment was entered in

Plaintiff's "alternative" claim—that ADPH and ADR acted as a single, integrated employer for purposes of Title VII—likewise fails to state a claim upon which relief may granted. This claim is predicated on Plaintiff's belief that ADPH "influenced or persuaded" ADR to terminate Plaintiff and that ADR "acceded" to such influence and persuasion. *See* Doc. 32 at ¶¶ 37-41; *see also* Pl.'s Resp. (Doc. 28) at 8-9 ("The 'Alternative Claim for Relief' . . . alleges that ADPH exerted such a substantial degree of influence over the decision by ADOR to discharge Plaintiff that the two entities should, at least with regard to their shared decision to discharge Plaintiff, be considered as a single employer under Title VII."). However, as discussed previously, the Amended Complaint contains no well-pleaded factual allegations permitting the reasonable inference that ADR terminated Plaintiff because of his protected EEOC activity, that any ADR decisionmaker

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favor of ADPH. *See id.* at Docs. 47 & 48. The court may take judicial notice of documents in that case without converting the instant motions to dismiss into motions for summary judgment. *See e.g.*, *Jones v. Alabama*, No. 14-0059-WS-C, 2015 WL 4104607, at *n.1 (S.D. Ala. July 8, 2015) ("At its discretion, the Court may take judicial notice of documents filed in other judicial proceedings, because they are public documents."); *Newcomb v. Brennan*, 558 F. 2d 825, 829 (7th Cir. 1977), *cert. denied*, (noting that "[a] court may take judicial notice of facts . . . in ruling on a motion to dismiss"); *Nila v. City of Aurora*, No. 89-C-4183, 1990 WL 16256, at *4 (N.D. Ill. 1990) (district court taking notice of adjudicative fact to determine motion to dismiss).

As the undersigned's Recommendation in Plaintiff's prior case makes clear, the protected activity in which Plaintiff engaged concerned employment actions—perceived "middling" annual performance reviews and non-disciplinary "counselings"—that were not even sufficiently adverse to establish a *prima facie* case of discrimination or retaliation. *See Greene*, Civ. No. 2:15-cv-892, Doc. 46 at 15-18, 20-22. In other words, ADPH's actions respecting Plaintiff were too trivial to even raise a question of fact about whether Plaintiff suffered unlawful gender-based discrimination or retaliation for his EEOC activity. Given the lack of any well-pleaded allegations suggesting retaliatory animus by ADR, it is simply implausible that ADR would nevertheless, months later, base the severely adverse employment action of termination on Plaintiff's prosecution of EEOC charges dealing with his largely trivial grievances with ADPH, with or without ADPH's alleged cajoling.

knew of any such protected activity, or that ADPH even attempted to persuade or influence an ADR decisionmaker to terminate Plaintiff. Accordingly, Plaintiff's "alternative" claim fails to state any claim upon which relief could be granted, and the court need not permit discovery on the issue of whether or not ADR and ADPH may be treated as a single employer for purposes of Title VII.

V. CONCLUSION

For all of the reasons stated above, the Magistrate Judge RECOMMENDS that Defendants' motions to dismiss (Docs. 24 & 25) be GRANTED.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **September 1, 2017**. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made; frivolous, conclusive, or general objections will not be considered. Failure to file written objections to the Magistrate Judge's findings and recommendations in accordance with the provisions of 28 U.S.C. § 636(b)(1) shall bar a party from a *de novo* determination by the District Court of legal and factual issues covered in the Recommendation and waives the right of the party to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11th Cir. R. 3-1; *see Stein v. Lanning Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*). The parties are

advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Done this 18th day of August, 2017.

/s/ Wallace Capel, Jr.
CHIEF UNITED STATES MAGISTRATE JUDGE