IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

SHAWN D. JACKSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION FILE NO.**
	)	**2:10-CV-0070-WCO-SSC**
HALL COUNTY SHERIFF'S OFFICE, SHERIFF STEVE CRONIC, and COLONEL JEFF STRICKLAND,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COME NOW, Hall County Sheriff's Office, Sheriff Steve Cronic, and Colonel Jeff Strickland, all of the Defendants herein, and pursuant to Rules 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure, file this, their Motion to Dismiss Plaintiff's Complaint in its Entirety and Memorandum of Law in Support Thereof.

In his Complaint, Plaintiff alleges the following claims: race discrimination based on the failure to promote under the Equal Protection Clause of the Fourteenth Amendment as asserted through 42 U.S.C. § 1983 against all Defendants (Complaint ¶¶ 33-40); race discrimination based on the failure to promote under 42 U.S.C. § 1981 as asserted through § 1983 against all Defendants

(id. ¶¶ 41-45); conspiracy in violation of 42 U.S.C. § 1985 against all Defendants (id. ¶¶ 46-52); retaliation against all Defendants under § 1981 (id. ¶¶ 53-56); retaliation against all Defendants under the First Amendment as asserted through § 1983 (id. ¶¶ 57-64); attorney's fees under 42 U.S.C. § 1988 (id. ¶¶ 65-67; and punitive damages. While Plaintiff does not set forth specific counts for such claims, it also appears that he alleges claims for discriminatory failure to promote and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (See id. ¶¶ 1, 4).

On the basis of the legal deficiencies described below, Defendants move to dismiss the following for failure to state a claim:

(1) All claims for insufficiency of service of process;

(2) To the extent such claims have been asserted, all Title VII claims against Defendants Sheriff Cronic and Colonel Strickland because Title VII does not allow suit against individuals;

(3) Plaintiff's Equal Protection, First Amendment, Conspiracy, and § 1981 failure to promote claims because these claims are barred by the applicable two-year statute of limitations;

(4) Plaintiff's First Amendment retaliation claims for failure to allege that Plaintiff engaged in speech on a matter of public concern and also

because the claims against the individual Defendants are barred on the grounds of qualified immunity;

(5) Plaintiff's § 1985(3) conspiracy claim[1] because he has not pled a valid conspiracy claim and because the claim is barred by the intracorporate conspiracy doctrine;

(6) Plaintiff's § 1981 claim, to the extent it is pled separately from his § 1983 claim;

(7) To the extent such a claim has been asserted, Plaintiff's hostile working environment claim because he has not pled facts sufficient to support such a claim;

(8) All claims asserted against the individual Defendants in their official capacities as these claims are duplicative of the claims against the Sheriff's Office; and

[1] Section 1985 contains three prongs providing separate grounds for relief: § 1985(1) prohibits conspiracy to prevent an officer of the United States from performing his duties, § 1985(2) prohibits conspiracy to obstruct justice through the use of force or intimidation, and § 1985(3) prohibits conspiracy to deprive persons of rights or privileges conferred by the laws of the United States. Although Plaintiff does not specifically cite § 1985(3), Plaintiff has not pled any facts to indicate that he is seeking relief under the first two prongs. Accordingly, Defendants address Plaintiff's conspiracy claim pursuant to § 1985(3).

(9) Plaintiff's claim for punitive damages against the Sheriff's Office and any Defendants in their official capacities because punitive damages are not recoverable against a governmental entity.[2]

In support of this motion, Defendants provide the following memorandum of law.

I. STATEMENT OF THE CASE

Plaintiff, currently employed as a deputy by the Hall County Sheriff's Office, filed his Complaint against the Sheriff's Office, Sheriff Cronic, and Colonel Strickland on April 20, 2010. On May 10, 2010, Plaintiff filed proofs of service for Defendants, indicating that all Defendants had been served by depositing a copy of the complaint with a Captain Chris Mathews on May 3, 2010. (Docs. 7, 9, 10.)

