NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11262
Non-Argument Calendar

PONSETTA SIMMONS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE INC,
Ohio,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 3:25-cv-00105-CLS

Before JILL PRYOR, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Ponsetta Simmons appeals the dismissal of her case under Rule 12(b)(6) for failure to state a claim and Rule 8 for shotgun

pleading. She argues that she was wrongfully denied a *sua sponte* opportunity to amend her complaint pursuant to our ruling in *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294–95 (11th Cir. 2018). Her argument is as follows: (1) Count IV of her complaint properly stated a claim for Title VII retaliation, (2) therefore that claim could only have been dismissed under the district court's alternative grounds of Rule 8 shotgun pleading, and (3) thus she was entitled to the *Vibe Micro sua sponte* chance to amend.

We review dismissals under Rule 12(b)(6) *de novo*, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Ounjian v. Globoforce, Inc.*, 89 F.4th 852, 857 (11th Cir. 2023). To survive a motion to dismiss, a 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) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (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 misconduct alleged. *Id.* While a reviewing court must accept as true all allegations in a dismissed complaint, this principle is inapplicable to legal conclusions. *Id.* Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.*

A "shotgun pleading" violates Rule 8's requirement that a complaint present a short and plain statement of the claim showing that the pleader is entitled to relief because it fails to "give the

defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Vibe Micro, Inc.*, 878 F.3d at 1294–95. When a litigant files a shotgun pleading, is represented by counsel, and fails to request leave to amend, a district court must *sua sponte* give them one opportunity to replead before dismissing the case with prejudice on non-merits shotgun pleading grounds. *Id.* at 1296.

Under Title VII, it is unlawful for an employer to discriminate against any of his employees because they have opposed any practice statutorily defined as an unlawful employment practice. 42 U.S.C. § 2000e-3(a). To establish a prima facie case of retaliation under Title VII, plaintiffs must show that (1) they engaged in statutorily protected expression, (2) they suffered an adverse employment action, and (3) there is some causal relation between the two events. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001). For purposes of a retaliation claim, the "adverse employment action" experienced must be one that caused injury or harm that would "dissuade a reasonable employee from engaging in the protected activity." *Ounjian*, 89 F.4th at 858. Causation can be plausibly alleged by alleging very close temporal proximity between the protected activity and retaliatory action. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007) (affirming summary judgment against a Title VII retaliation claimant when the gap between their protected activity and adverse employment action was three months).

Here, Simmons fails to show how the district court erred in finding her complaint factually insufficient under Rule 12(b)(6). Therefore, her theory that the district court necessarily dismissed Count IV only on non-merits shotgun pleading grounds, invoking her right to replead under *Vibe Micro*, fails. Although the district court's finding on the Rule 12(b)(6) issue is sparse, Simmons's factual allegations are even sparser. Paragraph 11 of her complaint states that she was "wrongfully denied advancement on a pretextual bases based upon her race . . . ." Paragraphs 33–35 likewise state that UPS's wrongful acts were "in retaliation" for her exercising her ADA, ADEA, and Title VII rights and for having filed her previous lawsuit asserting gender and racial discrimination. Simmons argues that these allegations are sufficient alone to survive a 12(b)(6) motion to dismiss. She is incorrect. As the Supreme Court has made abundantly clear, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, are insufficient. *Ashcroft*, 556 U.S. at 678. Although the district court held that Simmons's allegation of a prior federal lawsuit satisfied pleading requirements as to the first element of a Title VII retaliation claim, her complaint is insufficient as to the second and third elements. Paragraphs 11 and 33–35 constitute threadbare recitals of the second and third elements of Title VII retaliation and are thus insufficient. Rather than giving details about any specific promotion denial and relevant dates, she simply asserts that she was "wrongfully" denied an "advancement" that was causally linked to her race as an African-American.

For the second element, she would have needed to allege facts that allow the court to infer that the wrongful acts would have dissuaded a reasonable employee from engaging in the protected activity. *Ounjian*, 89 F.4th at 858. Here, Simmons set forth a conclusory allegation that she was denied advancement but did not identify any promotion or new job she was denied. Simmons's complaint contains no descriptions of her current work or the potential new work.

For the third element, she could have satisfied the federal pleading standard by a close temporal proximity between the protected activity and the adverse employment action. *Thomas*, 506 F.3d at 1364. But Simmons's complaint contains no dates of any specific employment actions.

Although all allegations are accepted as true when reviewing a 12(b)(6) dismissal, Simmons's legal conclusions are not entitled to that presumption. *Ashcroft*, 556 U.S. at 678. Therefore, the district court did not err in denying Count IV of her complaint for failure to state a claim under Rule 12(b)(6).

Because the district court independently and properly dismissed Count IV on the merits, it was not required to *sua sponte* grant her leave to amend under *Vibe Micro* based on its alternative finding that Count IV was a shotgun pleading, as the right to replead arises before the court dismisses a case with prejudice on

non-merits shotgun pleading grounds.[1] *Vibe Micro*, 878 F.3d at 1296.

AFFIRMED.

[1] Although the district court also dismissed the other counts of her complaint, on appeal Simons challenges only the dismissal of her Count IV retaliation claim. Accordingly, she has abandoned any challenge to the dismissal of the other counts. *See Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (holding that issues not raised on appeal are deemed waived).