

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 15, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-12380-GG
Case Style: Tiffany Range v. U.S. Postmaster General
District Court Docket No: 1:21-cv-02755-VMC

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

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REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12380

TIFFANY P. RANGE,

Plaintiff-Appellant,

versus

U.S. POSTMASTER GENERAL,

Defendant-Appellee,

DEAJHE HUTCHINSON, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia

2

Order of the Court

22-12380

D.C. Docket No. 1:21-cv-02755-VMC

Before ROSENBAUM, JILL PRYOR, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is
DENIED.

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12380

Non-Argument Calendar

TIFFANY P. RANGE,

Plaintiff-Appellant,

versus

U.S. POSTMASTER GENERAL,

Defendant-Appellee,

DEAJHE HUTCHINSON, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-02755-VMC

Before ROSENBAUM, JILL PRYOR, and BRASHER, Circuit Judges.

PER CURIAM:

Tiffany Range, proceeding *pro se*, appeals the district court's order dismissing her second amended complaint with prejudice. In a report and recommendation, the magistrate judge concluded that the second amended complaint should be dismissed because it failed to state a claim for relief and Range had failed to comply with court orders. When the magistrate judge issued the report and recommendation, he warned the parties of the need to object, stating that "[a] party [who] fails to object . . . waives the right to challenge on appeal the District Court's order based on any factual or legal conclusions in the report and recommendation." Doc. 25 at 1-2 (citing 11th Cir. R. 3-1).¹ Range never objected. The district court ultimately adopted the report and recommendation, granted the motion to dismiss, and dismissed the second amended complaint with prejudice. Range now appeals.

Because Range failed to object to the magistrate judge's report and recommendation, she waived her right to appeal the dismissal of her second amended complaint. Under 28 U.S.C.

¹ "Doc." numbers refer to the district court's docket entries.

§ 636(b)(1), “any party may serve and file written objections” to a magistrate judge’s report and recommendations within 14 days of being served with the report and recommendation. The district court must then “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But under our Circuit’s rules, a party who fails to object to a magistrate judge’s report and recommendation “waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” 11th Cir. R. 3-1. Still, even without “proper objection,” we “may review on appeal for plain error if necessary in the interests of justice.” *Id.*

Because Range failed to object to the magistrate judge’s report and recommendation after being warned “of all of the consequences on appeal for failing to object,” she waived any challenge she could have made to the adverse ruling. *See Harrigan v. Metro Dade Police Dep’t Station #4*, 977 F.3d 1185, 1192 (11th Cir. 2020) (internal quotation marks omitted). Although we may review the rulings of the district court for plain error, Range does not ask us to do so. Indeed, her brief never acknowledges the magistrate judge’s report and recommendation, much less argues that it is necessary in the interests of justice for us to review the district court’s decision after she failed to object. We thus will not consider this issue, which Range has abandoned. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (noting that “issues not briefed on appeal by a *pro se* litigant are deemed abandoned”).

AFFIRMED.

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David J. Smith
Clerk of Court

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August 08, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-12380-GG
Case Style: Tiffany Range v. U.S. Postmaster General
District Court Docket No: 1:21-cv-02755-VMC

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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CM/ECF Help Desk: 404-335-6125 Cases Set for Oral Argument: 404-335-6141

OPIN-1 Ntc of Issuance of Opinion

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

TIFFANY P. RANGE,	:	CIVIL ACTION NO.
	:	1:21-CV-2755-VMC-JSA
Plaintiff,	:	
	:	
v.	:	
	:	
LOUIS DEJOY, Postmaster General	:	
United States Postal Service (Capital	:	
Metro Area) <i>et al.</i> ,	:	FINAL REPORT AND
Defendants.	:	RECOMMENDATION ON A
	:	<u>MOTION TO DISMISS</u>

This case is before the Court on Defendant Louis DeJoy's Motions to Dismiss filed December 7, 2021 [14] ("December 7 Motion") and April 25, 2022 [23] ("April 25 Motion"). As detailed below, the undersigned **RECOMMENDS** that the December 7 Motion be **DENIED AS MOOT** and the April 25 Motion be **GRANTED**.

The relevant facts and background information are set out more fully in the Court's March 25, 2022 Order [20]. The Court only briefly restates them here. Plaintiff is a former employee with the United States Postal Service who sues, *pro se*, for discrimination and/or retaliation in regard to her former employment. Plaintiff's original Complaint [5] was filed on July 22, 2021. After DeJoy moved to dismiss on November 18, 2021, Plaintiff filed a series of documents that were docketed as an Amended Complaint [13], although it was not clear from reviewing

those documents that Plaintiff intended this filing to supersede her original Complaint. In any event, DeJoy filed a subsequent Motion to Dismiss on December 7, 2021 [14] directed at the Amended Complaint (and which also addressed the allegations in the original Complaint).

