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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CHARITA CARTHEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.:5:20-cv-1812-LCB**
	)	
THE CITY OF HUNTSVILLE, ALABAMA,	)	
	)	
Defendant.	)	

ORDER

Plaintiff Charita Carthen alleges the City of Huntsville subjected her to racial discrimination and retaliated against her. She's sued to right these wrongs, seeking a declaratory judgment, injunctive and equitable relief, monetary damages, and attorneys' fees. (Doc. 16). Because Carthen has failed to state a claim upon which relief can be granted–for several reasons–the Court **GRANTS** the City's Motion to Dismiss, and Carthen's claims are **DISMISSED WITH PREJUDICE**.

FACTUAL BACKGROUND

Carthen is an African American woman. (Doc. 16 at 2). She has a master's degree. (Doc. 16 at 2).[1] She worked for the City of Huntsville until June 21, 2019,

[1] Consistent with his pattern in this case, Carthen's counsel has omitted certain details from the Amended Complaint. For example, he failed to disclose the academic discipline in which Carthen holds a master's degree, the position she held with the City, when she started working for the City, and when she was hired–which would also provide a date for her attempted pay negotiations with the City.

when she resigned her position. (Doc. 16 at 2). Carthen claims that she and another African American employee[2] with an advanced degree performed duties required by positions that demanded higher compensation than they received. She further contends that those duties were more complex than those required by their positions. (Doc. 16 at 2).

At some unspecified time, Carthen requested a "pay negotiation" with the City, but her request was denied. (Doc. 16 at 2). Carthen complained about this denial to City Councilman Devyn Keith. (Doc. 16 at 2). Carthen contends that Councilman Keith told her that he believed she was underpaid. (Doc. 16 at 2). At some other unspecified time, Carthen contends she was encouraged to present a proposal for reopening a municipal administrative aide position and to apply for that job. (Doc. 16 at 2). Carthen avers that this position would've compensated her for the extra duties she was then-performing. (Doc. 16 at 2).

Around December of 2018, Councilman Keith told Carthen that Councilwoman Jennie Robinson had become involved with the administrative aide proposal and position when she learned that Carthen was interested in it. (Doc. 16 at 3). Councilwoman Robinson, according to Mr. Keith, believed that the administrative aide position should be open to external applicants and that the City

[2] As the Court understands it, the other employee counsel references here held a position titled "Secretary II," a position for which Carthen later applied. (Doc. 16 at 4).

should look for applicants that had experience with municipal boards. (Doc. 16 at 3). Moreover, Carthen contends, Councilman Keith told her that Councilwoman Robinson had a candidate in mind for the job. (Doc. 16 at 3).

Carthen perceived, based on Councilman Keith's representations, that Councilwoman Robinson's candidate for the administrative aide position was a shoo-in, so she didn't apply for it. (Doc. 16 at 3). Carthen contends that, in that same conversation, Councilman Keith told her that she would receive a raise (at some unspecified time), and that if that pay wasn't enough, she could look for a new job and expect a favorable reference from him. (Doc. 16 at 3). By June 21, 2019, the raise Mr. Keith assured her was coming hadn't arrived, so Carthen resigned. (Doc. 16 at 3).

Shortly after Carthen resigned, the City hired Kathy Rooker to fill the administrative aide position Carthen lobbied to reopen. (Doc. 16 at 3). Rooker is a Caucasian woman. *Id*. Another unnamed Caucasian woman was hired for a second position. It's unclear from Carthen's Amended Complaint whether this was a like position to Rooker's or an entirely different job. Each woman received higher compensation that Carthen had prior to her resignation. (Doc. 16 at 3). Councilwoman Robinson, Carthen contends, influenced her payrate and the payrates of the women hired after she resigned. (Doc. 16 at 3). On November 8, 2019, Carthen

filed an EEOC Charge of Discrimination against the City, alleging she experienced racial discrimination. (Doc. 16 at 4).[3]

Carthen applied for a "Secretary II" position with the City in December of 2019. (Doc. 16 at 2, 4). On January 3, 2020, Kathy Rooker conducted a pre-screen telephone interview with Carthen. (Doc. 16 at 2, 4). During the interview, Rooker told Carthen to let her know if Carthen decided to withdraw her application. (Doc. 16 at 4). Ultimately, Carthen wasn't hired for that job. (Doc. 16 at 2, 4).

