

APPENDIX A

**Order D 14 from the Western
District Court of Kentucky Which
Dismissed Qiu's Complaint**

Order DN 14 Filed 03/02/23 by Judge David J. Hale
3:22-cv-00383

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

WEI QIU, Plaintiff,
V.

BOARD OF EDUCATION OF OLDHAM
COUNTY SCHOOLS, KY, Defendant.

MEMORANDUM AND ORDER

Plaintiff Wei Qiu, proceeding pro se, alleges that Defendant Board of Education of Oldham County Schools, Kentucky (the Board), violated state and federal civil-rights laws by not hiring her for a teaching position. (Docket No. 1) The Board moves for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.N.4) Qiu filed a "motion to reply to defendant's #4," which the Court construes as a response to the motion to dismiss. (D.N.5) The Board replied. (D.N.7) For the reasons set forth below, the motion to dismiss for failure to state a claim will be granted.

I.

The following facts are set forth in the complaint and accepted as true for purposes of the present motion. See *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 757 (6th Cir. 2020). Qiu is an American citizen of Chinese origin. (D.N. 1, PageID.5) She is a highly qualified chemistry and physics teacher. (*Id.*) Qiu applied for a teaching position at South Oldham High School and interviewed on June 25, 2021. (*Id.*) Two weeks later, as Qiu had not yet heard back from the school, she emailed Principal Melissa Woosley ask[ing] to be hired." (*Id.*) Principal Woosley told her to wait while the school continued its search for other applicants. (*Id.*) Qiu alleges that Woosley did so because she disliked Qiu's accented English. (*Id.*)

Qiu continued to email the school until Woosley told her that her "persistence for the job is borderline unprofessional." (*Id.*) The plaintiff responded over email "that it is unprofessional to say her effort" for the job was unprofessional. (*Id.*) Woosley took "revenge[]" on Qiu by removing her from consideration for the position. (*Id.*) Although Qiu told Woosley to ask her any questions about her qualifications for the job, Woosley never did. (*Id.*) Qiu had applied for another chemistry position at the school in August 2019 but was not hired. (*Id.*, PageID.6) Qiu filed this suit on July 27, 2022, alleging that the Board discriminated against her based on her race, color, and national origin, in violation of both

Title VII of the Civil Rights Act and the Kentucky Civil Rights Act. (See D.N.1) The Board now moves for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.N.4)

II.

As an initial matter, the Court addresses Qiu's argument, set out in her "memorandum on defendant's #4" (D.N.5-5), and "memorandum and motion on defendant's pleadings" (D.N.9), that the Court should strike the Board's motion to dismiss for failure to follow Federal Rule of Civil Procedure 8(b)(1). She maintains that "[b]ecause defendant did not deny any point in the complaint in its response (#4) to the complaint, it admits the whole complaint by FRCP Rule 8(b)(6)." (D.N.5-5, PageID.50; see also D.N. 9, PageID.60) The Board objects to both filings as improper. (See D.N. 8; D.N. 10) Qiu is correct that Rule 8 generally requires a party to file an answer to the complaint within twenty-one days, Fed. R. Civ. P. 12(a)(1)(A)(i), and in that answer to admit, deny, or state that it lacks knowledge of all factual allegations. Fed. R. Civ. P. 8(b). The time to file an answer is tolled, however, if the defendant files a motion to dismiss under Rule 12, as the Board did here. Fed. R. Civ. P. 12(a)(4). (See D.N.5) The Court therefore declines to strike the motion to dismiss as Qiu

assertion of legal conclusions.” *Id.* (quoting *Columbia Nat. Res., Inc. v. Tatum*, 58F.3d 1101, 1109 (6th Cir. 1995)). A complaint is not sufficient when it only “tenders naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S. at 678 (internal quotations omitted) (citing *Twombly*, 550 U.S. at 557).

