No. _____

In the Supreme Court of the United States

ROCHELLE L. SMITH,
Petitioner,

v.

GENERAL MOTORS, L.L.C.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX

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FEBRUARY MMXXVI

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APPENDIX

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Appendix I

Appendix A
[Filed: Jun. 17, 2025]

United States Court of Appeals for the Fifth Circuit

No. 24-10841

ROCHELLE L. SMITH,

Plaintiff—Appellant,

versus

GENERAL MOTORS, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CV-379

Before HIGGINBOTHAM, JONES, and SOUTHWICK, *Circuit Judges.*
PER CURIAM:*

Plaintiff Rochelle Smith filed suit pro se against General Motors LLC ("GM") alleging violations of the Americans with Disabilities Act ("ADA"), *see* 42 U.S.C. § 12117(a), and the Texas Commission on Human

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Rights Act ("TCHRA"). We AFFIRM the district court's dismissal of Smith's claims.

I.

In December of 2022, Smith filed a complaint with the Equal Employment Opportunity Commission and Texas Workforce Commission alleging ADA violations and received a right to sue letter from the EEOC. Smith then filed this case in the Dallas Division of the Northern District of Texas in March of 2023. Magistrate Judge Horan transferred the case to the Northern District's Fort Worth Division and Smith then served GM with process on April 6. On April 24, GM filed an opposed motion to extend to May 25 its deadline to answer Smith's First Amended Complaint, which was granted by Magistrate Judge Ray. On May 21, Smith filed her Second Amended Complaint.

II.

Smith alleged that GM hired her as a temporary forklift driver and on August 29, 2020, while attempting to avoid an "automated see-grid," she drove a forklift into a pole, resulting in cephalonhematoma, intermittent blurred vision, dizziness, and a headache; that on September 2 a physician allowed Smith to return to work under the condition that she perform only sedentary work. The next day, Smith went to the GM medical clinic with a headache and dizziness while standing. There she rested with an ice pack, the lights off, and door closed, rest that partially alleviated her headache. She had suffered a mild concussion, head contusion, and cervical strain. On September 4, Concentra Medical Center "allowed" Smith to return to work only if she were to perform sedentary

work. On September 17, disregarding the medical restrictions, Smith was assigned to a GM "trim shop" where she lifted and rode on heavy equipment, producing "agitation in her back and neck[.]"

The next day, Smith advised a GM supervisor that dollies were hitting the back of a tugger truck and GM reassigned her to work in the GM stripping department until September 30. In this department, Smith stood for periods of time that assertedly exceeded her doctors' restrictions. In October, Smith was reassigned to the GM trim shop to take inventory, which "consisted of long standing, reaching, pulling and walking." From February through March of 2021, Smith's job required tasks, including janitorial tasks, that violated her physicians' restrictions. Smith asserts that these assignments constitute a failure to provide reasonable accommodations.

When Smith complained to her supervisors and her union about these assignments, she was told that if she was unwilling or unable to perform janitorial work she would be placed in a "no job available" program. This would allow her to return to work once restrictions were reduced. Smith also alleges that she was not permitted to attend an "ADAPT" program designed to assist employees with medical restrictions to "transition and find meaningful work."

GM declined to promote Smith from temporary to permanent employment and eventually terminated her employment. GM told Smith that her employment was terminated because she was on worker's compensation. A union representative told Smith that she had a week to "get [her] job back by clearing medical to come back to work." Smith does not allege that she attempted to return to work.

Smith's Second Amended Complaint asked the court to enjoin GM from discriminating based on disability status, require GM to provide equal employment opportunities for disabled employees, order GM to eradicate the effects of past and present unlawful employment practices, and award $1.45 million in damages.

III.

GM filed a Rule 12(b)(6) motion to dismiss Smith's claims, arguing that her ADA and TCHRA claims were untimely and that she did not exhaust her state administrative remedies for her TCHRA claims. Smith filed a response and GM replied, partially withdrawing its motion to dismiss as related to Smith's ADA claims due to "a clerical error in its calculation of how many days passed between the date the Plaintiff received the notice-of-right-to-sue letter from the EEOC and her filing of this lawsuit." In that same pleading, GM requested and the Magistrate granted an extension to July 14 to answer Smith's ADA claims alleged in her Second Amended Complaint.

On June 6, Smith filed a motion for default judgment, alleging that GM defaulted when it failed to file an answer to her First Amended Complaint. The Magistrate issued findings, conclusions, and a recommendation to deny Smith's motion. Accepting these findings and conclusions, the district court denied Smith's motion. The district court later also accepted the recommendation of the Magistrate to deny Smith's TCHRA claims.

GM filed its answer to Smith's Second Amended Complaint addressing her ADA claims within the deadline imposed by the Magistrate and moved for

judgment on the pleadings under Rule 12(c). On recommendation of the Magistrate, the district court dismissed Smith's remaining claims.

IV.

Smith alleges several points of error on appeal, including that GM defaulted when it failed to answer the amended summons within 21 days, that Smith's claims are not time-barred, that Smith did exhaust her administrative remedies, that Smith did plead a proper wrongful discharge claim, and that Smith did state facts to show that she was qualified for a job at GM.

V.

Rule 12(c) states: "After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed.

R. Civ. P. 12(c). Rule 12(c) motions are decided on the same grounds as Rule 12(b)(6) motions: whether, drawing all reasonable inferences in favor of the nonmoving party, the complaint contains sufficient factual matter to state a claim to relief that is plausible on its face. *See Adams v. City of Harahan*, 95 F.4th 908, 911 (5th Cir.), *cert. denied sub nom. Adams v. City of Harahan*, 145 S. Ct. 278 (2024); *Armstrong v. Ashley*, 60 F.4th 262, 269 (5th Cir. 2023). "Conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice . . . ." *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002). "[E]ven a liberally construed *pro se* civil rights complaint . . . must set forth facts giving rise to a claim on which relief may

be granted." *White v. Texas*, No. 23-11190, 2024 WL 1826245, at *2 (5th Cir. Apr. 26, 2024) (quoting *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993)). District court rulings on a Rule 12(c) motion are reviewed *de novo*. *Hale v. Metrex Rsch. Corp.*, 963 F.3d 424, 427 (5th Cir. 2020).

VI.

The district court found that most of Smith's claims were barred by limitations. "Before a plaintiff may file her ADA claim in federal court, she must exhaust her administrative remedies. Specifically, a plaintiff must file a charge of discrimination with the EEOC within 180 days of 'the alleged unlawful employment practice,' or within 300 days if the charge is filed with a state or local agency . . . ." *Patton v. Jacobs Eng'g Grp., Inc.*, 874 F.3d 437, 443 (5th Cir. 2017) (citations omitted).

As noted by the district court, Smith filed her charge with the EEOC and the TWC on December 19, 2022, allowing her federal complaint to include any alleged unlawful employment practice that occurred within 300 days prior to December 19, 2022—that is, from February 22 to December 19, 2022. Almost all of the acts alleged in Smith's Second Amended Complaint occurred before February 22, 2022 and are time barred.