In Count I of her Amended Complaint, Carthen alleges that she suffered racial discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended. (Doc. 16 at 5). Specifically, Carthen contends that she was "treated differently and worse" than the Caucasian employees who "replaced her" after her resignation and that "such treatment was directed to her during the application process by the White individual who replaced her." (Doc. 16 at 5). As the Court understands it, Carthen claims the City's refusal to hire her for the Secretary II position amounted to racial discrimination.

In her retaliation claim, Carthen alleges–as best as the Court can tell–that the City retaliated against her in violation of Title VII by not hiring her for the Secretary II position. She seems to contend that the City's refusal to hire her was retaliation

[3] Carthen also purportedly filed a second Charge of Discrimination with the EEOC on June 16, 2021. (Doc. 16 at 1).

for complaining to the City about her job prior to her resignation and for subsequently filing an EEOC charge. (Doc. 16 at 1, 6).

DISCUSSION

On August 13, 2021, the Court ordered Carthen to file an Amended Complaint not later than five days after that Order's entry. (Doc. 12). Counsel missed that deadline. Seventeen days later, on August 30, 2021, the Court ordered Carthen to show cause for why the Court shouldn't dismiss this action for failing to timely file an amended complaint and to prosecute her action. (Doc. 13). Counsel responded with an apology and timely filed an Amended Complaint on September 16, 2021, (Doc. 16), following a subsequent Order from the Court. (Doc. 15).

1. The Court's Initial Order Governing All Further Proceedings required Carthen to file a Response to the City's Motion to Dismiss.

The Eleventh Circuit has found that "district courts have unquestionable authority to control their own dockets . . . which includes broad discretion in deciding how best to manage the cases before them." *Frank v. Schulson*, 782 Fed. Appx. 917, 919 (11th Cir. 2019) (quoting *Smith v. Psychiatric Solutions, Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014)) (cleaned up). The City filed a Motion to Dismiss Carthen's Amended Complaint and Brief in Support on September 30, 2021. (Docs. 20 & 21). In accordance with this Court's Initial Order Governing All Further Proceedings and the Federal Rules of Civil Procedure, Carthen had twenty-one days to respond to the City's Motion. (*See* Doc. 11 at 10). Her counsel failed to timely file any Response

to that Motion. In accordance with the Court's Initial Order, Counsel's "failure to respond to [the City's] Motion within twenty-one days [amounted to] non-opposition to the [M]otion." (Doc. 11 at 10). Accordingly, the Court construes the City's Motion as non-oppositional.

2. Carthen's Response is conclusory and amounts to abandonment.

Courts can't formulate a party's argument for them. *See, e.g., A.L. v. Jackson Cnty. Sch. Bd.*, 635 Fed. Appx. 774, 786–87 (11th Cir. 2015) (per curiam) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)); *United States ex rel. Marsteller v. Tilton*, 2021 U.S. Dist. LEXIS 158771, at *56 n.20 (N.D. Ala. August 23, 2021). It's the party's burden to present an argument–fully developed–to the district court. *See Fils v. City of Aventura*, 647 F.3d 1272, 1284 (11th Cir. 2011) (collecting authorities: "To prevail . . . a party must present that argument to the district court. Our adversarial system requires it; district courts cannot concoct or resurrect arguments neither made nor advanced by the parties.") (citations omitted).

Carthen's counsel responded to the City's Motion to Dismiss *only after* the Court entered the second Show Cause Order. In that Response, Carthen's counsel merely concludes that the Amended Complaint contains two plausibly pled prima facie claims (Doc. 23 at 2–3) and that the City's Motion to Dismiss is duplicative. *Id*. at 3–4. These conclusory statements and passive references to law don't "plainly and prominently" address the City's contentions. *See, e.g., Ajomale v. Quicken*

Loans, Inc., 860 Fed. Appx. 670, 671 (11th Cir. 2021) (collecting authorities and affirming the district court's finding of abandonment). For that reason, the Court finds Carthen abandoned her claims, and that dismissal is appropriate.

3. Carthen's claims also fail on the merits because they don't establish a plausible inference of discrimination or retaliation.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that parties provide in a pleading "a short and plain statement for the claim showing that the pleader is entitled to relief[.]" That requirement, as expounded in *Iqbal* and *Twombly* requires courts to separate the factual wheat from the legal–conclusory chaff and determine whether the party has pled a plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79(2009) (citing *Bell Atlantic Corp v. Twombly*, 220 U.S. at 555–56 (2007)). When alleging racial discrimination, a plaintiff need only plead enough facts related to a prima facie case of discrimination to allow the Court to draw the reasonable inference that she was discriminated against because of her race. *Andrews v. City of Hartford*, 700 F. Appx. 924, 926 (11th Cir. 2017). As to retaliation, a plaintiff must plead facts plausibly establishing that she: (1) engaged in statutorily protected activity; (2) suffered an adverse action; and (3) that there is a causal relationship between the protected activity and the adverse action. *Adams v. Cobb County Sch. Dist*., 242 Fed. Appx. at 620–621 (citing *Cooper v. Southern Co.*, 390 F.3d 695, 740 (11th Cir. 2004)).

