Appendix A
Decision of United States Court of Appeals

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1508

CAROL BANGURA,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA SENATE;
PENNSYLVANIA SENATOR ANTHONY WILLIAMS, in his individual capacity;
MARLENE HENEKIN, in her individual capacity;
DESAREE JONES, in her individual capacity

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-16-cv-03626)
District Judge: Honorable Paul S. Diamond

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 2, 2019

Before: JORDAN, BIBAS and PHIPPS, Circuit Judges

(Opinion filed: December 3, 2019)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Carol Bangura appeals from the District Court's order granting summary judgment to the defendants in her employment discrimination lawsuit. For the reasons discussed below, we will affirm.

I.

We write primarily for the parties; because they are familiar with the facts, we will note them only as they become necessary to our analysis. Bangura was born in Sierra Leone and she speaks English as a second language. She was employed by the Pennsylvania State Senate as a scheduler for Senator Anthony Williams from March 2014 until her termination in September 2014 for poor performance.

In July 2016, Bangura filed her complaint in the District Court. In her operative third amended complaint,[1] she named as defendants the Commonwealth of Pennsylvania, the Pennsylvania State Senate, Senator Williams, Marlene Henkin, and Desaree Jones. Bangura brought claims of race and national origin discrimination, retaliation, and hostile work environment against all of the defendants under Title VII of the Civil Rights Act ("Title VII"), the Pennsylvania Human Relations Act ("PHRA"), and 42 U.S.C. §§ 1981

[1] During the course of the proceedings, the District Court dismissed multiple claims against various defendants. Any issues relating to the dismissed claims are waived, as Bangura has not argued those issues on appeal. See United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005) ("[A]n appellant's failure to identify or argue an issue in his opening brief constitutes waiver of that issue on appeal."). Bangura has also waived any issues regarding her requests for appointment of counsel. To the extent that Bangura challenges the District Court's discovery rulings, the District Court did not abuse its discretion. See Anderson v. Wachovia Mortg. Corp., 621 F.3d 261, 281 (3d Cir. 2010) ("We review a district court's discovery orders for abuse of discretion, and will not disturb such an order absent a showing of actual and substantial prejudice.").

and 1983. Bangura also brought disability discrimination claims against the Commonwealth under the Americans with Disabilities Act ("ADA") and against all the defendants under the PHRA. The defendants filed various cross-claims and moved for summary judgment. On February 28, 2019, the District Court entered an order granting the defendants' motion for summary judgment on all of Bangura's claims. On March 1, 2019, Bangura filed her notice of appeal from that order. On March 20, 2019, the District Court dismissed the defendants' outstanding cross-claims as moot.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291.[2] We exercise plenary review over the District Court's order granting summary judgment. See Kaucher v. County of Bucks, 455 F.3d 418, 422 (3d Cir. 2006). Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party and drawing all inferences in favor of that party, there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See id. at 422–23; Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists if the evidence is sufficient for a reasonable factfinder to return a verdict for the non-moving party. See Anderson v.

[2] When the District Court entered its order granting summary judgment, it was not appealable under 28 U.S.C. § 1291 because the District Court had not yet ruled on the defendants' outstanding cross-claims. See Aluminum Co. of Am. v. Beazer E., Inc., 124 F.3d 551, 557 (3d Cir. 1997). But Bangura's appeal from the entry of summary judgment has ripened now that the District Court has ruled on the cross-claims. See DL Res., Inc. v. FirstEnergy Sols. Corp., 506 F.3d 209, 216 (3d Cir. 2007) (applying the doctrine of Cape May Greene, Inc. v. Warren, 698 F.2d 179 (3d Cir. 1983)). Thus, we have jurisdiction over the appeal from the District Court's entry of summary judgment. See id.

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). We may affirm on any basis supported by the record. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

III.

The District Court properly entered summary judgment against Bangura on her disability discrimination claims under the ADA and PHRA because she did not establish that she has a disability. See Macfarlan v. Ivy Hill SNF, LLC, 675 F.3d 266, 274 (3d Cir. 2012) (explaining that, to establish a disability, "a plaintiff may demonstrate any one of: an actual mental or physical impairment that substantially limits one or more major life activities, a record of such impairment, or that his employer regarded him as having a disability."); see also 42 U.S.C. § 12102(2) (defining major life activities). Bangura maintained that she suffered from a variety of physical and mental impairments, but no reasonable juror could find that she demonstrated—or has a record which establishes—that those impairments substantially limited any major life activity.[3] Bangura has consistently maintained that her impairments did not affect her ability to work and that her work was limited, instead, by her strained relationships with the defendants. Thus, no reasonable factfinder could determine that Bangura has a disability, and the defendants were entitled to summary judgment on the disability discrimination claims.

[3] We note that, during the course of discovery, Bangura prevented the defendants from obtaining her medical records. She did provide evidence that she once sought treatment for an anxiety attack, but that limited evidence cannot establish anything more than a "temporary non-chronic impairment of short duration," which is insufficient to establish a disability. Macfarlan, 675 F.3d at 274 (quotation marks and citation omitted).