A. What Documents to Consider

To begin, the Court must determine what documents it may consider in reviewing the motion to dismiss. Qiu attached twenty-four pages of exhibits to her response, including emails between herself and Principal Woosley and documentation of her qualifications for the positions. (See D.N. 5-1; D.N. 5-2; D.N. 5-3; D.N. 5-4) Generally, a court may not consider “documents attached in response to a motion to dismiss” as they are “merely ‘matters outside the pleadings.’” *Simon Prop. Grp., L. P. v. CASDNS, Inc.*, No. 3:14-CV-566-CRS, 2015 WL 3407316, at*3 (W. D. Ky. May 26, 2015) (collecting cases). A court may consider some extraneous documents, including exhibits attached to the complaint, “public records, items appearing in the record of the case[, or] exhibits attached to a defendant’s motion to dismiss so long as they are referred to in the complaint.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir.

2008). Qiu's exhibits do not fall into any of these categories. (See D.N. 5-1; D.N. 5-2; D.N. 5-3; D.N. 5-4) Although "a pro se complaint must be held to a less stringent standard than that prepared by an attorney," the Court may not "abrogate basic pleading essentials in pro se suits." *Leisure v. Hogan*, 21 F. App'x 277, 278 (6th Cir. 2001) (citations omitted). The Sixth Circuit does not allow a plaintiff to "amend [her] complaint in an opposition brief or ask the court to consider new allegations (or evidence) not contained in the complaint." *Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 483 (6th Cir. 2020) (collecting cases). Thus, the Court will not consider the attached documents when evaluating the motion to dismiss. See *Simon Prop. Grp., L.P.*, 2015 WL 3407316, at *3.

B. Failure to State a Claim

Qiu alleges that the Board discriminated against her based on her race, color, and national origin in violation of both Title VII of the Civil Rights Act and the Kentucky Civil Rights Act (KCRA). (D.N.1, PageID.3-4) Under Title VII, it is unlawful for an employer to "fail or refuse to hire ... or otherwise to discriminate against an individual with respect to h[er] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, ... or national origin." 42 U.S.C. § 2000e-2(a)(1). The KCRA contains a similar prohibition, and the

Kentucky Supreme Court "interpret[s] the civil rights provisions of KRS Chapter 344 consistent with the applicable federal anti-discrimination laws." *Williams v. Wal-Mart Stores, Inc.*, 184S.W.3d 492, 495 (Ky. 2005) (citing *Brooks v. Lexington-Fayette Urban Cnty. Hous. Auth.*, 132 S. W. 3d 790, 802 (Ky.2004)). Because the KCRA largely mirrors Title VII, discrimination claims under the two statutes are analyzed using the same standard. See *Roof v. Bel Brands USA, Inc.*, 641 F. App'x 492, 496 (6th Cir. 2016) (citing *Hamilton v. Gen. Elec. Co.*, 556 F.3d 428, 435 (6th Cir.2009)). The Court will therefore evaluate Qiu's federal and state claims together.

To survive a motion to dismiss, a plaintiff alleging employment discrimination must "allege sufficient 'factual content' from which a court, informed by its 'judicial experience and common sense,' could 'draw the reasonable inference,'" *Keys v. Humana, Inc.*, 684 F.3d 605, 610 (6th Cir.2012) (quoting *Iqbal*, 556 U.S. at 678-79), that the defendant "discriminate[d] against [the plaintiff] with respect to [her] compensation, terms, conditions, or privileges of employment, because of [her] race, color, religion, sex, or national origin." *Id.* (quoting 42 U.S.C. § 2000e-2(a)(1) (emphasis added)). The Board argues that Qiu's complaint fails to meet this standard because it "only contains legal conclusions without specific factual allegations demonstrating how her

protected characteristics are connected to the defendant's decision not to hire her." D.N. 7, PageID.56).

