APPENDIX A

Order DN 17 from the District Court Which Dismissed Qiu's Complaint

DN 17 Filed on 02/28/23 by Judge David J. Hale
3:22-cv-00334

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

WEI QIU, Plaintiff,
V.
BOARD OF EDUCATION OF NELSON COUNTY SCHOOLS, KY, Defendant.

MEMORANDUM AND ORDER

Plaintiff Wei Qiu, proceeding pro se, alleges that Defendant Board of Education of Nelson 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 to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.N. 6) Qiu filed a "motion to reply to defendant's #5," which the Court construes as a response to the motion to dismiss. (D.N.8) The Board replied. (D.N.10) 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 licensed and highly qualified chemistry and physics teacher. (*Id.*) In July 2019, Qiu applied for a chemistry position at Thomas Nelson High School and conducted a phone interview with Vice Principal Curt Merrifield. (*Id.*, PageID.3, 5) Following the interview, the school "absolutely and completely " ignored her application and refused to contact her again. (*Id.*, PageID.5) Qiu applied for a different position at the school in April 2021, and the Board again refused to contact her. (*Id.*) Qiu alleges that the school then "changed the name of the position into Integrated Science to attract [a] teacher of less[er] quality."(*Id.*) Qiu filed this suit on June 27, 2022, alleging that the Board discriminated against her based on her Chinese accent in violation of Title VII of the Civil Rights Act of 1964 and the Kentucky Civil Rights Act. (*See* D.N. 1) For the reasons set forth below, the Court will dismiss Qiu's complaint for failure to state a claim.

II.

As an initial matter, the Court addresses Qiu's argument, set out in her "memorandum on defendant's #6" (D.N.8-4), and "memorandum and

motion on defendant's pleadings" (D.N.12), 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 (#6) to the complaint, it admits the whole complaint by FRCP Rule 8(b)(6)." (D.N.8-4, PageID.52; *see* also D.N. 12, PageID.62) The Board objects to both filings as improper. (*See* D.N. 9; D.N. 13) Qiu is correct that Rule 8 generally requires a party to file an answer to the complaint within twenty-one days of service, 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. 6) The Court therefore declines to strike the motion to dismiss as Qiu requests because the defendant was not required to admit or deny all allegations in its Rule 12 motion. *Id.*

To avoid dismissal for failure to state a claim upon which relief can be granted, "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)).

1 1 The Board cites an out-of-date pleading standard in its motion to dismiss. (*See* D.N. 6-1, PageID.16-17 (citing *Conley v.*

Gibson, 335 U.S. 41 (1957)) The Supreme Court retired Conley's "no set of facts" test in 2007. *Twombly*, 550 U.S. at 1959-60. As discussed above, the current pleading standard was set forth by the Supreme Court in *Twombly* and *Iqbal*. *See Mediacomn Se.LLC v. BellSouth Telecomms., Inc.*, 672 F.3d 396, 399 (6th Cir.2012). A claim is plausible on its face "when the plaintiff pleads 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. If "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the plaintiff has not shown that she is entitled to relief. *Id.* at 679. For purposes of a motion to dismiss, "a district court must (1)view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true." *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir.2009)(citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009)). "But the district court need not accept a "bare assertion of legal conclusions.'" *Id.* (quoting *Columbia Nat. Res., Inc. v. Tatum*, 58 F.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-three pages of exhibits to her response, including documentation regarding her qualifications for the teaching positions and copies of her communications with the school. (*See* D.N. 8-1; D.N. 8-2; D.N. 8-3) 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 "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. 8-1; D.N. 8-2; D.N. 8-3) While "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 "she has alleged no facts connecting her race, color, or national origin to her allegation of employment discrimination." (D.N.6-1, PageID.17)

The only fact in the complaint that arguably supports an inference of discrimination is Qiu's allegation that the Board changed the name of the teaching position after she applied to attract a teacher of "less[er] quality." (D.N.1, PageID.5) Her complaint is "held to a less stringent standard"

because Qiu is proceeding pro se, so the Court will "liberally construe[]" these allegations. *See Leisure*, 21 F. App'x at 278. Presumably, Qiu is alleging that the school did not want to hire her because of a discriminatory reason but did not have an alternative candidate to fill the position, so rather than hire Qiu, the school changed the position name to attract additional applicants that it would not object to hiring. This hypothetical scenario is similar to the facts alleged in *Blakely v. Austin Peay State University,* 591 F. Supp. 3d 278 (M.D. Tenn. 2022). The plaintiff in that case, an "'older' black male," applied for a position as Assistant Police Chief, but a white female applicant named Kristie Winters was selected for the position instead. *Id.* at 279. The plaintiff alleged that the defendant "modified the qualifications for the position of Assistant Chief in order to avoid hiring Plaintiff who is a member of two protected classes (African American and age 52) and to enable Kristie Winters to qualify for the position." *Id.* at 279-80. The plaintiff further alleged that Winters was less qualified for the position and fell "in an unprotected classification" under Title VII. *Id.* at 280. The court ultimately concluded that the complaint "more than plausibly state[d] a claim for race discrimination" and denied a motion to dismiss. *Id.* at 281.