Smith contends that her claims nonetheless survive under the continuing violation doctrine, which allows a complaint to be filed when "the last act alleged is part of an ongoing pattern of discrimination and occurs within the filing period . . . ." *McGregor v. Louisiana State Univ. Bd. of Sup'rs*, 3 F.3d 850, 866 (5th Cir. 1993) (citations omitted). The doctrine applies only to

acts that cannot be said to occur on any particular day. *See Heath v. Bd. of Supervisors for S. Univ. & Agric. & Mech. Coll.*, 850 F.3d 731, 737 (5th Cir. 2017), as revised (Mar. 13, 2017). For instance, creating a hostile workplace environment may be subject to the continuing violation doctrine. *Id.* Our guidance here is that equitable doctrines, like the continuing violations doctrine, are to be invoked "sparingly." *Inclusive Louisiana v. St. James Par.*, No. 23-30908, 2025 WL 1064847, at *4 (5th Cir. Apr. 9, 2025) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)). We must be cautious about our use of the doctrine here. Most of Smith's allegations—such as failure to accommodate, failure to promote, and wrongful discharge—are discrete acts that occurred on a particular day and are not subject to the continuing violation doctrine. *See, e.g. Delek Ref., Ltd. v. Occupational Safety & Health Rev. Comm'n*, 845 F.3d 170, 176 (5th Cir. 2016) (finding persuasive a sister circuit's holding that failure to create required records was not a continuing violation because this is not a discrete act).

The district court found that the three acts alleged to have occurred between February 22 and December 19 of 2022 are not time barred: GM's failure to enroll Smith in the ADAPT program, GM's alleged refusal to promote Smith, and GM's alleged wrongful discharge of Smith.

Beginning with claims regarding the ADAPT program claim and GM's refusal to promote her, Smith did not exhaust her administrative remedies before the EEOC, which requires stating sufficient facts in the charge brought to the EEOC sufficient to trigger an investigation. *See Simmons-Myers v. Caesars*

Entm't Corp., 515 F. App'x 269, 272-73 (5th Cir. 2013) (per curiam). Smith's charge states, in its entirety:

> HARM: I began my employment in March 2020, as a Forklift Operator. In August 2020, I was injured at work. I returned to work in September 2020 and the employer did not honor my restrictions. I was sent home. On or about March 8, 2022, I was informed that my employment terminated, and I was no longer in the system. I was discriminated against because of my injury.
>
> REASON: No reason given.
>
> I believe I was discriminated against as described above, because of my disability, in violation of the Americans with Disabilities Act of 1990, as amended (ADA).

This charge does not sufficiently state facts that would allow the EEOC to begin an investigation into Smith's ADAPT program or failure to promote claims.

As for wrongful discharge, Smith's Second Amended Complaint failed to plead plausible facts sufficient for the court to grant relief under the ADA. A wrongful discharge suit under the ADA requires that Smith plausibly allege each of the following: (1) that she has a disability; (2) that she was qualified for the job she sought; and (3) that her employer terminated her because of her disability. *See Moss v. Harris Cnty. Constable Precinct One*, 851 F.3d 413, 417 (5th Cir. 2017). To plausibly allege the second requirement, Smith must allege that she is able to "perform the essential functions of the job in spite of her disability" or "that

a reasonable accommodation of her disability would have enabled her to perform the essential functions of the job." *See EEOC v. LHC Grp., Inc.*, 773 F.3d 688, 697 (5th Cir. 2014) (citation omitted); 42 U.S.C. § 12111(8).

Smith did not plausibly allege that she can perform the essential functions of the job. While reassignment can be a reasonable accommodation, Smith failed to plausibly allege that she could perform if reassigned to any vacant position in GM. *Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 315 (5th Cir. 2007). In short, Smith cannot meet the second prong of the ADA's wrongful discharge requirements and has not pleaded plausible facts sufficient for relief. The wrongful discharge claim fails.

VII.

We also find no error in the district court's decision that GM did not default by failing to answer the amended summons within 21 days, as GM provided good cause for an extension to answer the amended complaint. "District courts have broad discretion in managing their dockets and deadlines," and we are persuaded that the district court here acted well within its discretion. *U.S. Bank Tr. Nat'l Ass'n as Tr. of Tiki Series IV Tr. v. Walden*, 124 F.4th 314, 320 (5th Cir. 2024).

VIII.

We AFFIRM the district court's final judgment.

Appendix B
[Filed: Jun. 17, 2025]

United States Court of Appeals for the Fifth Circuit

No. 24-10841

ROCHELLE L. SMITH,

Plaintiff—Appellant,

versus

GENERAL MOTORS, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CV-379

Before HIGGINBOTHAM, JONES, and SOUTHWICK, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that each party bear its own costs on appeal

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

Appendix C
[Filed: Jul. 14, 2025]

United States Court of Appeals for the Fifth Circuit

No. 24-10841

ROCHELLE L. SMITH,

Plaintiff—Appellant,

versus

GENERAL MOTORS, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CV-379

Before HIGGINBOTHAM, JONES, and SOUTHWICK, *Circuit Judges.*

ON PETITION FOR REHEARING

Before HIGGINBOTHAM, JONES, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

Appendix D
[Filed: Jul. 25, 2024]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

ROCHELLE L. SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.**
	§	**4:23-cv-00379-O-BP**
GENERAL MOTORS, LLC,	§	
	§	
	§	
Defendant.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Plaintiff filed objections on July 3, 2024. The District Court reviewed the proposed Findings, Conclusions, and Recommendation de novo.[1] Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

It is therefore **ORDERED** that Defendant's Motion (ECF No. 32) is **GRANTED**, Plaintiff's claims that

[1] Having reviewed and liberally construed Plaintiff's objection, the Court finds that the objection does not identify the particular finding or recommendation to with the objection is made, state a basis for the objection, and specify the place in the Magistrate's FCR where the disputed determination is found.

Defendant refused to promote her and failed to enroll her in the ADAPT program are **DISMISSED without prejudice** to her right to refile them after exhausting her administrative remedies, Plaintiff's remaining claims are **DISMISSED**, and all pending motions (ECF Nos. 92-93, 96, 101, 107-109) are **DENIED** as **MOOT**.

SO ORDERED this 25th day of July, 2024.

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES DISTRICT JUDGE

Appendix E
[Filed: Jul. 3, 2024]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

ROCHELLE L. SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.**
	§	**4:23-cv-00379-O-BP**
GENERAL MOTORS, LLC,	§	
	§	
	§	
Defendant.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Motion for Judgment on the Pleadings, Brief in Support, and Appendix filed by Defendant General Motors, LLC ("GM"); Response, Brief in Support, and Appendix filed by Plaintiff Rochelle L. Smith ("Smith"); GM's Reply; and Smith's Sur-reply. ECF Nos. 82-84, 86-88, 89, and 90, respectively. This case was referred to the undersigned for pretrial management under Special Order No. 3. ECF No. 17. After reviewing the pleadings and applicable legal authorities, the undersigned **RECOMMENDS** that United States District Judge Reed O'Connor **GRANT** GM's Motion and **DISMISS** Smith's claims as explained below.

I. BACKGROUND

Smith filed this suit against GM in the Dallas Division of the Court on March 22, 2023. ECF No. 1. On March 28, 2023, the case was transferred to this division. ECF No. 9. Smith filed her Amended Complaint, which is the live pleading in this case, on May 22, 2023. ECF No. 25. In the Amended Complaint, Smith sues GM under 42 U.S.C. § 12117(a), the Americans with Disabilities Act ("ADA"), and the Texas Commission on Human Rights Act ("TCHRA"). *Id.* at 1-2. On September 14, 2023, the Court dismissed Smith's TCHRA claims. ECF Nos. 70, 74.