The District Court properly analyzed Bangura's remaining discrimination claims, and her retaliation claims, according to the burden-shifting framework established by McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). See Jones v. Sch. Dist. of Phila., 198 F.3d 403, 410 (3d Cir. 1999) (explaining that the framework generally applies to claims under Title VII, the PHRA, and 42 U.S.C. § 1981); Stewart v. Rutgers, The State Univ., 120 F.3d 426, 432 (3d Cir. 1997) (applying the framework to claims under 42 U.S.C. § 1983). Under that framework, Bangura had the initial burden of establishing a prima facie case of discrimination or retaliation. See McDonnell Douglas, 411 U.S. at 802. If she succeeded, the burden then would shift to the defendants to articulate a legitimate non-discriminatory or non-retaliatory reason for taking an adverse employment action against her. See id.; Moore v. City of Philadelphia, 461 F.3d 331, 342 (3d Cir. 2006) (discussing retaliation claims). Bangura would then have an opportunity to prove by a preponderance of the evidence that the legitimate reason offered by the defendants for the adverse action was a pretext. See Jones, 198 F.3d at 410; Moore, 461 F.3d at 342.

Here, at the very least, and assuming without deciding that Bangura established a prima facie case of discrimination and retaliation, we agree with the District Court that the defendants pointed to a legitimate, non-discriminatory and non-retaliatory reason for their employment decisions—Bangura's poor performance. See Ross v. Gilhuly, 755 F.3d 185, 193 (3d Cir. 2014) (holding that "[e]ven assuming, *arguendo*, that [plaintiff] established a prima facie case," his "demonstrably poor job performance" was a "legitimate, non-discriminatory reason" for his termination). Bangura admitted that,

from the start of her employment, the defendants were persistently concerned with her poor performance. She also admitted that she refused to review a scheduling protocol describing her responsibilities. And the defendants provided evidence from multiple coworkers regarding scheduling issues that resulted from Bangura's mistakes.

Bangura failed to adduce evidence from which a reasonable factfinder could conclude "that the employer's proffered reasons were merely a pretext for discrimination," Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003) (per curiam), or that there were "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions from which a reasonable juror could conclude that the Defendants' explanation is unworthy of credence, and hence infer that the employer did not act for the asserted" non-retaliatory reason, Carvalho-Grevious v. Del. State Univ., 851 F.3d 249, 262 (3d Cir. 2017) (quotation marks and citations omitted). We agree with the District Court's analysis of this issue, including its discussion of the July 2014 series of events in which Bangura's coworkers made jokes about a fire that affected African immigrants, told Bangura to "speak English," and told Bangura to put a banana in her traditional African head wrap. While those isolated events are highly offensive, no reasonable juror could find that they establish pretext, as Senator Williams and Henkin—the defendants primarily responsible for the adverse employment actions taken against Bangura—were uninvolved. See Carvalho-Grevious, 851 F.3d at 263. Moreover, to the extent that the defendants were informed of or involved in the offensive events, it was in the context of communications that were focused primarily on Bangura's poor performance. Thus, the

defendants were entitled to summary judgment on the discrimination and retaliation claims under Title VII, the PHRA, and 42 U.S.C. §§ 1981 and 1983.

Finally, the District Court properly granted summary judgment to the defendants on Bangura's claims of a hostile work environment based on her race, national origin, and alleged disability. To prevail on such claims, "a plaintiff must show that 1) the employee suffered intentional discrimination . . . 2) the discrimination was severe or pervasive, 3) the discrimination detrimentally affected the plaintiff, 4) the discrimination would detrimentally affect a reasonable person in like circumstances, and 5) the existence of *respondeat superior* liability [meaning the employer is responsible]." Castleberry v. STI Grp., 863 F.3d 259, 263 (3d Cir. 2017) (quotation marks and citation omitted). Again, we agree with the District Court's analysis, including its determination that the isolated events in July 2014, while highly offensive, were insufficient for a reasonable juror to find that Bangura suffered discrimination that was severe or pervasive. Cf. id. at 265. Moreover, Bangura maintained that she was unaffected by these events and that her poor performance and health issues stemmed from the criticism she received for her work, which she began receiving well before the July 2014 incidents. Thus, the defendants were entitled to summary judgment on the hostile work environment claims.

Accordingly, we will affirm the judgment of the District Court. Bangura's motion for oral argument is denied.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1508

CAROL BANGURA,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA SENATE;
PENNSYLVANIA SENATOR ANTHONY WILLIAMS, in his individual capacity;
MARLENE HENEKIN, in her individual capacity;
DESAREE JONES, in her individual capacity

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-16-cv-03626)
District Judge: Honorable Paul S. Diamond

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 2, 2019

Before: JORDAN, BIBAS and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on December 2, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 28, 2019, be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 3, 2019

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

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December 3, 2019

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RE: Carol Bangura v. Commonwealth of PA Senate, et al
Case Number: 19-1508
District Court Case Number: 2-16-cv-03626

ENTRY OF JUDGMENT

Today, **December 03, 2019** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Caitlyn
Case Manager
267-299-4956

Appendix B
Decision of United States Court of Appeals Denying Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1508

CAROL BANGURA,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA SENATE;
PENNSYLVANIA SENATOR ANTHONY WILLIAMS, in his individual capacity;
MARLENE HENEKIN, in her individual capacity;
DESAREE JONES, in her individual capacity

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-16-cv-03626)
District Judge: Honorable Paul S. Diamond

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: December 26, 2019

CJG/cc: Carol Bangura
Katherine H. Meehan, Esq.
Joseph P. Grimes, Esq.