Qiu's complaint, in contrast to that in Blakely, does not allege that the individual who eventually filled the position that she had applied for fell outside of a protected class. (See D.N.1) Nor does she allege whether the position was eventually filled at all. (*Id.*) Thus, nothing in the complaint gives rise to a reasonable inference that Qiu was treated differently than anyone outside of a protected class. *See Smith v. Bd. of Trustees Lakeland 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"). 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). The complaint 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.

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's memorandum and motion on Defendant's pleadings (D.N. 12) is **DENIED.**

(2) Defendant's motion to dismiss for failure to state a claim (D.N: 6) is **GRANTED**. This matter is **DISMISSED** and **STRICKEN** from the Court's active docket.

February 27, 2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

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

APPENDIX B

Order D 15 from the 6th Circuit Court Which Affirmed Order DN 17 of the Western District Court of Kentucky

NOT RECOMMENDED FOR PUBLICATION
No.24-5305
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 NELSON 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 Nelson 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 Thomas Nelson High School. The vice principal conducted a phone "pre interview" with Qiu and then "absolutely and completely" ignored her application. Qiu applied for another position at the high school in April 2021 and did not receive any correspondence from the school. Qiu alleged that the school then changed the position description "to attract [an applicant of] less quality."

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 motions to alter the judgment and for sanctions. On appeal, Qiu argues that her complaint stated enough facts to survive a motion to dismiss. She also argues that the district court should have awarded sanctions against the Board because it lied in its filings, and she claims that the district court is corrupt.

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). 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))).

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 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). Qiu alleged generally, with no factual support, that the Board did not hire her after hearing her accent. She alleged that the Board subsequently changed the job description after she applied for it. She argues that this fact supports the inference that the Board discriminated against her. But she alleges no facts supporting this conclusory inference, such as who was ultimately hired for the position, a description of her initial phone conversation, or the details about the allegedly changed job description. 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., ElHallani 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.

Next, Qiu challenges the district court's denial of her request for sanctions. We review the denial of Federal Rule of Civil Procedure 11 sanctions for an abuse of discretion. See *Montell v.Diversified Clinical Servs., Inc.*, 757 F.3d 497, 510 (6th Cir. 2014). Rule 11 sanctions are warranted only where a party's conduct was "objectively unreasonable" or there was no reasonable basis for"the claims. *Id.* Qiu has failed to show that the Board lied in any of its filings or that it proceeded in an "objectively unreasonable" way. *See id.* Thus, the district court did not abuse its discretion in denying her requested relief.

Next, Qiu argues that the district court erred by denying her Federal Rule of Civil Procedure 59(e) motions to alter or amend its judgment dismissing her complaint. As explained above, the district court properly entered judgment in the Board's favor. Qiu's motions to alter or amend do not meaningfully argue that any ground existed upon which a court could grant such a motion. *See Intera Corp. v. Henderson,* 428 F.3d 605,620 (6th Cir.2005). Because Qiu merely sought to relitigate the district court's order, the district court did not abuse its discretion by denying

the motion. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) ("Rule 59(e)...may not be used to relitigate old matters." (citation omitted)).

Finally, to the extent that Qiu argues that the district court impermissibly ruled in the Board's favor because it is corrupt and biased against her, she presents no evidence to support these allegations except the court's rulings. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Nothing here supports a departure from that general rule.

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 26 from the 6th Circuit Court which denied Qiu's 59(e) motion

3:22-cv-00334 Document 26 Filed 03/20/24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

WEI QIU, Plaintiff,

V.

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

Civil Action No.3:22-cv-334-DJH

MEMORANDUM AND ORDER

Plaintiff Wei Qiu sued Defendant Board of Education of Nelson 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. 17). Qiu filed two motions to alter or amend the judgment under Fed. R. Civ. P. 59(e) (D.N. 18; D.N. 19); the Board filed a response to the motions (D.N. 20); and Qiu filed a reply (D.N.21). For the reasons stated herein, the Court will deny the Rule 59(e) motions. Qiu also filed a motion for sanctions under Rule 11 against the Board's counsel (D.N. 22), which has also

been fully briefed (D.N.23; D.N. 24). The Court will also deny the motion for sanctions herein.

