

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jettie Songo, :
 :
 Plaintiff : Civil Action 2:11-cv-510
 :
 v. : Judge Economus
 :
 The Ohio State University, : Magistrate Judge Abel
 :
 Defendant :

REPORT AND RECOMMENDATION

Plaintiff's motion for leave to proceed *in forma pauperis* under 28 U.S.C. §1915(b) is **GRANTED**.

It is **ORDERED** that Plaintiff be allowed to prosecute this action without prepayment of fees or costs and that judicial officers who render services in this action shall do so as if the costs had been prepaid.

This matter is now before the Magistrate Judge for an initial screening of the complaint under 28 U.S.C. §1915(e)(2) to identify cognizable claims, and to dismiss the complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997).

In her complaint, Plaintiff alleges:

I was harassed at work and school because of my color. I was called names such as I look like a whore, I smell, and I am a whore. During my employment with Ohio State, I was subjected to a hostile working

environment. I complained to my managers about my co-workers comment concerning my dress, accent, color, and smell, but nothing was done. The authorities I complained to defended their employees that they did not do anything; instead I am the one they fired from the employment on June 12, 2010. After employment with Ohio State, I found out that the co-worker who were taking the same classes with me spread the above name calling to other students that do not know me at school. So the name calling spread from work to classes I was taking such as biology, chemistry, ecology, and physics to name a few. The name calling spread from school to outside school such as grocery stores, on the street, and other employments I had at Kroger and Giant Eagle. Apart from the above issues, I cannot have employment at other locations because of the above harassment that have spread. I cannot go place with out other people harassing me as if they know me.

(Doc. 1-2 at 3.) The Ohio State University is the sole defendant. The only relief sought in the complaint is for the harassment to end:

I want the harassment to end. I want to apply for a job, have the employment without the harassment, and prevent me losing my employment because of my color or some one saying lies to my employer that will cost me my job. I want to be able to go anywhere without a strange[r] harassing me like they know me.

(*Id.* at 4.)

Rule 8(a), Federal Rules of Civil Procedure provides for notice pleading. *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The United States Supreme Court held in *Erickson v. Pardus*, 551 U.S. 89, 93 (2007):

. . . Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts showing that the pleader is entitled to relief are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.": *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 555, 127 S.Ct. 1955 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Moreover, *pro se* complaints must be liberally construed. *Erickson*, 551 U.S. at 94; *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980). Nonetheless, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' *Twombly*, 550 U.S. at 570." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

The complaint does not allege that Defendant caused, incited, or encouraged "name calling" by Plaintiff's classmates, or by persons outside the university. She also does not allege that Defendant caused "harassment" to "spread". Plaintiff does allege that a former coworker was at least partly responsible for spreading name calling outside school and to prospective employers, but she has not named this former coworker as a defendant.

The complaint does allege that Defendant subjected Plaintiff to a hostile work environment by failing to stop co-workers from harassing her on the basis of color and eventually firing her. However, a complaint "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s] devoid of further factual enhancement.'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009), quoting *Bell Atlantic v. Twombly*, 550 U.S. 554, 557 (2007). It is not enough for the complaint to allege that "I was subjected to a hostile working environment" without any allegations as to the nature of her employment, who "[t]he authorities" she complained to were, or whether Plaintiff was fired for complaining about harassment or for some other reason. Without

a clearer statement of Plaintiff's claim, Defendant is not given fair notice of what it is that it is supposed to have done to Plaintiff and when.¹

Accordingly, upon initial screening the Magistrate Judge **RECOMMENDS** that the complaint be **DISMISSED** because it fails to state a claim against Defendant upon which relief can be granted. Defendant does not have to respond to the complaint unless the Court rejects this Report and Recommendation. The Clerk of Court is **DIRECTED** to mail a copy of the complaint and this Report and Recommendation to Defendant.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the party thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373,

¹ In addition, Plaintiff does not request any relief against Defendant. Her complaint states that she wants the "harassment to end", although she is no longer employed by The Ohio State University and does not allege that *it* is continuing to harass her.

380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/Mark R. Abel
United States Magistrate Judge