The following description of the facts comes from the Amended Complaint. GM hired Smith as a temporary forklift driver on February 24, 2020. ECF No. 25 at 3. On August 29, 2020, while attempting to avoid an "automated see-grid," Smith ran her forklift into a pole. *Id.* The crash caused her to suffer neck and shoulder stiffness as well as a concussion. *Id.* On September 2, 2020, Smith was cleared to return to work, restricted to sedentary work only. *Id.* at 4. Smith alleges that on her return, GM repeatedly assigned her to jobs that violated her restrictions. *Id.* at 6.

On September 17, 2020, GM assigned her to the "trim shop" in a role that required her to operate heavy equipment and lift objects. *Id.* This aggravated her injuries, so she complained to her supervisor. *Id.* The next day, GM reassigned her to the "stripping department," where she worked until September 30, 2020. *Id.* This job required her to stand "for more than the restricted hours of standing based on her restrictions." *Id.* In October 2020, GM reassigned her to the trim department in an inventory role. *Id.* at 7.

There, she had to stand for long periods of time, reach, pull, and walk. *Id.* GM gave her the same assignment in February 2021. *Id.*

In March 2021, GM assigned Smith to the trim shop in a job that it claimed would accommodate her injuries. *Id.* at 7-8. But this role still required her to walk, reach, bend, and ride along with a co-worker to deliver parts, all of which she claims fell outside of her work restrictions. *Id.* at 8. In a further effort to accommodate Smith, GM reassigned her to janitorial work in the meeting and break rooms. *Id.* This job required her to pick up trash and clean the walls, lockers, cabinets, and tables. *Id.* Smith complained to her supervisor that these roles violated her work restrictions. *Id.*

Smith complained about these assignments to her supervisors and to her union. *Id.* at 9. GM then informed Smith that, if she was unwilling or unable to perform the janitorial work, it would have to place her in the No Job Available With Restrictions program, which would allow her to return to work when her restrictions were reduced. *Id.* at 9. Smith asserts that this constituted retaliation. *Id.* She also alleges that GM did not permit her to attend the "ADAPT" program, which "is a program that helps" employees with medical restrictions "transition and find meaningful work." *Id.*

Roughly a year later, in March 2022, Smith had not returned to work, so GM declined to promote her from a temporary employee to permanent employee and terminated her employment. *Id.* at 10. When Smith asked GM why it terminated her, she was told that she had not received the promotion and had been terminated because she had been on worker's

compensation for over a year and had refused to return to work. *Id.* GM also informed Smith that it would rehire her if she could get medically cleared to come back to work. *Id.* On December 19, 2022, Smith filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), alleging that GM had failed to accommodate her injuries and ultimately wrongfully discharged her. *Id.* at 11. She received a right to sue letter from the EEOC on December 22, 2022. *Id.*

II. LEGAL STANDARD

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "A motion for judgment on the pleadings under Rule 12(c) is subject to the same legal standard as a motion to dismiss under Rule 12(b)(6)." *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (citation omitted). "The central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief." *Id.* (cleaned up) (quoting *Hughes v. The Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). To survive a motion for judgment on the pleadings, 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) (internal punctuation & citation omitted).

A court should grant a Rule 12(c) motion when "the plaintiff would not be entitled to relief under any set of facts that [s]he could prove consistent with the complaint." *Johnson v. Johnson,* 385 F.3d 503, 529 (5th Cir. 2004). While courts liberally construe the pleadings of a *pro se* party, "even a liberally-construed *pro*

se . . . complaint must set forth facts giving rise to a claim on which relief may be granted." *Levitt v. Univ. of Tex. at El Paso*, 847 F.2d 221, 224 (5th Cir. 1988). "Conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice[.]" *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002).

III. ANALYSIS

In its Motion, GM seeks dismissal of Smith's ADA claims because: (1) most of the alleged acts of discrimination fell outside the 300-day limitations period; (2) Smith did not exhaust her administrative remedies; and (3) she did not sufficiently plead a wrongful discharge claim. ECF No. 83 at 2-11. In response, Smith claims that her untimely claims survive under the continued violation doctrine and that she sufficiently pleaded a wrongful discharge claim. ECF No. 86 at 5.

A. The 300-day statute of limitations bars most of Smith's claims.

A plaintiff must exhaust her administrative remedies before filing a claim under the ADA in federal court. *Patton v. Jacobs Eng'g Grp., Inc.*, 874 F.3d 437, 443 (5th Cir. 2017) (citation omitted). To do so, a plaintiff must file a claim with the EEOC "within 180 days of the unlawful act or, within 300 days if the plaintiff has first filed a complaint with a state or local agency." *Ikossi–Anastasiou v. Bd. of Supervisors of La. State Univ.*, 579 F.3d 546, 549 (5th Cir. 2009); *EEOC v. WC & M Enterprises*, Inc., 496 F.3d 393, 398 (5th Cir. 2007) (citing 42 U.S.C. § 2000e–5(e)(1)).

Here, Smith filed her discrimination charge ("Charge") with the EEOC and the Texas Workforce

Commission ("TWC") on December 19, 2022. ECF No. 25 at 11. Because she filed with the TWC, the 300-day statute of limitations attached, meaning that any act contained within the Amended Complaint must have occurred on or after February 22, 2022. But almost all of the acts of discrimination Smith alleged occurred long before February 22, 2022, and are thus time-barred. *See generally* ECF No. 25.

Smith's argument that her claims survive under the continued violation doctrine is unavailing. ECF No. 86 at 5. "The continuing violation theory provides that where the last act alleged is part of an ongoing pattern of discrimination and occurs within the filing period, allegations concerning earlier acts are not time-barred." *McGregor v. La. State Univ. Bd. of Supervisors*, 3 F.3d 850, 866 (5th Cir. 1993) (internal quotation marks and citation omitted). But this doctrine "does not apply to discrete acts, even if those acts are 'serial'" in nature. *Rushing v. Yazoo Cnty. Ex rel. Bd. of Supervisors of Yazoo Cnty.*, 861 F. App'x 544, 553 (5th Cir. 2001) (cleaned up) (quoting *Gen. Land Office v. U.S. Dep't of the Interior*, 947 F.3d 309, 319 (5th Cir. 2020)); *see also Henson v. Bell Helicopter Textron, Inc.*, 128 F. App'x. 387, 391 (5th Cir. 2005); *Tudor v. Mayorkas*, Case No. 3:23-cv-0344-D, 2023 WL 7549192, at *3 (N.D. Tex. Nov. 14, 2023) ("[T]he continuing violation doctrine does not apply to intentional discrimination claims based on discrete acts.") (citation omitted). Discrete acts include easily identifiable actions "such as termination, failure to promote, denial of transfer, or refusal to hire[.]" *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); *see also Henson*, 128 F. App'x. at 391 (holding that defendant's failure to accommodate plaintiff's disability, allow him to continue

participating in the employer's EAP program, and provide him with appropriate work considering his limitations, were all discrete acts). All of Smith's alleged acts of discrimination—failure to accommodate, failure to promote, and wrongful discharge—are discrete acts that do not qualify as continuing violations. Consequently, the continued violation doctrine does not save any of the alleged discriminatory acts that fall outside of the 300-day limitations period.