The Board is correct that the complaint contains few factual allegations. (See D.N.1) Qiu alleges that she is an American citizen of Chinese origin. (*Id.*, PageID.5) She further alleges that she is a "highly qualified" chemistry and physics teacher and that she applied and interviewed for a position with Oldham County High School in June 2021. (*Id.*) Qiu exchanged multiple emails with Principal Woosley asking to be hired until Woosley replied that Qiu's "persistence for the job [was] borderline unprofessional." (*Id.*) The school declined to consider Qiu's application and continued searching for other applicants. (*Id.*) Qiu alleges that the Board "discriminated against her" by failing to hire her because she is an "accented Chinese" woman. (*Id.*, PageID.6)

Even construed in the light most favorable to Qiu, the complaint "is devoid of any facts which could produce an inference that Defendant unlawfully considered Plaintiff's national origin," color, or race when deciding not to hire her. *Masaebi v. Arby's Corp.*, 852 F. App'x 903, 906 (6th Cir. 2021) (affirming dismissal for failure to state a claim). Qiu does not allege that the Board or its employees

"made any statements concerning [Qiu's] race," or that they "engaged in any conduct whatsoever that could reasonably be interpreted as racially motivated." *Veasy v. Teach for Am., Inc.*, 868 F. Supp. 2d 688,696 (M.D. Tenn. 2012). Without some indication that race factored into the Board's decision, Qiu is left with only the bare legal conclusion that she was discriminated against. See *Tackett*, 561 F.3d at 488.

Furthermore, nothing in the complaint gives rise to a reasonable inference that Qiu was treated differently than anyone outside of her protected class. See, e.g., *Smith v. Bd. of Trustees Lakel and Cmty. Coll.*, 746 F. Supp. 2d 877, 895 (N.D. Ohio 2010) (granting dismissal when the complaint did "not identif[y] a similarly situated member of an unprotected class who was treated differently"); cf. *Parker v. Strawser Constr., Inc.*, 307 F. Supp.3d 744 (S. D. Ohio 2018) (denying dismissal when the complaint alleged that the plaintiff was a member of a protected class and was treated differently than employees outside of her class). Qiu does not state whether any other applicants applied for the position, and if they did, whether the other applicants were of a different race, color, or national origin. (See D.N. 1) Nor does she allege whether the individual who eventually filled the role was of a different race, color, or national origin. (See *id.*) The Sixth Circuit has

made clear that “broad and conclusory allegations of discrimination cannot be the basis of a complaint and a plaintiff must state allegations that plausibly give rise to the inference that a defendant acted as the plaintiff claims.” *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 614 (6th Cir. 2012). Thus, Qiu's "allegations of racial discrimination, which are entirely subjective as alleged, do not give rise to a fair inference" that racial discrimination actually took place. *Veasy*, 868 F.Supp. 2d at 696. “Although dismissal on the pleadings is often inappropriate in employment discrimination cases where evidence of motive and discriminatory intent is frequently exclusively in the hands of defendants, this constitutes the rare case in which the allegations regarding discrimination [a]re so conclusory that no plausible claim could be inferred.” *Masaebi* 852 F.App'x at 909. The Court therefore finds that Qiu has failed to state a claim for discrimination and will grant the motion to dismiss. *See Keys*, 684 F.3d at 610.

III.

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) Plaintiff Wei Qiu's motion to reply (D.N. 5) is **GRANTED**.

(2) Plaintiff's memorandum and motion on Defendant's pleadings (D.N. 9) is **DENIED**.

(3) Defendant Board of Education of Oldham County Schools, Kentucky's motion to dismiss for failure to state a claim (D.N. 4) is **GRANTED**. This matter is **DISMISSED** and **STRICKEN** from the Court's active docket.

March 2, 2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

David J.Hale, Judge s/
United States District Court

APPENDIX B

**Order D 17 from the 6th Circuit
Court Which Affirmed Order
DN 14 of the Western District
Court of Kentucky**

NOT RECOMMENDED FOR PUBLICATION
No.24-5306
FILED on Oct 11, 2024, KELLY L. STEPHENS, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU, Plaintiff-Appellant
v.
BOARD OF EDUCATION OF OLDHAM COUNTY, KY
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT
OF KENTUCKY

ORDER

Before: GRIFFIN, LARSEN, and ALBANDIAN, Circuit
Judges.