Stripped of legal conclusions, Carthen's allegations fail to establish a plausible inference that she was the victim of racial discrimination or retaliation. Instead, the Amended Complaint reveals the following:

- Carthen is an African American woman. She previously worked for the City of Huntsville in an unknown capacity;[4]

- The City requires Secretary II's to hold, at minimum, a high school diploma.[5] Carthen has a master's degree;[6]

- Carthen and another African American employee performed job duties over and above those contained in their job descriptions;[7]

- Sometime during her municipal employment, Carthen sought a "pay negotiation" with the City. That request was denied;[8]

- Carthen complained about her compensation to Councilman Devyn Keith. Councilman Keith told Carthen to propose reopening (and to subsequently apply for) an administrative aide job that would better compensate her;[9]

- Councilman Keith later informed Carthen that Councilwoman Jennie Robinson became involved–in what capacity, exactly, the Court can't say–with the administrative aide opening proposal and expressed that she'd like the position to be open to external candidates;[10]

- Councilwoman Robinson expressed to someone that she wanted to fill that position with a candidate who'd had prior municipal board experience and that she had a candidate in mind;[11]

[4] Doc. 16 at 2.
[5] Doc. 16 at 2
[6] Doc. 16 at 2
[7] Doc. 16 at 2
[8] Doc. 16 at 2
[9] Doc 16 at 2.
[10] Doc. 16 at 3
[11] Doc. 16 at 3.

- Carthen didn't apply for that position because she thought Robinson's candidate would be chosen;[12]

- Councilman Keith assured Carthen that she would receive a raise, but, if not, to look for another position and he'd provide her a favorable recommendation;[13]

- Carthen never got her raise and resigned from her position with the City on June 21, 2019;[14]

- After Carthen resigned, the City hired two Caucasian women. At least one filled the position Carthen lobbied to reopen. Both were paid more than she had been when she worked for the City;[15]

- Councilwoman Robinson influenced municipal employees' compensation rates;[16]

- Carthen's former co-worker resigned her position in November 2019 because she was dissatisfied with her compensation. The Caucasian employees hired after Carthen's resignation were paid better than her. This was consistent with Councilman Keith's representations, at least as to Rooker and the administrative aide position;[17]

- Carthen filed an EEOC charge of discrimination six months after she resigned her position with the City;[18]

- Carthen applied for, but didn't receive, a Secretary II position in December 2019. She was interviewed by Kathy Rooker; and

[12] Doc. 16 at 3.
[13] Doc. 16 at 3.
[14] Doc. 16 at 3.
[15] Doc. 16 at 3.
[16] Doc. 16 at 3.
[17] Doc. 16 at 3–4.
[18] Doc. 16 at 4.

- Rooker told Carthen to let her know if she'd ever like to withdraw her application.[19]

As noted above, Carthen's racial discrimination claim seems to rest on the City's failure to hire her. (Doc. 16 at 5). And as noted above, Carthen bears the burden of pleading elements which plausibly establish that she was discriminated against because of her race. The elements of the Title VII claim Carthen pursues include the following: "that she is a member of a protected class, that she applied for and was qualified for an available position, that she was rejected, and that the defendant filled the position with a person outside of the protected class." *Murry v. Walmart Stores, Inc*., 2021 WL 3212205, at *4 (N.D. Ala. July 29, 2021) (quoting *Walker v. Prudential Prop. & Cas. Ins. Co.*, 286 F.3d 1270, 1274–75 (11th Cir. 2002)) (cleaned up). Totally absent from the Amended Complaint is any indication that the person the City hired for that Secretary II job wasn't African American. Instead, Carthen focuses exclusively on the "White individuals who were hired to replace her after her resignation." (Doc. 16 at 5). This fact is a direct reference to Rooker and the second Caucasian woman the City hired after Carthen's resignation. Neither woman was hired for the position at the center of this dispute: the Secretary II job that Carthen applied for in December of 2019. This is fatal for Carthen's Title VII racial discrimination claim.

