UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STEPHANIE DICKENS,

Plaintiff,

v. Case No. 8:19-cv-2529-T-60AEP

PEPPERIDGE FARM INCORPORATED,

Defendant.
_____/

ORDER GRANTING IN PART AND DENYING IN PART "DEFENDANT'S DISPOSITIVE MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW"

This matter is before the Court on "Defendant's Dispositive Motion to Dismiss Plaintiff's First Amended Complaint and Incorporated Memorandum of Law," filed on March 3, 2020. (Doc. 31). Plaintiff responded in opposition to the motion on March 17, 2020. (Doc. 32). The Court held a hearing to address this matter on June 24, 2020. (Doc. 39). Upon review of the motion, response, court file, and record, the Court finds as follows:

Background[1]

Defendant Pepperidge Farm Incorporated hired Plaintiff Stephanie Dickens in 2009. In November 2014, Defendant promoted her to the role of General Utility

[1] The Court accepts the well-pleaded facts in Plaintiff's amended complaint as true for purposes of ruling on the pending motion to dismiss. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Court is not required to accept as true any legal conclusions couched as factual allegations. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986).

Worker. According to the allegations in her amended complaint and EEOC documents, Plaintiff was denied promotion and transfer opportunities in 2016 and 2017.

On February 22, 2018, Plaintiff discovered a roach infestation in one of Defendant's wheat gluten tanks. Plaintiff believed Defendant had violated several federal regulations mandating that food processing plants implement certain protections against pest infestation and food contamination.[2] She informed her supervisor, but Defendant took no remedial action. However, on April 5, 2018, Plaintiff was suspended and demoted.

On October 11, 2018, Plaintiff met with the EEOC and completed an intake questionnaire. After the meeting, Plaintiff remained in consistent contact with the EEOC via email. On April 29, 2019, the EEOC received Plaintiff's formal charge of discrimination, and the EEOC issued Plaintiff a right to sue letter on May 1, 2019.

Plaintiff filed her claim in state court on July 29, 2019. Defendant timely removed the case to this Court under 28 U.S.C. § 1331. On February 18, 2020, Plaintiff filed her amended complaint alleging: (1) retaliation under the Florida Private Whistleblower Act ("FWA"); (2) gender discrimination under Title VII; (3) retaliation under Title VII; (4) gender discrimination under the Florida Civil Rights Act ("FCRA"); and (5) retaliation under the FCRA.

[2] *See* 21 C.F.R. §§ 117.20, 117.35.

Legal Standard

Federal Rule of Civil Procedure 8(a) requires that a complaint contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." While Rule 8(a) does not demand "detailed factual allegations," it does require "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, factual allegations must be sufficient "to state a claim to relief that is plausible on its face." *Id.* at 570.

When deciding a Rule 12(b)(6) motion, review is generally limited to the four corners of the complaint. *Rickman v. Precisionaire, Inc.*, 902 F. Supp. 232, 233 (M.D. Fla. 1995). However, the Court "may consider a document attached to a motion to dismiss … if the attached document is (1) central to the plaintiff's claim and (2) undisputed." *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (citing *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002)). Further, federal courts regularly take judicial notice of government documents, such as EEOC filings, at the motion to dismiss stage. *See, e.g.*, *Smith v. Atl. Beach*, No. 3:18-cv-1459-J-34MCR, 2020 WL 708145, at *1 (M.D. Fla. Feb. 12, 2020); *Pettiford v. Diversified Enter of S. Ga., Inc.*, No. 7:18-cv-105, 2019 WL 653813, at *2 (M.D. Ga. Feb. 15, 2019); *Jones v. Bank of Am.*, 985 F. Supp. 2d 1320, 1326 (M.D. Fla. 2013). Where there is a contradiction between the exhibits and the pleadings, the exhibits govern. *See Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007).

Analysis

Defendant contends the amended complaint should be dismissed because: (1) Plaintiff has not exhausted her administrative remedies under Title VII or the FCRA; and (2) Plaintiff has failed to state a claim as to all counts. The Court examines these arguments as to each count.

Count I - Retaliation Under the FWA

Defendant argues that Plaintiff has failed to state a claim for retaliation under the FWA. Under the FWA, "[a]n employer may not take any retaliatory personnel action against any employee because the employee has … [o]bjected to or refused to participate in, any activity, policy, or practice of the employer which is a violation of a law, rule, or regulation." § 448.102(3), *F.S.* To state a claim for retaliation under the FWA, a plaintiff must sufficiently plead that: (1) she objected to or refused to participate in an illegal activity, policy, or practice of the defendant; (2) she suffered an adverse employment action; and (3) the adverse employment action was causally connected to her objection or refusal. *Gleason v. Roche Laboratories, Inc.*, 745 F. Supp. 2d 1262, 1270 (M.D. Fla. 2010); *see Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir. 2000).

Upon review, the Court finds that Plaintiff has sufficiently pled that (1) she objected to Defendant's allegedly illegal failure to sufficiently follow federal regulations protecting against pest infestations and food contamination;[3] (2) that she was demoted; and (3) that her demotion was casually connected to her objection

[3] Florida courts disagree on the scope of statutory protections under the FWA. The Fourth District Court of Appeal requires only that an employee show "a good faith, objectively reasonable basis to

to Defendant's failure to comply with federal regulations. Consequently, the motion to dismiss is denied as to Count I.

Counts II-V: Discrimination & Retaliation Under Title VII & the FCRA

Defendant contends that Counts II-V should be dismissed for several reasons including (1) that the counts are rife with pleading defects and (2) that Plaintiff failed to timely exhaust her administrative remedies before filing her claim.

Pleading Defects

Through her EEOC questionnaire, formal charge, and amended complaint, Plaintiff appears to allege that she was subjected to these unlawful actions by Defendant:

(1) at some point, Plaintiff was denied a training opportunity by her manager;

(2) once Plaintiff became a General Utility Worker, she was picked on and held to a higher standard than her counterparts;

(3) in 2016 and 2017, Plaintiff was denied promotion and transfer opportunities;

(4) on April 5, 2018, Plaintiff was written up for an issue with a machine she was not responsible for, suspended, and demoted; and

(5) at some point after April 5, 2018, Plaintiff was not given a promotional opportunity or performance reviews.

Though Rule 8 does not ask for much, it does require that a plaintiff alleging discrimination or retaliation "include the basic facts" of the claims, including the

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believe" that her employer was engaged in illegal activity, while "the Second District Court of Appeal limits the FWA's protections to employees who object to actual violations of a law, rule, or regulation." *David v. BayCare Health Sys., Inc.*, No. 8:19-cv-2136-T-60JSS, 2019 WL 6842085, at *2 (M.D. Fla. Dec. 16, 2019) (Barber, J.). Here, Plaintiff alleges an actual violation of the law, so her amended complaint satisfies Rule 8 under either standard.

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