IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

QUNTELLER GOMILLER,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	
	)	**CIVIL ACTION NO. 4:23-CV-75**
GREENWOOD LEFLORE HOSPITAL, MARGARET BUCHANAN, AND JOHN DOES 1-5,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM BRIEF IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

Plaintiff brings this case over a matter during her employment with Greenwood Leflore Hospital (GLH) claiming race discrimination after there was an issue over plaintiff's unnatural hair color. Hair color, however, is not a protected class under either Title VII or 42 U.S.C. §1981. Plaintiff also brings claims against Margaret Buchanan (Buchanan) individually; however, Buchanan cannot be held liable individually under either Title VII or 42 U.S.C. §1981. Finally, plaintiff's retaliation claim must be dismissed as she does not allege any protected activity and, furthermore, statements to the Mississippi Employment Security Commission (MESC) are privileged.

II. FACTS[1]

Gomiller is a former employee of GLH. She worked at GLH beginning September 30, 2021 as a Medical Lab Assistant. ¶8. Plaintiff claims that she was terminated on September 15, 2022 after she was informed that her hair color violated GLH's grooming policy that states "Extreme hair colors are not permissible." ¶8. She further asserts that GLH retaliated against her in violation of Title VII by giving allegedly wrong information to the MESC about the reasons for her leaving GLH's employment when it told MESC that plaintiff had voluntarily resigned her employment on September 28, 2022.

III. ARGUMENT AND AUTHORITIES

A. Standard of Review

To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the conduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff. *Alexander v. AmeriPro Funding, Inc*., 848 F.3d 698, 701 (5th Cir. 2017) (citing *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). However, the court does not apply the same presumption to conclusory statements or legal conclusions. *Iqbal*, 556 U.S. at 678-79.

[1] Defendants are presenting the facts in the light most favorable to the plaintiff. Defendants are not, however, admitting any of the factual allegations found in plaintiff's Complaint.

B. Hair Color Is Not a Protected Class under either Title VII or 42 U.S.C. §1981.[2]

Of course, employers are prohibited from discriminating against employees due their race, an immutable characteristic. *Willingham v. Macon Tel Publ'g Co.*, 507 F.2d 1084, 1091 (5th Cir. 1975). The Fifth Circuit has held, however, that a policy that distinguishes on any other ground such as hair color, "is related more closely to the employer's choice of how to run his business than to equality of employment opportunity." *Id.* A policy that makes "distinctions based on an employer's subjective determination of what constitutes an 'extreme' hair color is perfectly acceptable under Title VII." *Santee v. Windsor Court Hotel Ltd. Pshp.*, 2000 U.S. Dist. LEXIS 15960 (E.D. La. Oct. 26, 2000).

Since hair color is not a protected class, plaintiff's claims under Title VII and Section 1981 must be dismissed.

C. Buchanan Cannot Be Held Liable Individually under Title VII.

Plaintiff's Complaint must be dismissed with respect to Buchanan because she, as a matter of law, is not subject to Title VII liability. See 42 U.S.C. § 2000e-2. "Only 'employers,' not individuals acting in their individual capacity who do not otherwise meet the definition of 'employers,' can be liable under title VII." *Grant v. Lone Star Co.*, 21 F.3d 649, 652 (5th Cir. 1994). Individuals are not liable under Title VII in either their individual or official capacities. *Malcolm v. Vicksburg Warren Sch. Dist. Bd. of Trs.*, 709 Fed. Appx. 243, 247 (5th Cir. 2017).

Since Buchanan cannot be held individually liable under Title VII, all claims against her for discrimination and/or retaliation must be dismissed.

[2] Plaintiff's claims under Title VII and 42 U.S.C. §1981 are governed by the same evidentiary framework. *See Shackelford v. Deloitte & Touche, LLP*, 190 F.3dd 38, 403 n. 2 (5th Cir. 1999) ("When used as parallel causes of action, Title VII and Section 1981 require the same proof to establish liability.")

D. Plaintiff Did Not File a Charge with the EEOC Alleging Retaliation

Plaintiff's EEO charge is attached to defendant's Motion to Dismiss. Plaintiff references her charge in paragraph 21 of the Complaint. "Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim." *Causey v. Sewell Cadillac-Chevrolet,* Inc., 394 F.3d 285, 288 (5th Cir. 2004). "By such attachments the defendant simply provides additional notice of the basis of the suit to the plaintiff and aids the Court in determining whether a claim has been stated." *Bar Group, LLC v. Bus. Intelligence Advisors, Inc*., 215 F. Supp. 3d 524, 541 (S.D. Tex. 2017). Additionally, "[t]he attachments may also provide the context from which any quotation or reference in the motion is drawn to aid the court in correctly construing that quotation or reference." *Id.* Indeed, "[w]here the allegations in the complaint are contradicted by facts established by documents attached as exhibits to the complaint, the court may properly disregard the allegations." *Id.*

In an employment discrimination case, a plaintiff must fully explore and exhaust all administrative remedies before filing a legal action in federal court. *Julian v. City of Houston, Tex.*, 314 F.3d 721, 725 (5th Cir. 2002); *Jefferson v. Christus St. Joseph Hosp.*, 374 Fed. Appx. 485, 489 (5th Cir. 2010). This requirement is satisfied by filing a timely charge with the EEOC and receiving a right-to-sue notice. *Dao v. Auchan Hypermarket,* 96 F.3d 787, 788-89 (5th Cir. 1996). If a claim's administrative requirements have not been exhausted, the claim should be dismissed. See *Iturralde v. Shaw Grp., Inc.*, 512 Fed. Appx. 430, 433-34 (5th Cir. 2013) (affirming the district court's dismissal of plaintiff's ADA claim because plaintiff "did not file a charge with the EEOC and thereby failed to exhaust his administrative remedies.").