Smith's Amended Complaint only alleges three acts that are not time-barred: (1) GM's failure to enroll Smith in the ADAPT program; (2) GM's refusal to promote her after her second work anniversary; and (3) the alleged wrongful discharge. *Id.* Smith argues that all or part of these discriminatory acts occurred in March 2022. Therefore, other than these three acts from March 2022, Judge O'Connor should **DISMISS** all of Smith's ADA claims as time-barred.

B. Smith did not exhaust her administrative remedies on her failure to promote and failure to enroll claims.

Administrative exhaustion occurs when the plaintiff presents her claims in an EEOC charge and receives a right to sue letter. *See Ernst v. Methodist Hosp. Sys.*, 1 F.4th 333, 337 (5th Cir. 2021). To determine whether a plaintiff has properly presented a claim, courts consider whether she formally asserted it in the relevant EEOC charge or the claim could "reasonably be expected to grow out of the charge[.]" *Filer v. Donley*, 690 F.3d 643, 647 (5th Cir. 2012) (quoting *Pacheco v. Mineta*, 448 F.3d 783, 789 (5th Cir. 2006)). "[T]he proper question is whether the charge

has stated sufficient facts to trigger an EEOC investigation . . . and to put an employer on notice of the existence and nature of the charges against him." *Madathil v. Accenture LLP*, No. 4:18-CV-511-ALM-CAN, 2019 WL 2913308, at *8 (E.D. Tex. May 29, 2019), *rec. adopted*, No. 4:18-CV-511, 2019 WL 2905037 (E.D. Tex. July 5, 2019) (quoting *Simmons-Myers v. Caesars Entm't Corp.*, 515 F. App'x 269, 272-73 (5th Cir. 2013) (per curiam)). When a court dismisses a claim for failure to exhaust administrative remedies, the dismissal is without prejudice, as the claimant has the right to return to court after exhausting applicable administrative remedies, if she can do so. *Taylor v. United States Treasury Dep't*, 127 F.3d 470, 478 (5th Cir. 1997).

Smith's Charge states, in its entirety:

> HARM: I began my employment in March 2020, as a Forklift
> Operator. In August 2020, I was injured at work. I returned to work in September 2020 and the employer did not honor my restrictions. I was sent home. On or about March 8, 2022, I was informed that my employment terminated, and I was no longer in the system. I was discriminated against because of my injury.
> REASON: No reason given. I believe I was discriminated against as described above, because of my disability, in violation of the Americans with Disabilities Act of 1990, as amended (ADA).

ECF No. 84 at 12.

Nothing in the Charge references Smith's allegations that GM did not permit her to attend the ADAPT program or that it denied her a promotion after her second work anniversary. Liberally construed, the Charge would not have caused GM to reasonably expect either of these alleged acts to grow out of the Charge. Tellingly, EEOC records that Smith filed do not indicate that the EEOC investigated either alleged act. *Id.* at 6-40. Additionally, in her response, Smith did not argue that she raised these claims in her Charge or that they were a logical outgrowth of the Charge. *See generally* ECF No. 87. Accordingly, the undersigned concludes that Smith did not exhaust her administrative remedies as to her claims for GM's failure to promote her and failure to enroll her in the ADAPT program, and Judge O'Connor should **DISMISS** these claims **without prejudice** to her right to refile once she has exhausted her administrative remedies.

C. Smith did not plead a proper wrongful discharge claim.

Smith has not pleaded sufficient facts to support her claim for wrongful discharge. To establish a *prima facie* case of wrongful discharge under the ADA, a plaintiff must prove: (1) that she has a disability under the ADA; (2) "that [s]he was qualified for the job;" and (3) that the employer terminated her because of her disability. *Moss v. Harris Cnty. Constable Precinct One*, 851 F.3d 413, 417 (5th Cir. 2017) (citations omitted). GM argues that Smith did not adequately state her wrongful discharge claim because she does not allege that she was disabled under the

ADA, she was qualified for the job, and she was terminated because of her disability. ECF No. 83 at 12-15. In response, Smith argues that: (1) "[her] restrictions and limitations meet the ADA requirements to show [she] was disabled" and she "has adequately alleged that her restrictions and limitations impact[ed her] major life activities because she was not allowed to work her current forklift job"; (2) "[she] was qualified for the job because she passed a medical exam that allowed her to operate heavy operating equipment . . . before the August 29, 2020 incident;" and (3) she has pleaded that GM fired her because of her disability since she was told "you have about a week to clear medical to get your job back." ECF No. 87 at 16, 19-20 (internal quotation marks omitted).

1. Smith did not state facts to show that she was qualified for the job.

A plaintiff can establish that she is "qualified" by showing that either (1) she could "perform the essential functions of the job in spite of her disability," or "(2) that a reasonable accommodation of her disability would have enabled her to perform the essential functions of the job." *EEOC v. LHC Grp., Inc.*, 773 F.3d 688, 697 (5th Cir. 2014) (cleaned up) (quoting *Turco v. Hoechst Celanese Corp.*, 101 F.3d 1090, 1093 (5th Cir.1996)). "Time off, whether paid or unpaid, can be a reasonable accommodation, but an employer is not required to provide a disabled employee with indefinite leave." *Delaval v. PTech Drilling Tubulars, L.L.C.*, 824 F.3d 476, 481 (5th Cir. 2016). Furthermore, reassignment to a different job may be a reasonable accommodation, but "[t]he plaintiff bears the burden of

proving that an available position exists that [she] was qualified for and could, with reasonable accommodations, perform." *Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 315 (5th Cir. 2007) (citing *Foreman v. Babcock & Wilcox Co.*, 117 F.3d 800, 810 (5th Cir. 1997) ("For the accommodation of a reassignment to be reasonable, it is clear that a position must first exist and be vacant.")).

GM argues that Smith has not alleged that she was qualified for her job as a forklift driver because she admits that operating heavy equipment violated her work restrictions. ECF No. 83 at 10-11. Additionally, it asserts that Smith did not state facts to show that there were any other jobs or tasks that she could have performed with or without reasonable accommodation. *Id.* In response, Smith claims that she was qualified for her job as a forklift driver because "she passed a medical exam that allowed her to operate heavy operating equipment[,] [] held a . . . license to drive a forklift," and that she was—after the forklift incident—"qualified for sedentary" work. ECF No. 87 at 19.

As a preliminary matter, the Court need not consider the allegations that Smith made in her response because she did not raise them in her original or amended complaint, and it is improper for her to attempt to amend her pleadings in a response brief. *See Mun. Employees' Ret. Sys. of Mich. v. Pier 1 Imports, Inc.*, 935 F.3d 424, 436 (5th Cir. 2019) (citing *Lohr v. Gilman*, 248 F. Supp. 3d 796, 810 (N.D. Tex. 2017) ("a plaintiff may not amend [a] complaint in [a] response to a motion to dismiss")).

Even if Smith had properly raised this point, her arguments are not persuasive. First, just because she was qualified to be a forklift driver when GM hired

her does not mean that she still was qualified after her forklift crash. Smith even admits that her work restrictions, which did not allow her to drive a forklift, rendered her unqualified because driving the forklift was an essential function of her job. ECF No. 25 at 3, 6.