In his Complaint, Plaintiff alleges that he is an African-American man who commenced employment with the Hall County Sheriff's Office on April 4, 1995 and remains employed by the Sheriff's Office through the filing date of his Complaint. (Complaint ¶¶ 6, 11-12.) Plaintiff further alleges that, in March 2007, he applied for promotion to sergeant in the Uniform Patrol Division and was rejected for such promotion because of his race and because discriminatory practices designed to

[2] If this motion is granted on all grounds except the service defense, the following claims would remain: Plaintiff's Title VII discriminatory failure to promote and retaliation claims against the Sheriff's Office and Plaintiff's § 1981 retaliation claim as asserted through § 1983 against all Defendants.

prevent African-Americans and other minority groups from advancing were employed by the Sheriff's Office. (Id. ¶¶ 13, 17.) He alleges that Defendants Sheriff Cronic and Colonel Strickland conspired to create a hostile work environment that prevents non-whites from obtaining promotions beyond corporal. (Id. ¶ 10.) On April 12, 2007 and July 11, 2007, Plaintiff alleges that two Caucasian candidates were promoted despite the fact that they were less qualified than Plaintiff. (Id. ¶¶ 18-20.)

Plaintiff alleges that he filed an EEOC charge and attempted to file a formal grievance complaint on October 19, 2007 and then began to experience instances of retaliation, such as being reassigned to a "line deputy" position. (Id. ¶ 23-26.) Plaintiff alleges that, on November 13, 2007, he filed a retaliation complaint with the EEOC for being placed in the capacity of a regular street officer. (Id. ¶ 27.) Plaintiff further alleges that he requested to speak with Sheriff Cronic about the retaliation by submitting a memo to his immediate supervisor, Sergeant Pearson, on January 4, 2008. (Id. ¶ 28.) On January 9, 2008, Plaintiff alleges he received correspondence from Captain Donnie Jarrard advising him to meet with him on January 11, 2008. Thereafter, Plaintiff alleges he was informed that he needed to follow the chain of command before meeting with the Sheriff and that Sheriff Cronic supposedly called Plaintiff to tell him that he refused to meet with him. (Id. ¶ 29.)

Plaintiff alleges that he also filed a grievance with internal affairs and Charles Nix, Director of Human Resources, on January 4, 2008 and met with Mr. Nix on January 8, 2008, where he was advised that his complaint had been investigated and found to be meritless. (Complaint ¶ 28.) Plaintiff further alleges that he received a memo from Lieutenant Robin Kemp advising Plaintiff that internal affairs does not handle grievances and that he should refer to the grievance procedures in General Order Number 2.05. (Id. ¶ 30.) Finally, Plaintiff alleges that, on January 15, 2008, Captain Jarrard canceled Plaintiff's previously scheduled vacation day of January 18, 2008. (Id. ¶ 32.)

II. ARGUMENT AND CITATION TO AUTHORITY

A. Plaintiff's Complaint Should Be Dismissed For Insufficiency Of Service Of Process

Plaintiff's complaint should be dismissed because plaintiff has failed to effect proper service upon Defendants. Rule 4 of the Federal Rules of Civil Procedure provides that "the plaintiff is responsible for service of a summons and complaint." Fed.R.Civ.P. 4(c)(1). In order to achieve effective service of process and survive a Rule 12(b)(5) motion to dismiss, a plaintiff's attempted service must meet the general requirements of Rule 4 of the Federal Rules of Civil Procedure. When a defendant moves for dismissal for insufficiency of service of process, the plaintiff bears the burden of proving that the service of process was valid. Sanders

v. Fluor Daniel, Inc., 151 F.R.D. 138, 139 (M.D. Fla. 1993), aff'd, 36 F.3d 93 (11th Cir. 1994).

Service of process on a local government such as the Hall County Sheriff's Office must be effectuated by delivering a copy of the summons and complaint to the government's chairman of the board of commissioners, president of the council of trustees, mayor or city manager, chief executive officer or clerk thereof, or any agent authorized by appointment to receive service of process. Fed.R.Civ.P. 4(j)(2); O.C.G.A. § 9-11-4(e)(5). Service of process upon an individual may be effected by (1) delivering a copy of the summons and complaint to the individual personally, (2) leaving a copy of each at the individual's dwelling with someone of suitable age and discretion who resides there, or (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process. Fed.R.Civ.P. 4(e); O.C.G.A. § 9-11-4(e)(7).