On March 25, 2022, the undersigned issued an Order [20] agreeing with DeJoy that Plaintiff had filed an impermissible shotgun complaint that was subject to dismissal; however, because Plaintiff is proceeding *pro se*, instead of recommending dismissal, the undersigned ordered Plaintiff to file an amended complaint. In relevant part, the Order provided:

Any such amended complaint must bear the title “Amended Complaint” along with the listing of the parties and docket number of this case. The Amended Complaint must include allegations in individually numbered paragraphs. Most importantly, the Amended Complaint must set out individual and separately enumerated claims (e.g., “Claim One: Sexual Harassment,” “Claim Two: Retaliation”), and must allege facts to satisfy all legal elements of those claims. Among other things, these allegations must make clear the adverse employment action(s) that Plaintiff is suing about and what facts support the inference that those actions were the result of discrimination or retaliation based on particular protected characteristics or conduct.

Order [20] at 9-10.

On April 11, 2022, Plaintiff filed what purports to be an amended complaint [22] (“April 11 Complaint”). This filing contains a one page letter describing various hardships Plaintiff has endured along with supporting documents. Some of the hardships appear to have taken place while she was working with the Postal Service.

For example, she says that she was “threatened by 2 employees twice and no disciplinary actions were taken against the employees when it clearly states in the employee Handbook it’s a 0 tolerance workplace for threatening employees in the workplace verbally or physically its part of the code of conduct.” Apr. 11 Compl. [22]. Others appear to be unrelated to her former job, such as “the death of [her] Grandmother, Mother, Father and being assaulted causing [her] to be hospitalized with brain injury¹ due to mental break down.” Apr. 11 Compl. [22]. The supporting documents include a United States Postal Service “Zero Tolerance Policy,” medical records, and death certificates. Dkt. Nos. [22-3][22-5].

DeJoy again moved to dismiss on April 25, 2022 [23].

Because Plaintiff filed the April 11 Complaint, the December 7 Motion [14], which relates to the prior Complaints, should be denied as moot. *See Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007) (per curiam) (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” (quoting *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006))).

¹ Based on the attachments to the April 11 Complaint, it appears that this incident took place in August 2021; whereas Plaintiff’s employment with the Postal Service apparently ended in May 2018. *See* Compl. [5] at 7; Dkt. No. [22-5] at 1-2.

As for the April 11 Complaint, even when it is read in conjunction with Plaintiff's prior Complaint(s), it does not cure the deficiencies that the undersigned identified in the March 25, 2022 Order [20] and is thus subject to dismissal for largely the same reasons set out therein.

Moreover, it is subject to dismissal for failure to comply with the Court's pretrial instructions. *See* LR 16.5, NDGa. Notably, despite the Court's explicit instructions:

- Although the letter refers to itself as an "amended complaint," it does not "bear the title 'Amended Complaint'"—or any title for that matter.
- The letter fails to include a "listing of the parties." This is particularly problematic because the letter refers to various individuals and it is unclear whether Plaintiff intends to add them as defendants.
- The letter does not "include allegations in individually numbered paragraphs."
- The letter does not "set out individual and separately enumerated claims" and "allege facts to satisfy all legal elements of those claims."

At least the first violation noted above would not likely in itself result in a recommendation of dismissal, but the other violations go directly to important reasons why the original complaint was deemed to be a shotgun complaint. This new letter does nothing to resolve those critical shortcomings. Accordingly, the undersigned **RECOMMENDS** that the December 7 Motion [14] be **DENIED AS MOOT** and the April 25 Motion [23] be **GRANTED**.

As this is a Final Report and Recommendation, there is nothing further in this action pending before the undersigned. Accordingly, the Clerk is **DIRECTED** to terminate the reference of this matter to the undersigned.

IT IS SO RECOMMENDED this 16th day of May, 2022.



JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE

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

TIFFANY P. RANGE,

Plaintiff,

v.

LOUIS DEJOY, Postmaster General
United States Postal Service (Capital
Metro Area) et al.,

Defendants.

Civil Action No.
1:21-cv-02755-VMC

ORDER

The matter is before the Court on United States Magistrate Judge Justin S. Anand's Final Report and Recommendation on Defendant Louis DeJoy's Motions to Dismiss (the "Report and Recommendation"). (Doc. 24). No objections to the Report and Recommendation were filed.