Wei Qiu, proceeding pro se, appeals the district court's judgment in favor of the Board of Education of Oldham County, Kentucky (the Board) on her employment-discrimination claims. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument

is not needed. See Fed. R. App. P. 34(a). For the following reasons, we affirm.

In 2019, Qiu, a Chinese woman, applied for a chemistry teacher position at South Oldham High School and was not hired. In 2021, she interviewed for a “chemistry/physics” opening at South Oldham. Two weeks after her interview, Qiu emailed the principal “ask[ing] to be hired.” The principal responded that they were still reviewing applications. Qiu continued to email the school until the principal told her that her “persistence for the job [was] borderline unprofessional.” Qiu responded “that it [was] unprofessional to say her effort” for the job was unprofessional. Qiu alleged that the principal took “revenge[.]” on her by removing her from consideration for the position and that the school was not interested in hiring her because of her accent.

Qiu filed an initial charge of discrimination with the Equal Employment Opportunity Commission, which granted her a right to sue in May 2022. Qiu then sued the Board for violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, and the Kentucky Civil Rights Act (KCRA), alleging that the Board discriminated against her by failing to hire her based on her race, color, and national origin. The district court granted the Board's motion to dismiss, reasoning that Qiu's complaint failed to

allege any facts supporting her discrimination claims. The court then denied Qiu's motion to alter the judgment and for sanctions.

On appeal, Qiu argues that the district court erred in not considering evidence that she attached to her response to the Board's motion to dismiss and that her complaint stated enough facts to survive a motion to dismiss.

We review de novo a district court's dismissal of a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Jama v. Dep't of Homeland Sec.*, 760 F.3d 490, 494 (6th Cir. 2014). To survive a motion to dismiss for failure to state a claim, the "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)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

Review of this standard "must ordinarily be undertaken without resort to matters outside the pleadings." *Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016). A court may, however, "consider exhibits

attached to the complaint, public records, items appearing in the record of the case, and exhibits attached to defendant's motion to dismiss, so long as they are referred to in the complaint and are central to the claims contained therein." *Id.* Evidence outside these materials is considered "matters outside the pleadings." Fed. R. Civ. P. 12(d). If the court considers such matters, it must treat the Rule 12(b)(6) motion as a motion for summary judgment. *Id.* "We review the district court's decision to convert a 12(b)(6) motion to dismiss into a motion for summary judgment for abuse of discretion." *Wysocki v. Int'l Bus. Mach. Corp.*, 607 F.3d 1102, 1104 (6th Cir. 2010).

First, the district court did not need to consider the exhibits attached to Qiu's response to the Board's motion to dismiss. The exhibits were "matters outside the pleadings," Fed. R. Civ. P. 12(d), because they were not "exhibits attached to the complaint, public records, items appearing in the record of the case, [or] exhibits attached to defendant's motion to dismiss," *Gavitt*, 835 F.3d at 640. Thus, the district court did not abuse its discretion in ruling on the motion to dismiss without considering the evidence. See Fed. R. Civ. P. 12(d); see, e.g., *Caraway v. CoreCivic of Tenn., LLC*, 98 F. 4th 679, 688 (6th Cir. 2024) (determining that the district court did not abuse its discretion in declining to convert a Rule 12(b)(6) motion).

Second, we agree with the district court that Qiu failed to allege facts to support a reasonable inference that the Board discriminated against her based on her race, color, or national origin. See *White v. Coventry Health & Life Ins.*, 680 F. App'x 410, 415-16(6th Cir. 2017) (finding "naked assertions" to be "wholly conclusory" and insufficient to state a claim). Title VII prohibits an employer from "discriminat[ing] against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1); see *Queen v. City of Bowling Green*, 956 F.3d 893, 902 (6th Cir. 2020) ("[B]ecause[t]he language of the KCRA generally tracks the language of Title VII[,] the KCRA 'should be interpreted consonant with federal interpretation.'" (second and third alterations in original) (quoting *Morris v. Oldham Cnty. Fiscal Ct.*, 201 F.3d 784, 793 (6th Cir. 2000))).