Plaintiff served all Defendants by delivering a copy of the summons and complaint to Captain Chris Mathews. (See Docs. 7, 9, 10.) Captain Mathews, however, is neither a defendant in this action nor does he fall into any of the categories of individuals on whom service for the Sheriff's Office may be effectuated. Furthermore, Plaintiff has presented no evidence indicating that Captain Mathews is authorized by appointment or by law to receive service of

process for the Sheriff's Office, Sheriff Cronic, or Colonel Strickland. Accordingly, Plaintiff has not met his burden in proving that service has been effectuated, and this action should be dismissed for insufficiency of service of process under Rule 12(b)(5).

B. Plaintiff's Title VII Claims Against The Individual Defendants Should Be Dismissed

To the extent that Plaintiff attempts to assert Title VII claims against the individual Defendants, it is well settled that a Title VII action may not be maintained against an individual. See, e.g., Dearth v. Collins, 441 F.3d 931, 933 (11th Cir. 2006), cert. denied, 127 S. Ct. 153, 166 L. Ed. 2d 37 (2006) (holding that "relief under Title VII is available against only the employer and not against individual employees whose actions would constitute a violation of the Act"); Hinson v. Clinch County, Ga. Bd. of Educ., 231 F.3d 821, 827 (11th Cir. 2000); Cross v. State of Ala., 49 F.3d 1490, 1504 (11th Cir. 1995). Accordingly, any Title VII claims that Plaintiff attempts to assert against Defendants Cronic and Strickland should be dismissed as a matter of law.

C. Plaintiff's Equal Protection, First Amendment, Conspiracy, and § 1981 Failure To Promote Claims Are Barred By The Applicable Two-Year Statute Of Limitations

The statute of limitations for all federal constitutional claims, including Equal Protection and First Amendment claims asserted through § 1983, is two

years in Georgia. See McNair v. Allen, 515 F.3d 1168, 1173 (2008); Lovett v. Ray, 327 F.3d 1181, 1182 (11th Cir. 2003) ("Federal courts apply their forum state's statute of limitations for personal injury actions to actions brought pursuant to 42 U.S.C. § 1983.") (citations omitted); Mullinax v. McElhenney, 817 F.2d 711, 716 n.6 (11th Cir. 1987). Similarly, the statute of limitations for § 1985(3) conspiracy claims is two years. See Trawinski v. United Technologies, 313 F.3d 1295, 1298-1299 (11th Cir. 2002); Rozar v. Mullis, 85 F.3d 556, 561 (11th Cir. 1996).

In addition, Plaintiff's § 1981 failure to promote claim is subject to a two-year statute of limitations. In Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004), the Supreme Court held that 28 U.S.C. § 1658, which established a default four-year statute of limitations for federal causes of action created after its enactment date of December 1, 1990, applied to federal causes of action "made possible by a post-1990 enactment" of a federal law. Id. at 382. Thus, if a claim was actionable prior to a post-1990 enactment, the previous state law statute of limitations applies. See id.; Baker v. Birmingham Bd. of Educ., 531 F.3d 1336, 1337-1338 (11th Cir. 2008). Plaintiff's failure to promote claim was actionable prior to the expansion of § 1981 in the 1991 amendments to the Civil Rights Act, and, therefore, it remains subject to Georgia's two-year statute of limitations. See

Price v. M & H Valve Co., 177 Fed.Appx. 1, 10 (11th Cir. 2006) ("Because Price was asserting that M & H Valve failed to promote him because of his race, we conclude that his § 1981 claims . . . [are] time-barred under Alabama's two-year statute of limitations."); see also Goodman v. Lukens Steel Co., 482 U.S. 656, 660 (1987); Hill v. Metropolitan Atlanta Rapid Transit Auth., 841 F.2d 1533, 1545-46 (11th Cir. 1988); O.C.G.A. § 9-3-33.