Second, Smith's assertion that she was qualified for sedentary work is insufficient. Smith must offer facts to show that a specific job was available for which she was qualified. *Jenkins*, 487 F.3d at 315. Smith's pleadings do not identify any specific job that was available to her and for which she was qualified. *See* ECF Nos. 25, 87. Moreover, GM placed her in no less than six different alternative jobs, none of which Smith was either able or willing to perform, indicating

that there were no jobs for which she was qualified. ECF No. 25 at 3-11. The undersigned therefore finds that Smith has not sufficiently pleaded facts that would show that she was qualified for the job, and Judge O'Connor should **DISMISS** Smith's wrongful discharge claim.

2. Smith did not adequately plead disability under the ADA.

Even if Smith had pleaded facts showing that she was qualified, she did not present facts demonstrating that she was disabled. The ADA defines "disability" as: "(A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(1). To "be substantially limited means to be unable to perform a major life activity that the average person in

the general population can perform, or to be significantly restricted in the ability to perform it." *EEOC v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 614 (5th Cir. 2009) (citing 29 C.F.R. § 1630.2(j)). "[M]ajor life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A). Thus, for Smith to adequately allege that she was disabled under the ADA, she had to plead facts sufficient to give rise to an inference that she had a physical or mental impairment which "substantially limit[ed] one or more 'major life activities.'" *See Luedecke v. Tenet Healthcare Corp.*, 2015 WL 58733, at *5 (N.D. Tex. Jan. 5, 2015) (quoting *Hale v. King*, 642 F.3d 492, 500-01 (5th Cir. 2011)).

Other than Smith's conclusory statements that she was a "disabled employee," restricted to "sedentary work," the Amended Complaint is devoid of any facts giving rise to an inference that she was disabled under the ADA. *See generally* ECF No. 25. Smith alleges, for the first time in her Response to GM's Motion, that her injuries substantially limited her major life activities. ECF No. 87 at 16. This allegation is insufficient to plead a disability as it is improper for the Court to rely on a response to a motion to assist the pleadings. *See Pier 1*, 935 F.3d at 436 (citing *Lohr*, 248 F. Supp. 3d at 810).

Even if Smith had made this allegation earlier than in her response, it is insufficient to establish that she was disabled. Smith's medical restriction on lifting does not automatically qualify her as disabled. *See, e.g., Tyler v. La-Z-Boy Corp.*, 506 F. App'x 265, 268

(5th Cir. 2013) ("lifting restrictions of twenty-four pounds from floor to waist and twenty pounds from waist to overhead do not qualify as a disability under the ADA"); *Ray v. Glidden Co.*, 85 F.3d 227, 229 (5th Cir. 1996) (restriction of lifting no more than five to ten pounds did not "substantially limit" the major life activity of lifting). To show substantial limitation on working, a plaintiff must allege that she is "unable to work in a broad class of jobs." *Sutton v. United Air Lines*, 527 U.S. 471, 483 (1999). "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." *Ray*, 85 F.3d at 229. Smith only alleges that she cannot perform her role as a forklift driver. *See* ECF No. 25. She alleges no facts demonstrating that she is unable to work in other jobs, and she acknowledges that she can perform sedentary work. *Id.*

Accordingly, the undersigned finds that Smith has not sufficiently pleaded facts to show that she was disabled under the ADA. Because she has not pleaded facts to show that she was disabled, she likewise cannot show that GM terminated her employment because of a disability. Accordingly, Judge O'Connor should **DISMISS** her wrongful discharge claim.

IV. CONCLUSION

The undersigned **RECOMMENDS** that Judge O'Connor **GRANT** GM's Motion for Judgment on the Pleadings (ECF No. 82), **DISMISS** Smith's claims that GM refused to promote her and failed to enroll her in the ADAPT program **without prejudice** to her right to refile them once she has exhausted her administrative remedies, **DISMISS** Smith's remaining

claims, and **DENY** the pending discovery-related motions (ECF Nos. 92-93, 96, 101, 107-109) as **MOOT**.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), modified by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).

SIGNED on July 3, 2024.

/s/ Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

Appendix F
[Filed: Jul. 25, 2024]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

ROCHELLE L. SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.**
	§	**4:23-cv-00379-O-BP**
GENERAL MOTORS, LLC,	§	
	§	
	§	
Defendant.	§	

FINAL JUDGMENT

This Judgment is issued pursuant to Fed. R. Civ. P. 58(a).

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered.

It is **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. Plaintiff's claims that Defendant refused to promote her and failed to enroll her in the ADAPT program are **DISMISSED without prejudice** to her right to refile them after exhausting her administrative remedies.

2. Plaintiff's remaining claims are **DISMISSED**.

3. The clerk shall transmit a true copy of this Judgment, together with a true copy of the Order accepting the Findings, Conclusions, and

Recommendation of the United States Magistrate Judge, to the parties.

SO ORDERED on this 25th day of July, 2024.

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES DISTRICT JUDGE

Appendix G
[Filed: Aug. 20, 2024]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

ROCHELLE L. SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.**
	§	**4:23-cv-00379-O-BP**
GENERAL MOTORS, LLC,	§	
	§	
	§	
Defendant.	§	

ORDER

Before the Court is Plaintiff's Objections to Final Judgment (ECF Nos. 119, 120, 121, 124, and 125); Defendant's Response (ECF No. 126), and Plaintiff's Reply (ECF No. 127). Plaintiff's motions do not articulate any ground under Rule 59 that would allow for reconsideration. Having considered the motion and the applicable law, this Court summarily **DENIES** Plaintiff's reconsideration request.

Federal Rule of Civil Procedure 59(e) provides that a "motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." FED. R. CIV. P. 59(e). "Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). A court may do so under Rule 59(e) "to correct manifest errors of law or fact or

to present newly discovered evidence." *Id.* at 479 (citation omitted). "'Manifest error' is one that 'is plain and indisputable, and that amounts to a complete disregard of the controlling law.'" *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (citation omitted). Evidence does not amount to "newly discovered evidence" under Rule 59(e) where a plaintiff could have pursued discovery earlier by proper diligence or asked the court for additional time but did not. *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863–65 (5th Cir. 2003).

Importantly, Rule 59(e) motions are "not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet*, 367 F.3d at 479 (citation omitted). Parties cannot use a Rule 59(e) motion to advance their disagreement with the Court's prior analysis in an effort to relitigate issues previously resolved against them. *Assariathu v. Lone Star HMA LP*, No. 3:11-cv-99-O, 2012 WL 12897342, at *3 (N.D. Tex. June 5, 2012) (O'Connor, J.) ("Plaintiffs are essentially attempting to relitigate issues previously resolved against them by advancing their disagreement with the Court's analysis. Such arguments are insufficient to warrant granting the extraordinary relief available under Rule 59(e) or 60(b).").

Having reviewed Plaintiff's request for reconsideration, the Court finds that Plaintiff points to no manifest errors of law or fact, newly discovered evidence, or other reason that reconsideration is warranted under the circumstances. In fact, Plaintiff's motion rehashes the same arguments previously rejected by the Court. The Court identifies no such manifest errors of law or fact in need of correction. Nor is the Court able

to identify any reference to newly discovered evidence or some change in controlling law.