Qiu alleged - in conclusory fashion - that the Board did not hire her after hearing her accent. And she argues that the Board held the application open to keep searching for candidates without an accent. But she alleges no facts supporting this conclusory inference, such as who was ultimately hired for the position, the details about her initial interview, or the details of her email correspondence. Her "broad and conclusory allegations of discrimination cannot be the

basis of a complaint," and she failed to "state allegations that plausibly give rise to the inference that" the Board discriminated against her. *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608,614(6th Cir.2012); see, e.g., *El-Hallani v. Huntington Nat'l Bank*, 623 F. App'x 730, 735 (6th Cir.2015) ("[F]actual allegations about discriminatory conduct that are based on nothing more than the plaintiff's belief are 'naked assertions devoid of further factual enhancement' that are insufficient to state a claim."(quoting *16630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 506 (6th Cir. 2013))))). Because Qiu did not allege sufficient facts to support an inference that she was treated differently based on her membership in a protected class, the district court properly dismissed her complaint for failure to state a claim.

For these reasons, we AFFIRM the district court's order.

ENTERED BY ORDER OF THE COURT
Kelly L., Stephens, Clerk s/

APPENDIX C

**Order DN 21 from the District
Court which denied Qiu's 59(e)
motion.**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

WEI QIU, Plaintiff,

V.

BOARD OF EDUCATION OF OLDHAM
COUNTY SCHOOLS, KY, Defendant.

MEMORANDUM AND ORDER

Plaintiff Wei Qiu sued Defendant Board of Education of Oldham County Schools, Kentucky ("the Board"), alleging violations of Title VII of the Civil Rights Act of 1964 and the Kentucky Civil Rights Act. (Docket No.1). The Court entered a Memorandum and Order granting the Board's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (D.N. 14). Qiu filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e) (D.N. 15); the Board filed a response to the motion (D.N. 16); and Qiu filed a reply (D.N. 17). For the reasons stated herein, the Court will deny the Rule 59(e) motion. Qiu also filed a motion for sanctions under Rule 11 against the Board's counsel (D.N. 18), which has also been fully briefed

(D.N. 19; D.N. 20). The Court will also deny the motion for sanctions herein.

I.

In granting the Board's motion to dismiss, the Court accepted the facts set forth in the complaint as true. (D.N. 14, PageID.70). Qiu alleged in the complaint that she was an American citizen of Chinese origin and that she was a highly qualified and licensed chemistry and physics teacher. (D.N.1, PageID.5). Qiu applied for a teaching position at South Oldham High School and interviewed on June 25, 2021. (*Id.*) Two weeks later, as Qiu had not yet heard back from the school, she emailed Principal Melissa Woosley "ask[ing] to be hired." (*Id.*) Principal Woosley told her to wait while the school continued its search for other applicants. (*Id.*) Qiu alleges that Woosley did so because she disliked Qiu's accented English. (*Id.*)

Qiu continued to email the school until Woosley told her that her "persistence for the job is borderline unprofessional." (*Id.*) Qiu responded over email "that it is unprofessional to say her effort" for the job was unprofessional. (*Id.*) Woosley took "revenge[]" on Qiu by removing her from consideration for the position. (*Id.*) Although Qiu told Woosley to ask her any questions about her qualifications for the job, Woosley never did. (*Id.*) Qiu had applied for another chemistry position at the school in August 2019 but

was not hired. (*Id.*, PageID.6). Qiu filed this suit on July 27, 22, alleging that the Board discriminated against her based on her race, color, and national origin, in violation of both Title VII of the Civil Rights Act and the Kentucky Civil Rights Act. (D.N. 1).

II.