Although state law determines the applicable two-year statute of limitations period for the above claims, federal law determines the date of accrual. Rozar, 85 F.3d at 561. Under § 1983, claims accrue when: (1) the plaintiff knows or has reason to know that he was injured, and (2) the plaintiff is aware or should be aware of who inflicted the injury." Id. at 562 (citing Mullinax v. McElhenney, 817 F.2d 711, 716 (11th Cir. 1987)).

Here, Plaintiff has alleged that Defendants discriminatorily failed to promote him after he applied for promotion in March 2007 and when alleged discriminatory promotions occurred in April and July 2007. (Complaint ¶¶ 17-20.) Plaintiff contends that the particular acts of retaliation occurred when his shift and certain job responsibilities were reassigned prior to his November 13, 2007 EEOC charge and when a vacation day was canceled on January 18, 2008. Plaintiff makes no allegation of any potentially actionable conduct on the part of Defendants

subsequent to the cancelation of his vacation day on January 18, 2008. Furthermore, Plaintiff alleges no facts indicating that he would not have known about these incidents on the date they occurred.

Because Plaintiff filed this lawsuit more than two years after the last alleged instance of supposedly unlawful conduct by Defendants, on April 20, 2010, all claims subject to the two-year statute of limitations must be dismissed. Accordingly, Defendants respectfully request that the Court dismiss Plaintiff's Equal Protection, First Amendment, § 1985(3) conspiracy, and § 1981 failure to promote claims as time-barred.

D. Plaintiff's First Amendment Retaliation Claims Should Be Dismissed

Even assuming, *arguendo*, that the Court declines to dismiss Plaintiff's §1983 First Amendment claims as barred by the statute of limitations, his First Amendment claims still must be dismissed because Plaintiff has not alleged any speech on a matter of public concern.

A public employee has a limited right to free speech. See Maggio v. Sipple, 211 F.3d 1346, 1351 (11th Cir. 2000). A public employee's speech is constitutionally protected only "if the speech may be fairly characterized as constituting speech on a matter of public concern, and the employee's interest in commenting on the matter outweighs the government's interest in promoting the

efficiency of the public services it performs through its employees." Oladeinde v. City of Birmingham, 230 F.3d 1275, 1291 (11th Cir. 2000) (quotations and citations omitted). Both of these inquiries are matters of law to be determined by the court. Brochu v. City of Riviera Beach, 304 F.3d 1144, 1157 (11th Cir. 2002).

Whether speech may be fairly characterized as constituting speech on a matter of public concern involves an examination of the "content, form, and context of the speech." Id. at 1157. The speech must be the kind of public discourse which the First Amendment was intended to protect. Id. at 1159. The speech therefore must relate to a "matter of political, social, or other concern to the community." Oladeinde, 230 F.3d at 1292 (quoting Maggio, 211 F.3d at 1352). A court may consider the employee's attempts to make the speech public and the employee's reason for speaking. Morgan v. Ford, 6 F.3d 750, 754 (11th Cir. 1993) (citing Deremo v. Watkins, 939 F.2d 908, 910 (11th Cir. 1991)).

Absent extraordinary circumstances, First Amendment protection remains unavailable when a "public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest . . . ." Connick v. Meyers, 461 U.S. 138, 147 (1983). A court must therefore discern "the purpose of the employee's speech – that is, whether she spoke on behalf of the public as a citizen, or whether the employee spoke for [him]self as an

employee." Morgan, 6 F.3d at 754 (citing id. at 146). If an employee's speech was made to further his private interests, even if the speech may be of important social interest, the speech is not of public concern and is not protected. Id.

Thus, the Eleventh Circuit has held that an employee's complaints to her employer about sexual harassment in the workplace do not constitute a matter of public concern and cannot form the basis of a § 1983 free speech claim. Morgan v. Ford, 6 F.3d 750 at 754-55. The Morgan court explained that the complainant's speech and grievances regarding the alleged sexual harassment were driven entirely by her own "rational self-interest in improving the conditions of her employment" and that her complaints, "as serious as they were, centered around her private matters, not matters of social interest." Id. at 755.