Appendix C
Decision of State Court Granting Summary Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL BANGURA,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 16-3626**
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, et al.	:	
Defendants.	:	

ORDER

Pro se Plaintiff Carol Bangura proceeds against Defendants Commonwealth of Pennsylvania, the Pennsylvania Senate, Pennsylvania Senator Anthony Williams, Marlene Henkin, and Desaree Jones, alleging that Defendants discriminated and retaliated against her in violation of federal and state law. (Doc. No. 76); Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq*, the Pennsylvania Human Relations Act, Pa. Stat. Ann. Tit. 43 §§ 951 *et seq.*, 42 U.S.C. §§ 1981 and 1983, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq*.

On June 22, 2018, the State Defendants (the Commonwealth of Pennsylvania and the Pennsylvania Senate) and Individual Defendants (Williams, Henkin, and Jones) separately moved for summary judgment, which Plaintiff opposes. (Doc. Nos. 103, 104, 105, 108.) I will grant Defendants' Motions and enter Judgment in favor of Defendants and against Plaintiff.

I. FACTUAL BACKGROUND

I have resolved all disputed facts and made all reasonable inferences in Plaintiff's favor. Hugh v. Butler Cty. Family YMCA, 418 F.3d 265, 267 (3d Cir. 2005). As I explain below, Plaintiff bases many of her allegations on her own uncorroborated beliefs or averments.

Plaintiff is a naturalized American citizen from Sierra Leone. (Pl.'s Statement of Facts ¶ 25, Doc. No. 108; State Defs.' Statement of Facts ¶ 3, Doc. No. 103.) From March 2014 until her

termination in September 2014, she worked as one of several schedulers for Williams. (Id.) As a scheduler, Plaintiff was formally employed by the Pennsylvania Senate. (Pl.'s Statement of Facts ¶ 25; State Defs.' Statement of Facts ¶ 5.)

Plaintiff was responsible for scheduling appointments for Williams and addressing inquiries about meetings and donation requests. (Pl.'s Statement of Facts ¶ 26–27; Ind. Defs.' Statement of Facts ¶ 13; Doc. No. 105-1.) She reported, *inter alia*, to Williams, his Director of Operations Henkin, and Deputy Director of Operations Jones. (Ind. Defs.' Corrected Statement of Facts ¶ 14.)

It appears that Plaintiff immediately began keeping a written "diary" of remarks and actions she found offensive when she started working as a scheduler. (Pl.'s Statement of Facts ¶ 33; Ind. Defs.' Corrected Statement of Facts ¶¶ 81–82; see also Ex. A1 to State Defs.' Mot. Summ. J. (CB 12–32), Doc. No. 103-2.) As recorded in her diary, while Plaintiff worked for Williams, Jones regularly belittled her, talked differently to her than to other employees, refused her requests for training policies, yelled at her, questioned and nitpicked her work, singled her out for criticism, and intentionally excluded her from office meetings and events. (Pl.'s Statement of Facts ¶ 30; Ind. Defs.' Corrected Statement of Facts ¶ 15.)

In May 2014, Plaintiff reported her concerns about Jones to both Henkin and Williams. (Pl.'s Statement of Facts ¶¶ 34–37; Ind. Defs.' Corrected Statement of Facts ¶¶ 21–26.) A short time later, Plaintiff received a follow-up email from Henkin with a "scheduling protocol," summarizing Plaintiff's scheduling duties. (Pl.'s Statement of Facts ¶ 36; Ind. Defs.' Corrected Statement of Facts ¶¶ 27–33.)

In June 2014, Defendants hired Kathleen Harvey (who is Caucasian) as a scheduler for Williams. (Pl.'s Statement of Facts ¶ 38; Ind. Defs.' Corrected Statement of Facts ¶¶ 36.)

Defendants then adjusted Plaintiff's scheduling responsibilities and instructed her to report scheduling information to Harvey. (Pl.'s Statement of Facts ¶ 41; Ind. Defs.' Corrected Statement of Facts ¶¶ 38–42.)

As alleged, in July 2014: (1) Jones told Plaintiff to "speak English"; (2) a coworker told Plaintiff to put a banana in her traditional African head wrap; and (3) other employees made "African jokes" about a fire that killed and/or displaced several African immigrants. (Pl.'s Statement of Facts ¶ 44; Ind. Defs.' Corrected Statement of Facts ¶¶ 50–54.) On July 10, 2014, Plaintiff texted Henkin about the fire "jokes." (Pl.'s Statement of Facts ¶ 45; Ind. Defs.' Corrected Statement of Facts ¶¶ 55, 58–60.)