The Court found that, even construed in the light most favorable to Qiu, the complaint was "devoid of any facts which could produce an inference that Defendant unlawfully considered Plaintiff's national origin,' color, or race when deciding not to hire her." (D.N. 14, PageID.75) (quoting *Masaebi v. Arby's Corp.*, 852 F. App'x 903, 906 (6th Cir. 2021)). The Court found that the complaint did not allege that the Board or its employees "made any statements concerning h[er] race"" or that they"engaged in any conduct whatsoever that could reasonably be interpreted as racially motivated.'" (*Id.*) (quoting *Veasy v. Teach for Am., Inc.*, 868 F. Supp. 2d 688, 696 (M.D. Tenn. 2012)).

Further, the Court held that nothing in the complaint gave rise to a reasonable inference that Qiu was treated differently than anyone outside of her protected class. (*Id.*) (citing, *inter alia*, *Smith v. Bd. of Trustees Lakeland Cmty. Coll.*, 746 F. Supp. 2d 877, 895 (N.D. Ohio 2010)). The Court found that Qiu did not allege that the individual who eventually filled the position that she had applied for fell outside of a

protected class or whether the position was filled at all. (*Id.*, PageID.75). The Court observed that the Sixth Circuit has made clear that “broad and conclusory allegations of discrimination cannot be the basis of a complaint and a plaintiff must state allegations that plausibly give rise to the inference that a defendant acted as the plaintiff claims.” (*Id.*, PageID.75-76) (quoting *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 614 (6th Cir. 2012)). Thus, the Court found, “Qiu’s allegations of racial discrimination, which are entirely subjective as alleged, do not give rise to a fair inference that racial discrimination actually took place.” (*Id.*, PageID.76) (quoting *Veasy*, 868 F. Supp. 2d at 696). The Court stated, “Although dismissal on the pleadings is often inappropriate in employment discrimination cases where evidence of motive and discriminatory intent is frequently exclusively in the hands of defendants, this constitutes the rare case in which the allegations regarding discrimination [a]re so conclusory that no plausible claim could be inferred.” (*Id.*) (quoting *Masaebi*, 852 F. App’x at 909).

III.

“A district court may alter or amend its judgment based on ‘(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in the controlling law; or (4) a need to prevent manifest injustice.’” *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834,

841 (6th Cir. 2018) (quoting *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir.2010)). “The Sixth Circuit has consistently held that a Rule 59 motion should not be used either to reargue a case on the merits or to reargue issues already presented[.]” *Durbin v. Marquette Transp. Co., LLC*, No. 5:18-cv-00055-TBR, 2021 U.S. Dist. LEXIS 213508, at *3 (W.D. Ky. Nov. 3, 2021) (citing *Whitehead v. Bowen*, 301 F. App’x 484, 489 (6th Cir. 2008)). Nor may a party use a Rule 59 motion to “merely restyle or rehash the initial issues.” *Id.* (quoting *White v. Hitachi, Ltd.*, No. 3:04-CV-20, 2008 U.S. Dist. LEXIS 25240, at *3 (E.D. Tenn. Mar. 20, 2008)). “Amending or altering a final judgment is an ‘extraordinary’ measure, and motions requesting such amendment are ‘sparingly granted.’” *New London Tobacco Mkt., Inc. v. Kentucky Fuel Corp.*, No. CV 12-91-GFVT, 2016 U.S. Dist. LEXIS 190855, at *4 (E.D. Ky. Feb. 9, 2016) (quoting *Marshall v. Johnson*, No. 3:07-CV-171-H, 2007 U.S. Dist. LEXIS 29881, at *4 (W.D.Ky. Apr. 19, 2007)).

IV.

In the motion to alter or amend the judgment, Qiu first argues that the Court committed an error of law when it did not consider the attachments to her response to the motion to dismiss (D.N. 15, PageID.76-77). She maintains that the instructions on the pro se complaint form did not instruct her to

attach evidence to the form. (Id., PageID.76). She argues, "So, when Defendant dismisses the complaint, Plaintiff has the only opportunity to attach evidence to refute the dismiss in her reply. Plaintiff's reply to the dismiss is all about the complaint, and it does not add any other stuff to the complaint." (*Id.*) While Qiu argues that the complaint form she completed did not indicate in the instructions that she should attach documents to the complaint, nothing in the form's instructions prevented her from alleging facts in the complaint to meet the pleading standard. Therefore, the Court did not err in not considering Qiu's attachments to her response to the motion to dismiss.