Similarly, in Myles v. Richmond County Bd. of Educ., an employee's complaints about unqualified individuals being appointed to positions of authority were found not to touch on a matter of public concern. 267 Fed.Appx. 898, 900 (11th Cir. 2008). The court explained,

> Though her speech did touch on a matter of public interest, the true purpose behind Appellant's various complaints was not to raise an issue of public concern, but rather to further her own private interest in improving her employment position. Her complaints centered predominantly around, and were driven by, her displeasure with having been denied promotions she thought she deserved.

Id.; see also Bennett v. Chatham County Sheriff's Dept., 2008 WL 628908, *8

(S.D.Ga. Mar. 5, 2008) (dismissing plaintiff's First Amendment retaliation claims based on grievances filed alleging discrimination on race and sex because the grievances did not touch on a matter of public concern).

Likewise, Plaintiff's allegations, even if true, only can establish that his complaints and grievances were made solely to try to improve his position in the Sheriff's office and his personal working conditions. Furthermore, according to his own allegations, Plaintiff never made or attempted to make his grievances public; all his complaints were made to employees or agents of the Sheriff's Office. Accordingly, Plaintiff has not alleged the existence of any speech on a matter of public concern, precluding his § 1983 First Amendment claims, and the Court should dismiss these claims against all Defendants pursuant to Rule 12(b)(6).[3]

[3] Even if the Court declines to dismiss Plaintiff's § 1983 First Amendment claims *in toto*, the Court should dismiss these claims against the individual Defendants on the basis of qualified immunity. A motion to dismiss asserting qualified immunity should be granted if the "complaint fails to allege the violation of a clearly established constitutional right." Chesser v. Sparks, 248 F.3d 1117, 1121 (11th Cir. 2001) (internal quotation marks and citation omitted). As discussed above, it is well-established under Eleventh Circuit law that a violation of a plaintiff's First Amendment rights will not be found where the plaintiff has not engaged in speech on a matter of public concern, such as where an employee has made a complaint to his employer that he has not been promoted due to his race. Accordingly, because Plaintiff has not alleged a violation of a clearly established constitutional right, qualified immunity bars Plaintiff's § 1983 First Amendment claims against the individual Defendants.

E. Plaintiff Has Failed To Plead A Viable § 1985(3) Claim

Even if the Court finds that Plaintiff's § 1985(3) claim is not barred by the two-year statute of limitations, it still must be dismissed for failure to state a claim. To establish a claim under § 1985(3), a plaintiff must show: (1) a conspiracy, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy, (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. Trawinski v. United Technologies, 313 F.3d 1295, 1299 (11th Cir. 2002) (citing Childree v. UAP/GA AG CHEM, Inc., 92 F.3d 1140, 1146-47 (11th Cir. 1996)). Conclusory, vague, and general allegations of conspiracy justify dismissal of a complaint. Fullman v. Graddick, 739 F.2d 553, 557 (11th Cir. 1984).

Here, Plaintiff summarily alleges that Defendants Sheriff Cronic and Colonel Strickland conspired to create a hostile work environment that prevents non-whites from obtaining promotions beyond corporal and to deprive Plaintiff of the equal protection of the laws. (Complaint ¶¶ 10, 47-52.) These statements are exactly the kind of conclusory allegations found by the Supreme Court in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009), to be insufficient to state a claim for conspiracy. Id. at

1950-1952. Indeed, Plaintiff has alleged no ***facts***, as opposed to legal ***conclusions***, that Sheriff Cronic and Colonel Strickland entered into an agreement to deprive Plaintiff of his rights. Indeed, apart from the legal conclusion stated in ¶ 10 of Plaintiff's Complaint, neither Sheriff Cronic nor Colonel Strickland are mentioned again in Plaintiff's Complaint, with the exception of Plaintiff's allegations that Sheriff Cronic called him to tell him that he would not meet with him. Plaintiff's allegations of conspiracy are, therefore, wholly insufficient to state a claim under Iqbal and should be dismissed for this reason alone. See id.