[19] Doc. 16 at 4.

Similarly, Carthen failed to plead a plausible retaliation claim. As noted above, one necessary element for a retaliation claim is a causal connection between the protected activity and the adverse action. To satisfy that element, a party may rely upon the temporal proximity of an adverse employment action in relation to a protected activity. *See Pruitt v. Charter Commc'ns, Inc.*, 2020 WL 8093584, at *5 (N.D. Ala. Dec. 18, 2020). It appears that this is what Carthen intended to do.

The Court finds–specifically as to her retaliation claim–that Carthen's counsel failed to allege facts plausibly showing she engaged in a protected activity that can be temporally connected to an adverse employment action. The Eleventh Circuit has found a pleading wanting where "a reader of the complaint must speculate as to which factual allegations pertain to which count" and where the complaint "is so disorganized and ambiguous that it is almost impossible to discern precisely what it is that the[] [plaintiff is] claiming." *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1323 n. 12 (11th Cir. 2015) (collecting authorities & cleaned up). This is precisely the situation the Court is in here. On one hand, counsel appears to rely upon Carthen's internal complaints pre-dating her resignation and her EEOC Charge of Discrimination from November 8, 2019, to satisfy the protected activity element of her retaliation claim. (Doc. 16 at 4). But counsel also appears to rely on Carthen's Charge of Discrimination filed on June 16, 2021. (Doc. 16 at 1). This

vexing ambiguity leaves the Court lost: upon which protected act does Carthen rely for her retaliation claim? Upon that matter, the Court won't speculate; it can't.

Regardless of which action Carthen relies upon, her position misses the mark. First, this Court has previously recognized that the Eleventh Circuit demands temporality between a protected action and an adverse employment action to be much closer than the lapse of time between Carthen's internal complaints and her first EEOC Charge and the City's decision not to hire her. *See Pruitt*, 2020 WL 8093584, at *5. Further, the Court is unaware of any case which holds that a causal connection between a protected activity and an adverse employment action can be found where a plaintiff has filed a charge of discrimination *after* leaving that position. *Id*.

4. Alternatively, the record doesn't show that Carthen exhausted her administrative remedies.

First, the Court notes that "[f]iling an EEOC charge within one hundred and eighty days after the alleged unlawful employment practice occurred is a condition precedent to bringing a civil action pursuant to Title VII." *Cole v. Gestamp N. Am., Inc.*, 2019 WL 1875357, at *5 (N.D. Ala. Apr. 26, 2019) (cleaned up). And a plaintiff must file her complaint in accordance with that letter not later than 90 days after receiving it. *Green Union Foundry Co.*, 281 F.3d 1229, 1233 (11th Cir. 2002). Second, filing an amended complaint supersedes any other pleading and its attachments as a matter of law. *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th

Cir. 2016) (an original complaint and its attachments become a "legal nullity" upon the filing of an amended complaint.). While failing to attach an EEOC right to sue letter isn't grounds for dismissal on its own, failure to allege the exhaustion of administrative remedies when required is. *See Keith v. Talladega City Bd. Of Educ.*, 2019 U.S. Dist. LEXIS 66311, at *11–12 (N.D. Ala. April 17, 2019).

A. Carthen's later-filed Charge of Discrimination doesn't suffice.

In the first paragraph of the Amended Complaint, counsel alleges that Carthen "filed charges of race discrimination and retaliation with the [EEOC] on June 16, 2021, within 180 days of the most recent discriminatory action" and cites the Court to documents attached to the original Complaint. (*See* Doc. 16 at 1). Thereafter, counsel alleges that Carthen received her right to sue letter from the EEOC on August 21, 2020. *Id*.

According to the Amended Complaint, Carthen received her right to sue letter *before* she filed the EEOC Charge she relies upon. (Doc. 16 at 1). It doesn't follow that Carthen can rely upon a previously received right to sue letter to show that she exhausted her administrative remedies for a subsequent EEOC Charge.

B. Carthen's reliance upon her earlier Charge also fails.

First, considering the rules outlined in Section 4, supra, the Court can't and won't refer back to the original Complaint or its attachments. Second, while the City contends that the Court can consider *at least* Carthen's first Charge because she

"specifically cited and relied upon [it]" (Doc. 21 at 2 n. 1), this doesn't cure Carthen's pleading defect.