In August 2014, Plaintiff complained about Jones to Henkin. (Pl.'s Statement of Facts ¶ 47; Ind. Defs.' Corrected Statement of Facts ¶¶ 61–66.) On August 20, 2014, Plaintiff met with Henkin and Jones to discuss her concerns. (Pl.'s Statement of Facts ¶ 48; Ind. Defs.' Corrected Statement of Facts ¶¶ 67–68.) As alleged, Henkin told Plaintiff during the meeting that if Plaintiff "didn't stop sending emails about complaints about [Jones], maybe this job is not for you." (Pl.'s Statement of Facts ¶ 48.; Ind. Defs.' Corrected Statement of Facts ¶ 79.) Plaintiff suffered an anxiety attack after the meeting, and Henkin allowed her to go home early. (Pl.'s Statement of Facts ¶ 50; Ind. Defs.' Corrected Statement of Facts ¶ 78.)

On August 21–22, 2014, Plaintiff texted Williams's wife (with whom she was friends) about her meeting with Henkin and Jones. Mrs. Williams told Plaintiff to "start looking for another opportunity[;] they have all [sic] ready painted a picture of you[;] I mentioned to the senator and he already knows there [sic] side you will never win . . . your job is in jeopardy[,] but don't stress[;] you can find something else[;] he's not going to fire you so don't worry[,] but everyone has it out for you." (Pl.'s Statement of Facts ¶¶ 51–54; Ind. Defs.' Corrected Statement of Facts ¶¶ 69–71.)

On August 21, 2014, Plaintiff sent Williams a copy of the "scheduling protocol." (Pl.'s Statement of Facts ¶ 55.) The same day, Henkin informed Plaintiff that she was being put on paid leave for disciplinary reasons until September 2, 2014. (Pl.'s Statement of Facts ¶¶ 56–57; Ind. Defs.' Corrected Statement of Facts ¶ 85.) On August 23, 2014, Plaintiff sent Williams an email reiterating her concerns about Jones. (Pl.'s Statement of Facts ¶ 59.)

On September 2, 2014—the day Plaintiff was supposed to return to work—Plaintiff suffered another anxiety attack and received permission to stay home. (Id. at ¶ 60.) The same day, Plaintiff informed Henkin that she wanted to file a workers' compensation claim based on her August 20, 2018 anxiety attack, which Plaintiff attributed to Jones's conduct. (Id.) On September 4, 2014, Plaintiff filed her claim. (Pl.'s Statement of Facts ¶ 63; State Defs.' Statement of Facts ¶ 23.)

On September 5, 2014, Plaintiff asked Henkin for a copy of the Pennsylvania Senate's disciplinary policy. (Pl.'s Statement of Facts ¶ 66.) Henkin advised Plaintiff to contact Robert Kline (Director of Administration for the Democratic Caucus) for "further personnel questions." (Id.)

On September 8, 2014, Plaintiff asked Henkin if she could "work from home for mutually agreed upon days due to [her] aggravated health conditions, anxiety, and migraine headaches with nosebleeds." (Pl.'s Statement of Facts ¶ 69; State Defs.' Statement of Facts ¶ 24.) Plaintiff told Henkin that "the thought alone of being in the office with [] Jones frightens me." (Id.)

On September 10, 2014, Plaintiff's workers' compensation claim was denied. (Pl.'s Statement of Facts ¶ 72; State Defs.' Statement of Facts ¶ 26.) On September 11, 2014, Plaintiff informed Kline that she "wished to seek legal advice" about her harassment concerns and denied workers' compensation claim." (Pl.'s Statement of Facts ¶ 73; State Defs.' Statement of Facts ¶

25.) Kline replied, "Please feel free to have your attorney contact me." (Id.)

On September 12, 2014, Defendants terminated Plaintiff, effective September 17, 2014, for poor performance. (Pl.'s Statement of Facts ¶ 74; State Defs.' Statement of Facts ¶ 27.)

II. PROCEDURAL HISTORY

On August 29, 2014, while on paid leave, Plaintiff filed an EEOC charge of discrimination against the Office of Senator Williams, alleging retaliation and discrimination based on national origin and disability. (EEOC Charge No. 3244, Ex. 134 to Pl.'s Br. Opp., Doc. No. 108-10.) On November 3, 2014, Plaintiff filed an EEOC charge of discrimination against the Commonwealth and the State Senate, alleging retaliation for filing discrimination charges. (EEOC Charge No. 272, Ex. 135 to Pl.'s Br. Opp., Doc. No. 108-10.) On April 19, 2016, Plaintiff received Notices of Dismissal and Right to Sue Letters for both charges. (EEOC Charge No. 3244; EEOC Charge No. 272.)

On July 18, 2016, Plaintiff filed a *pro se* Complaint against the instant Defendants, as well as Robert Kline, and the Pennsylvania Senate Democratic Caucus, alleging discrimination, retaliation, and sexual harassment. (Doc. No. 3.) All Defendants moved to dismiss. (Doc. Nos. 10, 11, 28.) On March 15, 2017, Judge Legrome Davis (to whom this matter was then assigned) dismissed: (1) all Plaintiff's claims against Kline and the Pennsylvania Senate Caucus; and (2) her sexual harassment claims against the instant Defendants. (Doc. No. 37.)