Moreover, Plaintiff's § 1985(3) conspiracy claim is barred by the intracorporate conspiracy doctrine. "The intracorporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy." Denney v. City of Albany, 247 F.3d 1172, 1190 (11th Cir. 2001) (quoting McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir.2000) (en banc)). "Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves." Id. This doctrine applies equally to public entities, such as the Hall County Sheriff's Office, and their personnel. Denney, 247 F.3d at 1190.

Thus, where plaintiffs have alleged that governmental employees manipulated a promotion process to deprive white employees of promotional opportunities, the plaintiffs' conspiracy claims were barred by the doctrine because such manipulation could be attributed to the employees' performance of their official, and not personal, duties. Denney at 1191. Similarly, where a plaintiff alleged a conspiracy under § 1985(3) to "increase the number of African American employees in upper management" and to "intentionally discriminate against white employees," the court dismissed the plaintiff's conspiracy claim under the doctrine. McMillan v. Dekalb County, 2005 WL 5121856, *5 (N.D.Ga. Feb. 15, 2005) (Martin, J.).

In the instant case, Plaintiff bases his conspiracy claim solely on Sheriff Cronic's and Colonel Strickland's alleged efforts to create a hostile work environment that prevents non-whites from obtaining promotions beyond corporal. While his conspiracy claim is vague as pled, these allegations can support nothing more than employment discrimination claims against Defendants in connection with Plaintiff's employment. The only two conspirators identified by Plaintiff – Sheriff Cronic and Colonel Strickland – are both Sheriff's Office employees, and Plaintiff has alleged the involvement of no outsiders. Like the claims asserted in Denney and McMillan, therefore, any claims that Plaintiff may have in connection with his employment only can be imputed to his employer, the Sheriff's Office, as Sheriff

Cronic and Colonel Strickland were effectively acting as the Sheriff's Office to the extent that they manipulated the promotion process. See Denney, 247 F.3d at 1191.

Accordingly, Plaintiff's claim under § 1985(3) should be dismissed under Rule 12(b)(6) for failure to plead facts indicating that such a claim is plausible and because the intracorporate conspiracy doctrine bars the claim.

F. Plaintiff's Separate § 1981 Claims Should Be Dismissed

Courts repeatedly have held that § 1983 provides the exclusive remedy against public actors for the alleged violation of rights secured by § 1981; thus, a cause of action asserted under § 1983 extinguishes any claim brought pursuant to § 1981. Jett v. Dallas Indep. School Dist., 491 U.S. 701, 706 (1989); Webster v. Fulton County, 283 F.3d 1254, 1256 (11th Cir. 2002). Courts also have extended this same rule to § 1981 claims against individual defendants sued in their individual capacity. Jett, 491 U.S. at 706; Ebrahimi v. City of Huntsville, 905 F. Supp. 993, 995-96 (N.D. Ala. 1995). Accordingly, to the extent that Plaintiff has asserted § 1981 claims separate and apart from his § 1983 claim, these stand-alone § 1981 claims should be dismissed.

G. Any Hostile Working Environment Claims Should Be Dismissed For Failure To Plead Facts Sufficient To Indicate That Plaintiff Was Subject To A Discriminatorily Abusive Work Environment

To the extent that Plaintiff has pled any hostile working environment claims, these claims must be dismissed. Plaintiff has summarily alleged that Defendants "created a racially-hostile work environment." (Complaint ¶ 43.) Under Iqbal and subsequent case law in the Eleventh Circuit, these naked conclusions cannot state a claim for relief.

For example, in Edwards v. Prime, Inc., 602 F.3d 1276, 1300 (11th Cir. 2010), the plaintiff alleged that he was subjected to a racially hostile work environment. The Eleventh Circuit noted that the plaintiff's allegation that "in his work for Prime, plaintiff Edwards was subjected to a hostile discriminatory environment on the basis of his race" was too broad and formulaic to satisfy the pleading standards of Federal Rule of Civil Procedure Rule 8. Id.