As a result, the Court finds that Plaintiff is merely attempting to relitigate issues previously resolved against him by advancing disagreement with the Court's analysis. *Assariathu*, 2012 WL 12897342, at *3. Accordingly, the Court finds that Plaintiff does not carry his burden under Rule 59 and summarily **DENIES** the Objections to Final Judgment. This case remains **CLOSED**.

SO ORDERED on this **20th day** of **August, 2024**.

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES DISTRICT JUDGE

Appendix H
[Filed: Aug. 30, 2024]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

ROCHELLE L. SMITH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.**
	§	**4:23-cv-00379-O-BP**
GENERAL MOTORS, LLC,	§	
	§	
	§	
Defendant.	§	

ORDER

Before the Court are Plaintiff's Additional Objections to Final Judgment (ECF Nos. 129 and 130). Having reviewed Plaintiff's additional requests for reconsideration, the Court finds that Plaintiff points to no manifest errors of law or fact, newly discovered evidence, or other reason that reconsideration is warranted under the circumstances. Accordingly, the Court finds that Plaintiff does not carry her burden under Federal Rule of Civil Procedure 59(e) and summarily **DENIES** the Objections to Final Judgment. This case remains **CLOSED**.

SO ORDERED on this **30th day** of **August, 2024**.

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES DISTRICT JUDGE

Appendix I
[Filed: Dec. 9, 2024]

No. 24-10841

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Rochelle L. Smith,
Plaintiff-Appellant.

v.

General Moros, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Texas, No. 23-cv-379
Hon. Reed O'Connor

BRIEF OF THE EQUAL EMPLOYEMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

KARLA GILBIRDE
General Counsel

EQUAL EMPLOYMENT
OPPORTUNITY COM-
MISSION

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[Tables of Contents and Authorities omitted in reproduction]

STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission ("EEOC") with interpreting the definition of "disability" under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12205a, and with interpreting and enforcing Title I of the ADA, 42 U.S.C. §§ 12116, 12117. In 2008, Congress amended the ADA to expand the scope of its protections. ADA Amendments Act of 2008 ("ADAAA"), Pub. L. No. 110-325, 122 Stat. 3553 (2008). In this case, the district court relied on pre-ADAAA law in analyzing whether the plaintiff had a covered disability. Because the EEOC has a substantial interest in the proper interpretation of the laws it enforces, the EEOC files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUES[1]

1. Did the district court err in relying on pre-ADAAA law in analyzing whether the plaintiff had an actual disability?

2. Should the district court have considered plaintiff's argument that her employer regarded her as disabled?

STATEMENT OF THE CASE

A. Statement of the Facts[2]

Defendant General Motors LLC ("GM") hired Plaintiff Rochelle Smith as a forklift driver for its Arlington Plant in February 2020. R.25 at 3 (¶6).[3] On August 29, 2020, Smith was operating a forklift when she swerved to avoid a GM automated vehicle and hit a pole. *Id.* at 3 (¶7). The forklift frame slammed into her forehead, causing her to lose consciousness. *Id.* at 3 (¶¶7,9). After an on-site nurse noted her swollen head, EMS transported Smith to the ER. *Id.* at 3 (¶¶8-10). There, Smith experienced a "significant headache," "stiffness in the neck and shoulders," and blurred vision, and was diagnosed with a concussion, a "head contusion," and "cervical strain." *Id.* at 3-4 (¶10).

A doctor cleared Smith to return to work on September 2 with restrictions, including a restriction to

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[1] The EEOC takes no position on any other issues in this appeal.

[2] Because this appeal arises from a grant of GM's motion for judgment on the pleadings, the EEOC recounts the well-pleaded facts in Smith's Amended Complaint in the light most favorable to Smith. *See Great Lakes Ins., S.E. v. Gray Grp. Invs., L.L.C.*, 76 F.4th 341, 349 (5th Cir. 2023).

[3] The EEOC cites to the district court record using the following format: R.[Docket number] at [PageID number].

"sedentary work only" for three days. *Id.* at 4 (¶11). The next day, however, Smith went to GM's medical clinic because she was experiencing a severe headache and dizziness. *Id.* at 4 (¶13). She visited a medical center the following day, where a doctor cleared her to return to work with a long-term, sedentary-only restriction. *Id.* at 5 (¶14). Smith's Amended Complaint also referenced some restrictions on standing, walking, lifting, pulling, reaching, bending, and riding on heavy equipment. *See generally id.* at 6-8 (¶¶19-22,24-26).

According to Smith's Amended Complaint, GM repeatedly assigned Smith to jobs that fell outside of her restrictions. *Id.* at 6-9 (¶¶19-26). In mid-September, GM assigned her to the Trim Shop, which involved "lifting heavy equipment and riding on heavy equipment"—actions that aggravated her back and neck injuries. *Id.* at 6 (¶19). When Smith complained, GM assigned her to the Stripping Department. *Id.* at 6 (¶20). This position also fell outside of Smith's work restrictions because it required hours-long, continuous standing. *Id.* In October, and again in February, GM assigned her to an inventory role in the Trim Shop that "consisted of long standing, reaching, pulling and walking"—actions at odds with Smith's work restrictions. *Id.* at 7 (¶¶21-22).

In March 2021, GM assigned Smith to two roles in the Trim Shop that it claimed would accommodate her injuries. *Id.* at 7-8 (¶¶24-26). Neither did. *Id.* at 8 (¶¶25-26). The first required Smith to ride on heavy machinery and to walk, reach, and bend. *Id.* at 8 (¶25). The second involved janitorial work in the meeting and break rooms and required her to wash walls and cabinets, as well as pick up trash and clean tables. *Id.*

at 8 (¶26). Smith complained to her supervisor and the union that these tasks violated her work restrictions. *Id.* 8-9 (¶¶27-28).

Finally, GM placed Smith in a "no job available" program and instructed her to go home. *Id.* at 9 (¶28). Smith received worker's compensation at this time. *Id.* at 5,9-10 (¶¶16,30,32).

GM terminated Smith's employment in March 2022, stating that Smith had been on worker's compensation for a year. *Id.* Smith alleges that she learned of the termination from a GM medical nurse when she was "visit[ing] GM for her bi-weekly doctor orders update." *Id.* at 5 (¶15). When Smith inquired into the reasons for termination, GM informed Smith that it would rehire her if she could get medically cleared within a week. *Id.* at 10 (¶31). According to Smith, GM wanted her "to ignore her doctor's orders." *Id.*

B. District Court's Decision

Smith filed suit *pro se* under, *inter alia*, the ADA, and GM moved for judgment on the pleadings. The magistrate judge issued a Findings, Conclusions, and Recommendation ("FCR"). R.114. He first recommended dismissing most of Smith's claims as time-barred. *Id.* at 4-6. He then recommended disposing of two additional claims, holding that Smith failed to satisfy the administrative charge-filing requirements for those claims. *Id.* at 6-7.

For Smith's sole remaining claim—termination in violation of the ADA—the magistrate judge held that Smith did not plead sufficient facts to show either that she was qualified for the job or that she had a disability. *Id.* at 8-11. And "[b]ecause she has not pleaded facts to show that she was disabled, she likewise

cannot show that GM terminated her employment because of a disability." *Id.* at 11.