The case upon which the City relies, *Financial Sec. Assurance, Inc v. Stephens, Inc.*, 500 F.3d 1276 (11th Cir. 2007), merely stands for the uncontroversial proposition that courts can consider external documents when reviewing a motion to dismiss where the document is central to the plaintiff's claim, its contents are undisputed, and they are attached to a live filing. *Id*. at 1284. The *Financial Sec*. decision didn't concern an amended complaint superseding a previous pleading, thereby negating the original complaint's contents and its attachments. Instead, the Eleventh Circuit reasoned it could consider a document the appellant had failed to attach to its complaint because its contents were claim-central, undisputed, *attached to the appellee's motion to dismiss*, and the appellee was already on notice of the relevant document. *Id*. at 1284. The Court is satisfied that the City had notice of Carthen's claims. But based on the pleading ambiguities outlined above, the Court is less-than-satisfied that their bases can be sufficiently determined. Further, neither the Charges nor the Letters are attached to a live filing. And other decisions in line with *Hoefling* suggest the Court shouldn't consider them. *See, e.g.*, *Scott v. ILA Loc. 140 Int'l Longshoremen's Ass'n*, 449 F. Supp. 3d 1270, 1278–79 (S.D. Ala. 2020) (collecting authorities and noting the plaintiff's failure to properly attach an

administrative complaint to his operative pleading didn't foreclose its consideration, but Eleventh Circuit precedent didn't require the court to consider it).

Carthen's counsel includes the Charge number assigned to Carthen's November 2019 EEOC Charge in the Amended Complaint (perhaps trying to incorporate such information by reference to a publicly available document). (Doc. 16 at 4). But that method of incorporation also fails. As noted by the EEOC's website, "EEOC's Online Charge Status System allows both individuals who have filed a charge of discrimination (charging parties) with EEOC and respondents, and their respective representatives, to track the progress of the charge. **These are the only users of the system authorized by EEOC**." *EEOC: CHECKING THE STATUS OF YOUR CHARGE*, https://www.eeoc.gov/checking-status-your-charge, (last visited December 3, 2021) (emphasis added). The Court used the Charge number counsel provided on the EEOC's website to access those documents to no avail. This makes sense, given that only the charging party and the defendant can access such information via the EEOC's system. *Id*. Considering the Court can't access Carthen's records, counsel's pleading deficiencies, and his failure to attach the relevant documents to the Amended Complaint, the Court finds there's nothing to evince that Carthen exhausted her administrative remedies.

Accordingly, to the extent Carthen was required to plead facts which plausibly established that she'd exhausted her administrative remedies or attach documents

exhibiting that exhaustion, dismissal is also appropriate on these grounds. *See, e.g.*, *Bos. v. Best Buy*, 2008 WL 11320084, at *3 (N.D. Ga. Mar. 27, 2008), *report and recommendation adopted as modified*, 2008 WL 11320124 (N.D. Ga. Apr. 23, 2008).

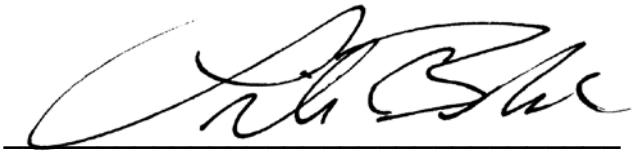
CONCLUSION

Considering the above, the Court finds dismissal of Carthen's Amended Complaint appropriate. The Court must now determine whether it should dismiss with or without prejudice. The Court has previously stated that dismissal with prejudice is appropriate if "a more carefully drafted complaint could not state a claim[.]" *Nash v. Fairfield City Council*, 2010 WL 11565454, at *2 (N.D. Ala. Jan. 4, 2010) (quoting *Ziemba v. Cascade Intern., Inc.*, 256 F.3d 1194, 1213 (11th Cir. 1991)). That is the case here: a more carefully drafted Complaint couldn't state a plausible claim entitling Carthen to relief. First, it's clear to the Court based on counsel's Response to the second Show Cause Order that Carthen abandoned her claims. The record before the Court also doesn't show that Carthen exhausted her administrative remedies before filing this lawsuit. Moreover, Carthen hasn't shown that someone outside her protected class was hired for the Secretary II position. And, finally, Carthen can't establish a causal connection between any adverse employment action and her complaints about her former job.

For the foregoing reasons, the Court **GRANTS** the City's Motion (Doc. 20) and **DISMISSES WITH PREJUDICE** Carthen's Amended Complaint.

The Clerk of Court is DIRECTED to close the case

DONE and **ORDERED** December 17, 2021.



LILES C. BURKE
UNITED STATES DISTRICT JUDGE