I.

In granting the Board's motion to dismiss, the Court accepted thefacts set forth in the complaint as true. (D.N. 17,PageID.66). 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). In July 2019, she applied for a chemistry-teacher position at Thomas Nelson High School and was subsequently called by Vice Principal Curt Merrifield. (Id.) She alleged that after the call, Merrifield ignored her attempts to contact him because he disliked her Chinese accent. (*Id.*) Plaintiff applied for a different chemistry/physics position at the school in April 2021,but the Board "absolutely and completely ignored her application." (*Id.*) Qiu alleged that the school then "changed the name of the position into Integrated Science to attract [a] teacher of lesser quality." (Id.) Qiu filed this suit on June 27, 2022, alleging that the Board discriminated against her based on her Chinese accent in violation of Title VII of the Civil Rights Act and the Kentucky Civil Rights Act. (D.N.1).

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.17, PageID.71)(quoting *Masaebi v. Arby's Corp.*, 852 F. App'x 903, 906 (6th Cir. 2021) (affirming dismissal for failure to state a claim)). 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)). The Court observed that Qiu did not allege any facts to suggest that the Board even knew her race or national origin. (*Id.*) The Court found, "[w]ithout some indication that race factored into the Board's decision, Qiu is left with only the bare legal conclusion that she was discriminated against." (*Id.*) (citing *Tackett v. M&G Polymers, USA, LLC*, 561 F.3d 478, 488(6th Cir.2009)).

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.72). 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.*) (quoting HDC, LLC v.City of Ann Arbor, 675 F.3d 608, 614 (6th Cir.2012)). Thus, the Court concluded, "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.*) (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).

II.

"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-H, 2007 U.S. Dist.LEXIS 29881, at *4 (W. D. Ky. Apr.19, 2007)).

III.

In the first motion to alter or amend the judgment, Qiu argues that the Court's Memorandum and Order contained a factual error. (D.N. 18, PageID.73-74). Plaintiff argues that the Court erroneously stated in its Memorandum and Order that her call with Vice Principal Merrifield was an interview when it was actually a pre-interview. (D.N. 18, PageID.73). She states that this distinction is important in that she was not able to have an actual interview because the Vice Principal determined during the pre-interview call

that she had a Chinese accent. (*Id.*) Upon consideration, the Court concludes that this misstatement does not in any way affect its conclusion that Defendant's motion to dismiss should be granted. No matter when the Board or its employees became aware that Qiu was of Chinese national origin, if ever, the complaint was still lacking in any facts to allege that the Board did not interview Qiu because of her Chinese national origin and not for any number of other reasons.

Qiu also argues that the Court's statement that "[t]he only fact in the complaint that supports an inference of discrimination is Qiu's allegation that the Board changed the name of the teaching position after she applied to attract a teacher of lesser quality" is incorrect. (D.N. 18, PageID.73-74) (citing D.N.17, PageID.70). Qiu then recites the facts which she believes support an inference of discrimination. (D.N. 18, PageID.74-75). This argument fails because Qiu is essentially rearguing or rehashing allegations she already presented or could have presented in the complaint and her response to the motion to dismiss, which is not permitted under Rule 59(e). See *Durbin,* 2021 U.S. Dist. LEXIS 213508,at*3.

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. 18-5) (citing D.N.17, PageID.71). 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." (D.N. 17, PageID.75-76). Qiu argues that she needs to engage in discovery to determine who, if anyone, was hired for the positions she applied for. (D.N.18, PageID.75-76). 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.

Qiu also 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. 18, 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.*)1 1 Qiu also asserts that the Court's dismissal vioated Fed. R. Civ. P. 11(b)(3) and (4), which she states, "reQiure the facts in a motion must be with evidence

support." Rule 11(b) sets forth obligations for the parties and is not a basis to alter or amend a judgment entered by the Court. 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.

Finally, in Qiu's second motion to alter or amend the judgment, she asserts that the Board lied to the EEOC during its investigation. The Court's dismissal of this action, however, was based on the allegations in Plaintiff's complaint andnot on any statements made by Defendant to the EEOC during its investigation of Plaintiff's claim.

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 motions to alter or amend the judgment (D.N. 18; D.N. 19) are 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.22). The Court granted the Board's motion to dismiss and has denied

APPENDIX D

The Order D 19 denied Qiu's petition to the en banc to rehear on Nov. 18, 2024

No.24-5305
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 NELSON 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