"The scope of the exhaustion requirement has been defined in light of two competing [statutory] policies that it furthers." *Pacheco v. Mineta*, 448 F.3d 783, 788 (5th Cir. 2006). On

the one hand, the EEOC charge "should be construed liberally," because most EEOC actions are initiated *pro se* by unsophisticated parties. Id. On the other hand, the purpose of the exhaustion requirement is to encourage the resolution of employment disputes through the administrative process rather than through litigation – a goal that can only be achieved if the EEOC charge gives meaningful notice of the nature and basis of the plaintiff's claims to the EEOC investigator and the defendant. *Id*. at 788-89 (explaining that "a primary purpose of Title VII is to trigger the investigatory and conciliatory procedures of the EEOC, in an attempt to achieve non-judicial resolution of employment discrimination claims"). Consequently, the scope of a plaintiff's complaint is limited to any claim she asserted in the EEOC charge, any claim actually investigated by the EEOC, and any claim that the EEOC could reasonably be expected to investigate based on the charge's allegations. *See id.* (discussing *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 463 (5th Cir. 1970); *Fellows v. Universal Rest., Inc.*, 701 F.2d 447, 451 (5th Cir. 1983); *Fine v. GAF Chem. Corp.*, 995 F.2d 576, 578 (5th Cir. 1993); see also *Terrell v. U.S. Pipe & Foundry Co.*, 644 F.2d 1112, 1123 (5th Cir. 1981), *vacated on other grounds*, 456 U.S. 955 (1982) ("[A] rule of reason . . . permits the scope of a Title VII suit to extend as far as, but no further than, the scope of the EEOC investigation which could reasonably grow out of the administrative charge.").

The EEOC can only be reasonably expected to investigate a claim if the plaintiff makes allegations that support or are related to the claim. Simply checking the box on the EEOC charge for a certain category of discrimination, without more, does not exhaust the administrative requirements regarding that claim. The plaintiff in *Givs v. City of Eunice*, for example, submitted an EEOC charge in which he had checked the boxes for "race" discrimination and "retaliation." 512 F. Supp. 2d 522, 536-37 (W.D. La. 2007), *aff'd*, 268 Fed. Appx. 305 (5th Cir. 2008). In the charge's narrative, however, the plaintiff only stated that he had been discharged by his employer

and "discriminated against due to his race." *Id*. at 536. In a ruling affirmed by the Fifth Circuit, the district court found the plaintiff had only exhausted his administrative remedies for his racial discrimination claim, and not for his retaliation claim, because the narrative did not include any allegations showing retaliation (*i.e.*, that the plaintiff was discharged for engaging in protected conduct, rather than because of his race). Id. at 537. The court therefore dismissed the retaliation claim. *Id*.

In this case, plaintiff did neither – she did not claim retaliation in the box where she was to identify the basis of her claim, and she did not put any claim of retaliation in the narrative of her EEOC charge. Plaintiff's retaliation claim must, therefore, be dismissed.

2. Alternatively, Plaintiff's Retaliation Claim Must Be Dismissed as Plaintiff Did Not Engage in Any Protected Activity.

To make a *prima facie* case of retaliation, plaintiff must demonstrate that (1) she engaged in statutorily protected activity; (2) she suffered a materially adverse employment action; and (3) there was a causal link between the protected activity and the subsequent materially adverse employment action. *McCoy v. City of Shreveport,* 492 F.3d 551, 556-57 (5th Cir. 2007). Ultimately, to establish a retaliation claim, an employee must prove that the adverse action would not have occurred "but for" the employer's retaliatory animus. *Univ. of Tex, SW. Med. Ctr. v. Nassar*, 133 S.Ct. 2517, 2533-34 (2013).

Plaintiff's Complaint gives no factual basis to suggest that plaintiff engaged in protected activity. As such, it must be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

IV. CONCLUSION

For the above and foregoing reasons, plaintiff's Complaint must be dismissed. Further, as the issues are a matter of law, plaintiff should not be given an opportunity to amend her Complaint.

Respectfully submitted

/s/ Susan Fahey Desmond
Susan Fahey Desmond (#5119)
Susan.Desmond@jacksonlewis.com
JACKSON LEWIS P.C.
601 Poydras Street, Suite 1400
New Orleans, Louisiana 70130
Telephone: (504) 208-1755
Facsimile: (504) 208-1759

COUNSEL FOR DEFENDANTS, GREENWOOD LEFLORE HOSPITAL AND MARGARET BUCHANAN

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