On April 6, 2017, Plaintiff filed a First Amended Complaint against the instant Defendants. (Doc. No. 40.) On April 18, 2017, the Commonwealth and the State Senate moved to dismiss Plaintiff's First Amended Complaint. (Doc. No. 41.) On October 4, 2017, the case was reassigned to me. (Doc. No. 47.)

On December 11, 2017, I appointed Ari Karpf, a vastly experienced civil rights attorney,

to represent Plaintiff. (Doc. No. 54.) On December 22, 2017, I allowed Plaintiff to file a counseled Second Amended Complaint and denied all outstanding motions as moot. (Doc. Nos. 57, 58.) On February 26, 2018, after the Parties met with Magistrate Judge Timothy Rice for a settlement conference—which was not successful—they agreed to proceed with discovery. (Doc. Nos. 63, 64.)

On March 7, 2018, Plaintiff "terminated" Mr. Karpf, who, on the next day, moved to withdraw, explaining that Plaintiff had assumed control of all aspects of her case. (Doc. No. 65.) On March 9, 2018, after holding a hearing on Mr. Karpf's Motion, I permitted him to withdraw and granted Plaintiff's request to file a *pro se* Third Amended Complaint. (Doc. Nos. 68–71.)

On March 28, 2018, Plaintiff filed the instant *pro se* Complaint against the instant Defendants, seeking back pay, front pay, reinstatement, compensatory damages, and punitive damages. (Doc. No. 76.) During discovery, Plaintiff filed four Motions seeking sanctions against various Defendants; I denied all the Motions. (Doc. Nos. 77, 78, 81, 85, 90, 91 92.)

On June 22, 2018, all Defendants moved for summary judgment. (Doc. Nos. 103–105.) On July 10, 2018, Plaintiff filed a response in opposition to Defendants' Motions. (Doc. No. 108.) On July 30, 2018, Plaintiff asked me to issue trial subpoenas to nineteen individuals. (Doc. No. 109.) I denied her request without prejudice. (Doc. No. 110.)

On August 17, 2018, I stayed all deadlines pending my decision on summary judgment. (Doc. No. 111.) Plaintiff nevertheless then asked me to: (1) issue trial subpoenas to two of her treating providers "to provide testimony regarding [her] diagnosis[], treatment from 2014 [to the present], and [her] potential prognosis"; (2) prohibit Defendants from using her deposition testimony at trial because of discovery violations; and (3) hold an expedited status conference. (Doc. Nos. 112, 114–115.) I have denied those motions without prejudice. (Doc. Nos. 116–18.)

III. STANDARD OF REVIEW

I may grant summary judgment "if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party must initially show the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). An issue is material only if it could affect the result of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). I "must view the facts in the light most favorable to the non-moving party," and make every reasonable inference in that party's favor. Hugh, 418 F.3d at 267. If I then determine that there is no genuine issue of material fact, summary judgment is appropriate. Celotex, 477 U.S. at 322.

Summary judgment is appropriate where the moving party shows that there is an absence of evidence to support the non-moving party's case. Id. at 325. Where a moving party identifies an absence of necessary evidence, the non-moving party "must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Grp., Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006).

IV. DISCUSSION

Plaintiff brings race and national origin discrimination, retaliation, and hostile work environment claims against all Defendants under Title VII, the PHRA, and §§ 1981 and 1983. (TAC ¶¶ 80–85, 89–92.) She also brings disability discrimination claims against the Commonwealth under the ADA and all Defendants under the PHRA. (TAC ¶¶ 86–92.)

The State and Individual Defendants have separately moved for summary judgment. (Doc. Nos. 103, 105.) The State Defendants argue that Plaintiff's discrimination claims are administratively barred. (State Defs.' Mem. Law 4–6, Doc. No. 103-1.) All Defendants argue that Plaintiff cannot: (1) show that she was terminated because of her race, national origin, alleged

disabilities, or protected activities; or (2) establish that she worked in a hostile environment. (See generally State Defs.' Mem. Law; Ind. Defs.' Corrected Mem. Law, Doc. No. 105-2.)

My task has been made more difficult by Plaintiff's voluminous, obsessively detailed, confusing, and often irrational pleadings and arguments. Construing her many filings as liberally as I can, it is evident that Plaintiff has sought to transform her inability to get along with Jones into innumerable instances of workplace discrimination. Defendants are entitled to summary judgment on all Plaintiff's claims.

A. Administrative Exhaustion

The State Defendants argue that Plaintiff failed to exhaust her administrative remedies for the discrimination claims she now brings under Title VII and the PHRA. (State Defs.' Mem. Law 4–6.) To proceed here, Plaintiff must first file a charge of discrimination with the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission. Weems v. Kehe Food Distributors, Inc., 804 F. Supp. 2d 339, 341–42 (E.D. Pa. 2011) (citing Antol v. Perry, 82 F.3d 1291, 1295–96 (3d Cir. 1996)).