I. Background

Plaintiff Tiffany Range, proceeding *pro se*, brought this action against Postmaster General ("PMG") Louis DeJoy, in his official capacity,¹ based on alleged discrimination, harassment, and retaliation during her time as an employee of the United States Postal Service. (Doc. 25 at 1). Ms. Range exhausted

¹ To the extent Plaintiff sought to add additional defendants, PMG DeJoy is correct that under 42 U.S.C. § 2000e-16(c) he, as the "head of the department, agency, or unit" is the only appropriate defendant in this Title VII action. (Doc. 23 at fn. 1).

her EEOC administrative remedies, and she was issued a right to sue letter on June 7, 2021, when her request for reconsideration by the EEOC was denied. (Doc. 5 at 11). The allegations outlined in the EEOC documents and her initial complaint include sexual harassment, discrimination, and retaliation. *Id.* Ms. Range's initial Complaint was timely filed in July 2021. (Doc. 5). PMG DeJoy moved to dismiss. (Doc. 12). Ms. Range then filed an Amended Complaint (Doc. 13), which PMG Dejoy again moved to dismiss (Doc. 14). After PMG DeJoy's second Motion to Dismiss was fully briefed, Magistrate Judge Anand found that while "the Complaint is deficient in a number of respects," Ms. Range should be allowed an opportunity to attempt to "more properly replead" her complaint. (Doc. 20 (the "March 25th Order") at 1). The March 25th Order directed Plaintiff to file an amended complaint in compliance with specific instructions laid out in the order. (Doc. 20 at 9-11). Ms. Range did file a document styled as an amended complaint (the "April 11th Complaint") (Doc. 22), which consisted of a one-page letter and several exhibits unrelated to her claims. PMG DeJoy again filed a Motion to Dismiss (the "Third Motion to Dismiss"). (Doc. 23). Magistrate Judge Anand issued his Final Report and Recommendation with regard to the second and Third Motion to Dismiss on May 16, 2022. (Docs. 24, 25). As noted above, no party filed

objections to the Report and Recommendation, and it is now ripe for consideration by the Court.

II. Legal Standard

Under 28 U.S.C. § 636(b)(1)(B), a district court may “designate a magistrate judge... to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any [dispositive] motion,” including a motion to dismiss for failure to state a claim. A district judge has a duty to conduct a “careful and complete” review of a magistrate judge’s report and recommendation. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. Unit B 1982)).

If no party files a timely objection to the report and recommendation, the Court reviews the magistrate judge’s findings for clear error. *See Lawrence v. Governor of Georgia*, 721 F. App’x 862, 864 (11th Cir. 2018) (“district court reviewed the magistrate judge’s findings for clear error, as [plaintiffs] had failed to object to the R & R”); *see also Tauber v. Barnhart*, 438 F. Supp. 2d 1366, 1373-74 (N.D. Ga. 2006). “Clear error review asks if, ‘after viewing all the evidence, [the Court is] left with the definite and firm conviction that a mistake has been committed.’” *Anderson v. Dunbar Armored, Inc.*, 678 F. Supp. 2d 1280, 1289 (N.D. Ga. 2009) (quoting *HGI Assocs., Inc. v. Wetmore Printing Co.*, 427 F.3d 867, 873 (11th Cir.

2005)). The Court may then “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

III. Discussion

Magistrate Judge Anand found that PMG DeJoy’s second Motion to Dismiss (Doc. 14) should be dismissed as moot, and the Third Motion to Dismiss (Doc. 23) be granted. (Doc. 25 at 4). Magistrate Judge Anand found that “even when [the April 11th Complaint] is read in conjunction with Plaintiff’s prior Complaint(s), it does not cure the deficiencies” described in the March 25th Order, principally that it was an impermissible shotgun pleading. (Doc. 25 at 2). Further, Magistrate Judge Anand found that Ms. Range had failed to comply with pre-trial instructions pursuant to LR 16.5, NDGa., and her April 11th Complaint could be dismissed for that additional reason. (Doc. 25 at 4).

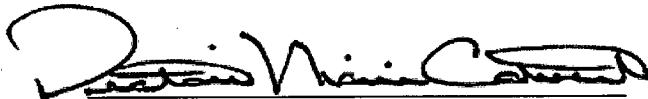
After careful review, the Court concludes Magistrate Judge Anand’s findings in the Report and Recommendation (Doc. 25) contain no clear error, and thus should be adopted. The March 25th Order provided specific instructions to Ms. Range on how to amend her complaint to comply with the pleading requirements of this Court, and she did not do so.

IV. Conclusion

For the foregoing reasons, the Court accepts the findings of Magistrate Judge Anand and hereby **ADOPTS IN FULL** the Report and Recommendation

(Doc. 25). Defendant DeJoy's second Motion to Dismiss (Doc. 14) is **DENIED** as moot. Defendant DeJoy's Third Motion to Dismiss for failure to state a claim (Doc. 23) is **GRANTED**, and Plaintiff Range's Complaint is **DISMISSED WITH PREJUDICE**. The Court **DIRECTS** the Clerk to close this case.

SO ORDERED this 1st day of July, 2022.



Victoria Marie Calvert
United States District Judge

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