The court even held that allegations from the plaintiff that he was threatened by a Hispanic co-worker did not suffice to satisfy his Rule 8 pleading requirements because there was no allegation that the threats were made based on his race. Id. The Eleventh Circuit noted that a complaint must plead factual matters so as to state a plausible claim, and "an introductory conclusion cannot take the place of factual allegations in stating a plausible claim for relief." Id.

As compared to the Plaintiff in the present lawsuit, the complaint in the Edwards matter contained significantly more factual detail in his allegations of harassment. Nonetheless, the Eleventh Circuit held that these allegations were conclusory, and affirmed the district court's dismissal for failure to state a claim for relief. Id.

Similarly, in Enadeghe v. Ryla Teleservices, Inc., 2010 WL 481210 (N.D. Ga. Feb. 3, 2010), the court dismissed a plaintiff's discrimination and retaliation complaint for failing to state a claim under Federal Rule 12(b)(6). In Ryla, the plaintiff alleged that she was sexually harassed and terminated because of her race. She also "appeared" to allege retaliation. Id. at *1. Initially, the court noted that the plaintiff's complaint "should clearly identify the claims she was asserting in separate counts and discuss the legal theories and statutes upon which her claims rested." Id.

The court then analyzed the plaintiff's allegations, including that she was poked and touched on her back and shoulder, that her co-workers encouraged others to continue this conduct, that she complained of this harassment to her manager, and that the defendant did not take any action to address her concerns. Id., at *2. The court held that a plaintiff must establish by factual allegations that alleged harassment is based on the plaintiff's sex, and in order to plead a claim for

sexual harassment, the plaintiff must allege facts that show a severe or pervasive work environment. Id., at *4-5. In other words, if a plaintiff simply alleges that they were harassed and subjected to a hostile work environment, the plaintiff has failed to state a claim to relief. Id.; see also Raja v. Englewood Community Hospital, 2009 WL 3429805, *3 (M.D. Fla. Oct. 21, 2009) (dismissing Plaintiff's discrimination complaint when plaintiff pled conclusions instead of factual allegations of discrimination, noting "pursuant to Ashcroft v. Iqbal, each conclusory allegation is to be ignored").

Likewise, Plaintiff's conclusory hostile working environment allegation is patently insufficient to establish that he was subjected to actionable racial harassment, even taking all of his allegations as true. None of the facts alleged in Plaintiff's Complaint, even construed in their most favorable light, can be read to plead the kind of "severe or pervasive" harassment required by the Eleventh Circuit. See McCann v. Tillman, 526 F.3d 1370, 1378 (11th Cir. 2008). Accordingly, to the extent they have been asserted, Plaintiff's hostile working environment claims should be dismissed in their entirety.

H. Plaintiff's Official Capacity Claims Against The Individual Defendants Are Duplicative Of His Claims Against The Sheriff's Office And Should Be Dismissed

The Court should dismiss all claims pled against the individual Defendants in

their official capacities because they are duplicative of the claims asserted against the Hall County Sheriff's Office. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985); Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991).

I. Plaintiff's Claims For Punitive Damages Against The Hall County Sheriff's Office Must Be Dismissed

In his prayer for relief, Plaintiff has asserted claims for punitive damages. A municipality is immune from punitive damages under § 1983. Newport v. Fact Concerts, 453 U.S. 247, 271 (1981). Similarly, punitive damages may not be assessed against a municipality under Title VII. 42 U.S.C. § 1981a(b)(1); Brantley v. City of Macon, 390 F.Supp.2d 1314, 1332 (M.D.Ga. 2005). Accordingly, punitive damages against the Hall County Sheriff's Office are unavailable under any theory asserted by Plaintiff, and, therefore, such claims should be dismissed.

III. CONCLUSION

For the reasons expressed above, Defendant's Motion to Dismiss Plaintiff's Complaint should be granted.

This 7th day of June, 2010.

Respectfully submitted,

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Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT THEREOF** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 7th day of June, 2010.

s/ Benton J. Mathis, Jr.
Benton J. Mathis, Jr.
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