The Parties do not dispute that Plaintiff filed EEOC and PHRC charges in this case. The State Defendants argue, however, that Plaintiff's EEOC charge against them does not cover the instant discrimination claims because Plaintiff: (1) failed to allege that the State Defendants discriminated against her because of her race or disabilities; and (2) failed to check the applicable discrimination boxes on her EEOC form. (State Defs.' Mem. Law 4–6; see also EEOC Charge No. 272.) The State Defendants also note that Judge Davis previously dismissed Plaintiff's claims against the Democratic Caucus on identical grounds. (State Defs.' Mem. Law 5–6 (citing Order 10, Doc. No. 37).) After reviewing the EEOC Charge, as well as Judge Davis's Order, I agree with the State Defendants.

Although "the failure to check a particular box on an EEOC charge" is not fatal to a Title

VII claim, the acts alleged in a Title VII [Complaint] must be "fairly within the scope of [Plaintiff's] prior EEOC charge or the investigation arising therefrom." See Antol, 82 F.3d at 1295; Webb v. City of Philadelphia, 562 F.3d 256, 263 (3d Cir. 2009) ("[T]he parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." (quotation omitted)).

In her EEOC charge against the State Defendants, Plaintiff alleges only that Defendants "discharged [her] in retaliation for having filed previous charges of discrimination, including charges filed with the EEOC under Title VII and the ADA" and for "engaging in protected activities." (EEOC Charge 272.) As the State Defendants correctly observe, Plaintiff did not allege that the State Defendants discriminated against her or allege any facts regarding her race, national origin, or disabilities. (State Defs.' Mem. Law 4–6.) Plaintiff thus did not exhaust the administrative remedies for her discrimination claims against the State Defendants. Accordingly, I will enter Judgment in favor of the State Defendants on Plaintiff's discrimination claims under Title VII and the PHRA.

B. Merits

In the alternative, I will dismiss Plaintiff's claims against the State Defendants on the merits. I will also dismiss all her claims against the Individual Defendants on the merits.

I must analyze Plaintiff's discrimination and retaliation claims under the burden-shifting framework of *McDonnell Douglas Corporation v. Green.* 411 U.S. 792, 802 (1973); Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410–11 (3d Cir. 1999). Plaintiff must first establish "a *prima facie* case either by providing direct evidence of intentional discrimination or circumstantial evidence that would raise the inference that the defendant's conduct was motivated by discriminatory animus." Santiago v. City of Vineland, 107 F. Supp. 2d 512, 529 (D.N.J. 2000) (citing McDonnell Douglas, 411 U.S. at 802 (1973); Texas Dep't of Cmty. Affairs v. Burdine, 450

U.S. 248, 252–53 (1981)).) "An inference of discrimination can be 'supported . . . [by] comparator evidence, evidence of similar discrimination of other employees, or direct evidence of discrimination from statements or actions by her supervisors suggesting . . . animus.'" Zielinski v. Kimberly-Clark Corp., No. 15-3053, 2016 WL 3519709, at *4 (E.D. Pa. June 28, 2016) (quoting Golod v. Bank of Am. Corp., 403 F. App'x 699, 703 n.2 (3d Cir. 2010)).

If Plaintiff makes out a *prima facie* case, the burden shifts to Defendants to produce a legitimate, nondiscriminatory reason for its adverse employment action. Burdine, 450 U.S. at 254; Santiago, 107 F. Supp. 2d at 530 (citation omitted). To satisfy this light burden, Defendants need only produce admissible evidence that would allow the factfinder rationally to conclude that the employment decision was not motivated by discrimination. Cooper v. PricewaterhouseCoopers, No. 07-1399, 2008 WL 4441993, at *4 (E.D. Pa. Sept. 30, 2008) (citing Dorsey v. Pittsburgh Assoc., 90 F. App'x 636, 639 (3d Cir. 2004)); see also Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994) (employer's burden is "relatively light"). Defendants "need not prove that the articulated reason actually motivated the [action]." Klina v. Se. Pennsylvania Transp. Auth., No. 10-5106, 2011 WL 4572064, at *9 (E.D. Pa. Oct. 3, 2011) (quoting Shellenberger v. Summit Bancorp, Inc., 318 F.3d 183, 189 (3d Cir. 2003)).

If Defendants carry this burden, Plaintiff must prove by a preponderance of the evidence "that the legitimate reasons offered by the defendant were not [their] true reasons, but were a pretext for discrimination." Jones, 198 F.3d at 410; Santiago, 107 F. Supp. 2d at 530. "[T]o defeat a motion for summary judgment . . . the plaintiff must point to some evidence, be it direct or circumstantial, from which a fact finder could reasonably either (1) disbelieve the employer's articulated legitimate reasons or, (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Jones v. Sch. Dist.

of Philadelphia, 19 F. Supp. 2d 414, 421 (E.D. Pa. 1998), aff'd 198 F.3d 403 (3d Cir. 1999) (citing Fuentes, 32 F.3d at 764). "The ultimate burden of proving intentional discrimination always rests with the plaintiff." Fuentes, 32 F.3d at 763. Plaintiff has failed to carry this burden for any of her claims.

