

UNITED STATES DISTRICT COURT
[DISTRICT NAME]

)

[PLAINTIFF NAME],)

)

Plaintiff,) Case No. [XX-CV-XXXX]

)

v.) Judge [Name]

)

[DEFENDANT NAME],) Magistrate Judge [Name]

)

Defendant.)

DEFENDANT'S MOTION TO DISMISS

PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

I. INTRODUCTION

Defendant [DEFENDANT NAME] ("Defendant"), by and through undersigned counsel, respectfully moves this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's Complaint in its entirety for failure to state a claim upon which relief can be granted.

As set forth below, Plaintiff's Title VII claims fail to satisfy the pleading requirements established by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

II. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). 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.*

The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

In applying this standard, courts employ a "two-pronged approach." *Id.* at 679. First, the court identifies and disregards allegations that "are no more than conclusions" because such allegations "are not entitled to the assumption of truth." *Id.* Second, the court considers the remaining well-pleaded factual allegations and determines whether they "plausibly give rise to an entitlement to relief." *Id.*

III. TITLE VII PLEADING REQUIREMENTS

Title VII prohibits employers from discriminating against employees "because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). To state a

plausible Title VII discrimination claim, a plaintiff must allege facts sufficient to show: (1) membership in a protected class; (2) qualification for the position; (3) an adverse employment action; and (4) circumstances giving rise to an inference of discrimination. *See, e.g., Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015).

While the *Iqbal/Twombly* framework applies with full force to employment discrimination claims, courts recognize that a plaintiff "need not plead a prima facie case" to survive dismissal. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511 (2002). Nevertheless, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face," and "naked assertions devoid of further factual enhancement" will not suffice. *Twombly*, 550 U.S. at 557, 570.

IV. ARGUMENT

A. Plaintiff Fails to Plead Factual Content Supporting an Inference of Discrimination

Plaintiff's Complaint is replete with conclusory allegations that Defendant discriminated against Plaintiff because of [his/her] [protected characteristic]. However, these allegations amount to nothing more than "labels and conclusions" and "a formulaic recitation of the elements of a cause of action," which do not suffice under *Twombly*. 550 U.S. at 555.

[DESCRIBE SPECIFIC DEFICIENCIES IN PLAINTIFF'S COMPLAINT. Examples:
The Complaint alleges only that Plaintiff was terminated and that Plaintiff is a member of a protected class. It contains no factual allegations suggesting that similarly situated employees outside the protected class were treated more favorably, no allegations of discriminatory

statements or conduct, and no factual basis from which this Court could infer discriminatory intent.]

The Supreme Court has made clear that "[d]etermining whether a complaint states a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. Here, common sense and judicial experience compel the conclusion that Plaintiff's threadbare allegations do not plausibly suggest discrimination.

B. Plaintiff's Allegations Are Equally Consistent with Lawful Conduct

Even accepting Plaintiff's factual allegations as true, they are "merely consistent with" lawful, non-discriminatory conduct and therefore fail to cross "the line between possibility and plausibility." *Iqbal*, 556 U.S. at 678.

[EXPLAIN HOW THE ALLEGED FACTS ARE EQUALLY OR MORE CONSISTENT WITH LAWFUL EXPLANATIONS. Examples: The fact that Plaintiff was terminated after receiving multiple documented performance warnings is entirely consistent with a lawful termination for cause. The Complaint itself acknowledges that Plaintiff received negative performance reviews, was placed on a performance improvement plan, and failed to meet the stated objectives. These facts, which Plaintiff does not dispute, provide an obvious non-discriminatory explanation for Defendant's actions.]

As the Supreme Court explained in *Iqbal*, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has

not 'show[n]'—'that the pleader is entitled to relief.'" 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Plaintiff has done nothing more than allege the "mere possibility" of discrimination.

C. [If Applicable] Plaintiff Fails to Allege Conduct Sufficiently Severe or Pervasive to State a Hostile Work Environment Claim

To state a hostile work environment claim under Title VII, a plaintiff must allege conduct that is "sufficiently severe or pervasive to alter the conditions of [the plaintiff's] employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). The alleged conduct must be both subjectively and objectively hostile. *Id.* at 21-22.

[EXPLAIN WHY THE ALLEGED CONDUCT DOES NOT MEET THIS STANDARD.

Examples: Plaintiff alleges only isolated incidents of workplace friction that do not rise to the level of actionable harassment. The alleged comments, while perhaps unprofessional, were not tied to Plaintiff's protected characteristic and do not constitute the type of "extreme conduct" necessary to support a hostile work environment claim. "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).]

V. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court grant this Motion and dismiss Plaintiff's Complaint in its entirety with prejudice.

Dated: [DATE]

Respectfully submitted,

[ATTORNEY NAME]

[BAR NUMBER]

[FIRM NAME]

[ADDRESS]

[PHONE]

[EMAIL]

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on [DATE], a true and correct copy of the foregoing
DEFENDANT'S MOTION TO DISMISS was served upon all counsel of record via the Court's
CM/ECF electronic filing system.

[ATTORNEY NAME]