As to Smith's failure to plead that she had a disability, the magistrate judge first explained that the ADA defines disability to include "a physical or mental impairment that substantially limits one or more major life activities." *Id.* at 10 (quoting 42 U.S.C. § 12102(1)). He added that to "be substantially limited means to be unable to perform a major life activity that the average person in the general population can perform, or to be significantly restricted in the ability to perform it." *Id.* (quoting *EEOC v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 614 (5th Cir. 2009)).

The magistrate judge next determined that Smith's allegations that she was a "disabled employee" and limited to "sedentary work" were conclusory and held that the Amended Complaint was otherwise "devoid of any facts giving rise to an inference that she was disabled under the ADA." *Id.* He dismissed Smith's allegations in her response to GM's motion because it would be "improper ... to rely on a response to a motion to assist the pleadings." *Id.* at 10-11 (citation omitted).[4]

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[4] Smith's response brief says that a doctor diagnosed her at some point with "on-going head and neck injur[ies]" as well as "Traumatic Brain Injury" and "Post Concussion Syndrome," and that she was placed on numerous long-term restrictions extending from the time of the accident until June 2023 (e.g., "driving/operating heavy equipment," "kneeling/squatting," "bending/stooping," "climbing," "overhead reaching," standing more than four hours a day, and walking more than two hours a day). R.87 at 14-17. *Cf. Lozano v. Schubert*, 41 F.4th 485, 490-91 (5th Cir. 2022) (collecting cases explaining that courts should consider *pro se* briefs as amendments to the complaint when considering motions to dismiss).

But even if Smith's Amended Complaint had included the allegations mentioned in Smith's response briefing, the magistrate judge concluded, her allegations would still be "insufficient to establish that she was disabled." *Id.* at 11. The judge held that Smith's allegations regarding her medical restriction on lifting were insufficient. *Id.* Nor did she plausibly allege a substantial limitation on the major life activity of "working." *Id.* The magistrate judge reasoned that Smith "only alleges that she cannot perform her role as a forklift driver," "alleges no facts demonstrating that she is unable to work in other jobs," and "acknowledges that she can perform sedentary work." *Id.* The magistrate judge did not address Smith's allegations that GM "regarded [her] as having a disability," R.25 at 6 (¶18), or GM's rebuttal as to that point, R.83 at 13.

Shortly after the magistrate judge issued its FCR, Smith filed a Motion for a Jury Trial. *See* R.115. Both the district court and GM interpreted the motion as an objection to the FCR but concluded that Smith had not lodged specific objections. R.117 at 1; R.116 at 1-

2.[5] The district court reviewed the FCR *de novo* and accepted it upon finding no error. R.117.[6]

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[5] Smith's motion, liberally construed—as it must be, *Brown v. Sudduth*, 675 F.3d 472, 477 (5th Cir. 2012); *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995) (per curiam)— does include arguments that rebut the FCR's disability analysis and conclusion. For example, she argues that "[t]he motion implicates the 2008 amendments to the ADA, which broadened the definition of 'disability,'" she details how her various impairments limited numerous life activities throughout her employment, and she includes the statutory text of the definition of disability. R.115 at 3, 18-20, 28-31.

[6] Because the district court engaged in *de novo* review, this Court's review is *de novo* (rather than for plain error)—even assuming that Smith failed to lodge specific objections. "*De novo* review... means that the district court independently review[d] matters in the record," *Shiimi v. Asherton I.S.D.*, No. 92-5562, 1993 WL 4732, at *2 n.18 (5th Cir. Jan. 8, 1993), and "[w]hen ... the district court undertakes an independent review of the record, [the Fifth Circuit's] review is *de novo*, despite any lack of objection [to the FCR]," *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017). *See also Dennis v. U.S. Postal Serv.*, 564 F. App'x 85, 86 (5th Cir. 2014) ("[W]e do not require specific objections as a prerequisite to full review when the district court has engaged in de novo review."). This rule is "especially relevant in the context of *pro se* cases." *Alexander*, 875 F.3d at 248 (citation omitted). That the district court's statement might be "judicial boilerplate" makes no difference; it nonetheless "indicate[s] that [the district court] conducted an independent review of the record." *Id.* at 249. Indeed, the same district court judge underscored in a different order accepting an FCR that "*de novo* review mandates a from-scratch review of the record and application of the law to the facts of th[e] case." *Glick v. Am. Bar Ass'n*, No. 4:24-cv-00350, 2024 WL 3264514, at *1 (N.D. Tex. July 1, 2024). Whether Smith offered specific objections to the FCR is therefore irrelevant, and the appropriate standard of review is *de novo*.

ARGUMENT

Under the ADA, a covered employer may not "discriminate against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). "Disability" means "a physical or mental impairment that substantially limits one or more major life activities of such individual," "a record of such an impairment," or "being regarded as having such an impairment." 42 U.S.C. § 12102(1)(A)-(C). Smith pled that she was disabled under the first and third prongs of the statutory definition, which are known as the actual disability and regarded-as prongs. *See, e.g.*, 29 C.F.R. § 1630.2(g)(2). Specifically, she alleged that she was "a qualified individual with a disability" and that GM "also regarded [her] as having a disability by subjecting her to an adverse employment action . . . because of an actual or perceived physical impairment." R.25 at 6 (¶18). As explained below, the district court[7] used the wrong standard as to the actual disability prong and improperly ignored Smith's allegations as to the regarded-as prong.

I. The district court relied on a definition of "substantially limited" that the ADAAA expressly abrogated.

The district court erred in its analysis of the actual disability prong by using standards that Congress expressly abrogated in the ADAAA and that this Court has since rejected. The court held that to "be substantially limited means to be *unable to perform* a major

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[7] Because the district court reviewed the FCR *de novo* and accepted its conclusions, R.117, the EEOC refers to both decisions together as those of the "district court."

life activity that the average person in the general population can perform, or to be *significantly restricted* in the ability to perform it." R.114 at 10 (emphases added). For this prevent-or-significantly-restrict standard, the district court cited *EEOC v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 614 (5th Cir. 2009), which in turn cited 29 C.F.R. § 1630.2(j). R.114 at 10.

The district court used the wrong regulatory standard. That standard, cited in *Chevron Phillips*, appears in the pre-ADAAA version of the regulations. *See* 29 C.F.R. § 1630.2(j)(1)(i)-(ii) (1991) ("substantially limits" means "[u]nable to perform" or "[s]ignificantly restricted" in performing a major life activity). Congress has since rejected it. Indeed, this Court has acknowledged that *Chevron Phillips* "applied *pre*-ADAAA case law and [is] therefore inapposite." *Mueck v. La Grange Acquisitions, L.P.*, 75 F.4th 469, 481 (5th Cir. 2023).

As *Mueck* explained, because "[c]ourts initially construed the definition of disability narrowly, particularly in the context of determining whether an impairment substantially limited a major life activity ... Congress enacted the ... ADAAA ... with the goal of reinstating a broad scope of protection to be available under the ADA." *Id.* at 479 (citations omitted). *See also* ADAAA, Pub. L. No. 110-325, §§ 2(a), 2(b)(1), 122 Stat. 3553 (2008) (hereinafter "ADAAA") (similar). Congress underscored that "[t]he definition of disability ... shall be construed in favor of broad coverage," 42 U.S.C. § 12102(4)(A), and "the question of whether an individual's impairment is a disability under the [post-amendment] ADA should not demand extensive analysis," ADAAA § 2(b)(5). *See also Cannon v. Jacobs Field Servs. N. Am., Inc.*, 813 F.3d 586, 590 (5th Cir.