1. Plaintiff's Title VII and PHRA Race and National Origin Discrimination Claims

In Counts Two and Four, Plaintiff alleges that Defendants took adverse employment actions against her based on her race and national origin in violation of Title VII and the PHRA. (TAC ¶¶ 83–85; 89–92.); 42 U.S.C. 2000e, et seq; 43 P.S. § 951, *et seq.*; Dici v. Commonwealth of Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996) ("Generally, the PHRA is applied in accordance with Title VII."). Title VII affords explicit protection to employees from such actions based upon race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a). The *McDonnell Douglas* burden-shifting framework applies. Jones, 198 F.3d at 410.

To establish a *prima facie* case of race or national origin discrimination under Title VII and the PHRA, Plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) the action was taken in circumstances that give rise to an inference of unlawful discrimination. Id. at 410–11.

Although Plaintiff has satisfied the first three *McDonnell Douglas* elements, she has failed to identify circumstances that give rise to an inference of unlawful discrimination.

Plaintiff argues that Defendants took five adverse employment actions against her, including: (1) terminating her; (2) "demoting" her; (3) giving her a "scheduling protocol"; (4) placing her on paid leave; and (5) denying her request to work from home for disability-related reasons. (Pl.'s Mem. Law 2, 9, Doc. No. 108-3.) The Parties agree that Plaintiff's termination constitutes an adverse employment action. (See generally Pl.'s Mem. Law; State Defs.' Mem. Law; Ind. Defs.' Mem. Law); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761–62 (1998)

(adverse actions include hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits).

Plaintiff could thus establish a *prima facie* discrimination case based on her termination. The other actions Plaintiff protests, however, are not adverse employment actions. Jones v. Se. Pennsylvania Transp. Auth., 796 F.3d 323, 326 (3d Cir. 2015) (adverse employment action must be "serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment").

Plaintiff alleges that her receipt of a "scheduling protocol" (a summary of her job responsibilities) was an "adverse action" motivated by discrimination because other schedulers did not receive it. (Pl.'s Mem. Law 9.) Plaintiff's allegation is not supported by the record. To the contrary, the protocol states that Henkin prepared the document for Plaintiff in specific response to her request for written job instructions. (Ex. 9 to Pl.'s Br. Opp., Doc. No. 108-3.) Remarkably, Plaintiff admits that she did not read the protocol because she assumed it was retaliatory. (Dep. of Carol Bangura 76:3–12, Exs. A–D to State Defs.' Mot. Summ. J., Doc. No. 103-2, 3, 4, 5, 6.) She nevertheless charges that Henkin's stated reason for creating it was a lie. (Id.) Plaintiff's only support for this contention, however, is her own uncorroborated belief. Abuomar v. Dep't of Corrections, No. 17-2751, 2018 WL 5778247, at *4 (3d Cir. 2018) ("[S]elf-serving averments alone are insufficient to withstand summary judgment."). Because the record neither supports Plaintiff's contention nor suggests that the "protocol" was motivated by any discrimination, no reasonable factfinder could characterize it as an adverse employment action. Cf. Hill v. Governor Mifflin Sch. Dist., No. 09-5525, 2013 WL 2392908, at *8 (E.D. Pa. May 21, 2013).

Plaintiff also charges that Defendants "demoted" her in June 2011 by: (1) transferring her "primary employment duties and responsibilities" to Harvey; (2) gradually blocking Plaintiff from

directly viewing, accessing and editing Williams's calendar; and (3) instructing Plaintiff to report scheduling requests to Harvey. (Pl.'s Mem. Law 9.) Plaintiff describes these changes as "humiliat[ing]," and notes that, because of these changes, Williams no longer texted her about his scheduling needs. (Bangura Dep. 207:3–5; see also Ex. 16 to Pl.'s Br. Opp., Doc. No. 108-3.) The record and the law do not support these charges.

"Minor actions, such as lateral transfers and changes of title and reporting relationships," without more, generally do not constitute adverse employment actions. Langley v. Merck & Co., 186 F. App'x 258, 260 (3d Cir. 2006) (citing cases). Even if they did, the record does not support Plaintiff's characterization of her job changes as a "demotion." Plaintiff concedes that her salary was unaffected by these changes, and that she was given increasing responsibility in other areas. (Bangura Dep. 90:13–91:16; see also Ex. 44 to Pl.'s Br. Opp., Doc. No. 108-4 ("I was increasingly attending community events related to the African community including representing the office at the monthly Mayor's Commission on African and Caribbean Affairs.").) Significantly, the record also shows that Defendants adjusted Plaintiff's job responsibilities because Plaintiff complained (albeit incorrectly) that some of her job duties violated the State Ethics Act. (See Aff. of Marlene Henkin ¶¶ 10–11, Ex. S to Ind. Defs.' Mot. Summ. J., Doc. No. 105-15.) In these circumstances, no reasonable factfinder could construe Plaintiff's purported "demotion" as an adverse action.