Qiu also argues that the Court erred when it agreed with the Board's statement that "the complaint fails ... because it 'only contains legal conclusions without specific factual allegations demonstrating how her protected characteristics are connected to the [Board]'s decision not to hire her." D.N.15, PageID.79) (citing D.N. 14, PageID.74). Qiu then recites the facts which she believes support her claims. (D.N. 15, PageID.79-80). Qiu also argues that her allegations are sufficient to show that she was treated differently because of her national origin in violation of Title VII. Both of these arguments fail because Qiu is essentially rearguing or rehashing the issues she already presented, which is not permitted under Rule

59(e). See *Durbin*, 2021 U.S. Dist.LEXIS 213508, at *3.

Qiu next argues that the Court committed an error of fact when it held that the complaint did not allege that the Board or its employees "made any statements concerning h[er] race" or that they "engaged in any conduct whatsoever that could reasonably be interpreted as racially motivated." (D.N. 15, PageID.81) (citing D.N. 14, PageID.75). She then alleges that she sent Principal Woosley an email stating that she "lost the opportunity for the job she was so well qualified for because of her Chinese accent English" and that Woosley did not respond to her email. She argues that this allegation shows that she was not hired because of her accent. Although the complaint did not include an allegation that she sent the above-described email to Woosley and Woosley did not respond, Qiu could have included this allegation in the complaint. However, if she had, it would in no way affect the Court's conclusion that Defendant's motion to dismiss should be granted.

Qiu next argues that the Court's Memorandum and Order is "crooked and messed up" because the Court held that her complaint was subject to dismissal, in part, because she "did not allege that the individual who eventually filled the position she applied for was outside of a protected class or whether the position

was eventually filled at all." (D.N. 15-11) (citing D.N. 14, PageID.75). The Court held that, because Qiu failed to make that allegation, there was nothing in the complaint that gave rise to a "a reasonable inference that Qiu was treated differently than anyone outside of a protected class." (*Id.*) Qiu argues that she needs to engage in discovery to determine who, if anyone, was hired for the positions she applied for. (D.N. 15, PageID.82). However, pursuant Rule 12(b)(6), before this case could proceed to discovery, Qiu was required to state a claim upon which relief may granted in the complaint, that is, make some allegation in the complaint which would plausibly suggest that the Board treated her differently because of her race. This case was dismissed because she failed to do so.

Thus, the Court concludes that Qiu has shown no clear error of law, newly discovered evidence, intervening change in the law, or manifest injustice to warrant altering or amending its judgment under Rule 59(e).

Accordingly, it is hereby

ORDERED that Qiu's motion to alter or amend the judgment (D.N. 15) is DENIED.

This matter remains CLOSED.

Qiu also moved for sanctions against the Board's counsel under Fed. R. Civ. P. 11 based on arguments made in the motion to dismiss (D.N. 18). The Court granted the Board's motion to dismiss and has denied Qiu's motions to alter or amend judgment herein. The Court, therefore, finds that sanctions are not warranted against the Board's counsel.

Accordingly, it is hereby

ORDERED that Qiu's motion for sanctions (D.N. 18) is DENIED.

Date: March 19, 2024

David J.Hale, Judge s/
United States District Court

cc: Plaintiff Qiu, pro se
Counsel of record
4415.011

APPENDIX D

**The Order D 21 denied Qiu's
petition to the en banc to rehear
on Nov. 18, 2024**

No.24-5306
FILED on Nov. 18, 2024, KELLY L. STEPHENS, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU, Plaintiff-Appellant
v.
BOARD OF EDUCATION OF OLDHAM COUNTY, KY
Defendant-Appellee.

ORDER

BEFORE: GRIFFIN, LARSEN, and NALBANDIAN,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
KELLY L. STEPHENS, Clerk /s/
KELLY L. STEPHENS, Clerk