2016) (recognizing that the "amendments 'make it easier for people with disabilities to obtain protection under the ADA,' and that "[a] principal way in which Congress accomplished that goal was to broaden the definition of 'disability'" (quoting 29 C.F.R. § 1630.1(c)(4)).

Indeed, Congress expressly rejected the standard that the district court used, "convey[ing] congressional intent" that the pre-ADAAA standard "created an inappropriately high level of limitation." ADAAA § 2(b)(5); *see also id.* § 2(a)(8) (similar). It thus instructed the EEOC to "revise" its "regulations that define[] the term 'substantially limits' as 'significantly restricted' to be consistent with this Act." *Id.* § 2(b)(5)-(6); *see also* 42 U.S.C. § 12102(4)(B) ("The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008."); 42 U.S.C. § 12205a (authorizing the EEOC to issue regulations implementing the definition of disability).

The EEOC's revised regulations state that "[a]n impairment *need not prevent, or significantly or severely restrict,* the individual from performing a major life activity in order to be considered substantially limiting," 29 C.F.R. § 1630.2(j)(1)(ii) (emphasis added), as this Court has recognized, *see, e.g., Epley v. Gonzalez*, 860 F. App'x 310, 313 (5th Cir. 2021); *Williams v. Tarrant Cnty. Coll. Dist.*, 717 F. App'x 440, 446 (5th Cir. 2018); *Mann v. Louisiana High Sch. Athletic Ass'n*, 535 F. App'x 405, 410 n.1 (5th Cir. 2013) (noting that where this Court has used pre-ADAAA standards, it has done so "because the amendments were not retroactive" and those cases "involved conduct occurring prior to the effective date of the amendments.").

Rather, the term "substantially limits" "shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for 'substantially limits' applied prior to the ADAAA." 29 C.F.R. § 1630.2(j)(1)(iv); *see also Mueck*, 75 F.4th at 479 (same); *Cannon*, 813 F.3d at 590-91 (same).

Post-amendments, the correct coverage inquiry is "whether [the plaintiff's] impairment substantially limits his ability 'to perform a major life activity as compared to most people in the general population.'" *Cannon*, 813 F.3d at 591 (quoting 29 C.F.R. § 1630.2(j)(1)(ii)); *Mueck*, 75 F.4th at 479 (same). The district court thus erred in using an outdated standard.

The district court also wrongly relied on pre-ADAAA case law in concluding that, even when considering Smith's allegations in her response briefing, her alleged lifting limitations did not qualify as a disability. Notably, the court's cited authority—*Tyler v. La-Z-Boy Corp.*, 506 F. App'x 265 (5th Cir. 2013), and *Ray v. Glidden Co.*, 85 F.3d 227 (5th Cir. 1996)—analyzed pre-amendments conduct and thus used the outdated disability definition to hold that the respective plaintiffs did not adduce sufficient evidence for purposes of summary judgment to show that their lifting restrictions substantially limited a major life activity. These cases' disability analyses are no longer good law. *See Mann*, 535 F. App'x at 410 n.1.

This Court's decision in *Cannon*, 813 F.3d at 590-91, provides a framework for applying the correct, post-amendments standard for the actual disability analysis. In *Cannon*, the plaintiff suffered from an inoperable rotator cuff injury that resulted in a ten-pound lifting restriction and other limitations. *Id.* at 588. The

district court held on summary judgment that Cannon had not shown that he was disabled because his "injured shoulder did not substantially impair[] his daily functioning." *Id.* at 590 (alteration in original). This Court reversed, holding that "[w]hatever merit that finding of no disability may have had under the original ADA, it is at odds with changes brought about by the ADA Amendments Act of 2008." *Id.* The court observed that "[t]he inquiry in this post-amendment case is ... whether Cannon's impairment substantially limits his ability 'to perform a major life activity as compared to most people in the general population.'" *Id.* at 591 (quoting in part 29 C.F.R. § 1630.2(j)(1)(ii)). Using that "more relaxed standard," this Court held that the evidence that "[Cannon] is unable to lift his right arm above shoulder level and that he has considerable difficulty lifting, pushing, or pulling objects with his right arm" supported "a conclusion that Cannon's injury qualifies as a disability[.]" *Id.* Thus, *Cannon*, rather than *Tyler* or *Ray*, provides the correct analysis.

II. The district court failed to consider whether Smith adequately pled that she was "regarded as" disabled.

The district court should have considered Smith's allegation that GM "regarded [her] as having a disability by subjecting her to an adverse employment action, race discrimination, job promotion denial and termination because of an actual or perceived physical impairment." R.25 at 6 (¶18). Post-amendments, an individual seeking to show that she was disabled under the regarded-as prong need only show "that he or she has been subjected to an action prohibited under

this chapter because of an actual or perceived physical or mental impairment *whether or not the impairment limits or is perceived to limit a major life activity*." 42 U.S.C. § 12102(3)(A) (emphasis added); *see also Burton v. Freescale Semiconductor, Inc.*, 798 F.3d 222, 230 (5th Cir. 2015) (quoting statutory provision). Given that the district court concluded that Smith had failed to plead that her impairments substantially limited a major life activity, it should have addressed the regarded-as prong.

Focusing on the regarded-as prong is especially appropriate in a case like this one, where the district court disposed of Smith's failure-to-accommodate claims on other grounds, leaving only her termination claim. *See, e.g.*, 29 C.F.R. § 1630.2(g)(3) ("Where an individual is not challenging a covered entity's failure to make reasonable accommodations ... it is generally unnecessary to proceed under the 'actual disability' or 'record of' prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the 'regarded as' prong of the definition of disability, which does not require [that showing]."); *Alexander v. Wash. Metro. Area Transit Auth.*, 826 F.3d 544, 547 (D.C. Cir. 2016) ("[A]fter the 2008 Amendments, the regarded-as prong has become the primary avenue for bringing [ADA discrimination claims with no accommodation component].").

GM argued before the district court that Smith could not satisfy the regarded-as prong, and in doing so relied solely on pre-ADAAA case law—namely, *McInnis v. Alamo Cmty. Coll. Dist.*, 207 F.3d 276 (5th Cir. 2000), and *Aldrup v. Caldera*, 274 F.3d 282 (5th

Cir. 2001). R.83 at 13. Quoting language from those decisions, GM argued that Smith had to show that her employer entertained a misperception about her: either Smith must show that GM believed that she had a substantially limiting impairment that she does not in fact have, or she must show that her impairment is not so limiting as GM believed. *Id.* Congress abrogated that standard with the ADAAA. Post-ADAAA, the level of limitation caused (or perceived to be caused) by the impairment is irrelevant to the regarded-as prong—a plaintiff need only establish that she was "subjected to an action prohibited under [the ADA] because of an actual or perceived physical or mental impairment *whether or not the impairment limits or is perceived to limit a major life activity.*" *Burton*, 798 F.3d at 230 (alteration in original) (emphasis added) (quoting 42 U.S.C. § 12102(3)(A)).

CONCLUSION

For the foregoing reasons, the EEOC respectfully requests this Court conduct the disability analysis under the standards set out by the ADAAA.

Respectfully submitted,

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