Defendants' decision to place Plaintiff on disciplinary leave also is not an adverse employment action. "Placing an employee on paid administrative leave where there is no presumption of termination is not an adverse employment action under the substantive provision of Title VII." See Jones, 796 F.3d at 326 (citation omitted). The record shows that Williams placed Plaintiff on paid leave until he could discuss her concerns about Jones. (See Ex. 20 to Pl.'s Br. Opp., Doc. No. 108-3 ("[T]his is not pre[-]termination but simply separating all parties until I

return."). No reasonable juror could thus construe Defendants' decision to place Plaintiff on leave as an adverse action.

Finally, Plaintiff appears to argue that Defendants denied her request to work from home (for medical reasons) because she is African. (Pl.'s Mem. Law 2.) Although it is conceivable that failing to accommodate an ADA disability based on race or national origin could give rise to an adverse employment action, Plaintiff has produced no evidence that she is disabled under the ADA or that Defendants based their decision on Plaintiff's national origin. See infra Section III.B.5; cf. Gilbert v. Maricopa Cty., No. 09-1756, 2010 WL 2712225, at *4 (D. Ariz. July 2, 2010) (failing to accommodate an ADA disability based on sex); Hong v. Children's Memorial Hosp., 993 F.2d 1257, 1266 (7th Cir. 1993) (plaintiff must show that employer "relied on impermissible criterion in making its decision"). Absent a legally cognizable disability or evidence of discrimination, Defendants' failure to allow Plaintiff to work from home does not constitute an adverse employment action under Title VII.

In sum, only Plaintiff's termination is an adverse employment action within the meaning of *McDonnell Douglas*. Plaintiff nevertheless has failed to produce evidence from which a reasonable factfinder could infer that she was fired because of her race or national origin. See Jones, 198 F.3d at 410–11. Plaintiff argues that a reasonable factfinder could infer that she was discriminated against because: (1) Jones once told her to "speak English"; (2) a co-worker told her to put a banana in her African headwear; and (3) co-workers made "African jokes" (the specifics of which Plaintiff cannot recall). (Pl.'s Mem. Law 6; see also Bangura Dep. 99:18–100:16, 102:12–24, 112:2–113:2, 262:4–263:4, 269:3–5.) Plaintiff also argues that, at the Rule 12 stage, Judge Davis found that these incidents could support an inference of discrimination. (Pl.'s Mem. Law 6 (citing Order 12–14, Doc. No. 37).) At summary judgment, however, these incidents,

although highly offensive if they occurred, do not support a claim of discriminatory firing.

Plaintiff has not produced any evidence of these incidents beyond her own arguments, deposition testimony, or written descriptions of events. Le v. City of Wilmington, 736 F. Supp. 2d. 842, 854 (D. Del. 2010), aff'd 480 F. App'x 678 (3d Cir. 2012) (self-serving allegations and deposition testimony, without more, generally do not create a sufficient issue of fact to be resolved by a jury). In any event, the incidents do not show that Plaintiff was fired because she was African. See, e.g. Hong, 993 F.2d at 1266 ("Remarks at work that are based on stereotypes of an individual's national origin do not invariably prove that national origin played a part in an employment decision; the plaintiff must show that the [employer] relied on this impermissible criterion in making its decision.") Although one of these incidents involved a supervisor (Jones), none of the statements were made by individuals who made the decision to fire Plaintiff (i.e., Henkin, Williams, Kline). Plaintiff charges that Henkin and Williams knew about these incidents and failed to investigate them. (Bangura Dep. 112:21–24, 264:10–12; Interrog. 1–2, Ex. B to State Defs.' Mot. Summ. J. (CB 5), Doc. No. 103-4 (stating that Williams and Henkin "[were] aware of discriminatory remarks based on Plaintiff's race and national origin, African.") The record does not support this allegation, however. To the contrary, the evidence shows that in the midst of a lengthy text chain to Henkin, Plaintiff mentioned "insensitive and discriminatory remarks" made by her colleagues. (Ex. 15 to Pl.'s Br. Opp., Doc. No. 108-3.) In addition, Plaintiff sent a single email to Williams setting out a laundry list of complaints against Jones, including making unspecified "African jokes." (Ex. 23 to Pl.'s Br. Opp., Doc. No. 108-4.) Even if Henkin and Williams did not pursue these complaints, no reasonable factfinder could infer, based on this evidence, that Plaintiff's termination was motivated by race- or national origin-based discrimination. Accordingly, Defendants are entitled to Judgment on Plaintiff's discrimination

claims.

Even if Plaintiff could establish a *prima facie* discrimination case, Defendants identify a legitimate, non-discriminatory reason for her termination: poor performance. (Ind. Defs.' Corrected Mem. Law 3–6, 15–17; State Defs.' Mem. Law 9; see also Termination Letter, Ex. 31 to Pl.'s Br. Opp., Doc. No. 108-4.) Defendants offer a "note to file" drafted by Henkin while Plaintiff was on paid disciplinary leave, recounting that Plaintiff, *inter alia*, had trouble retaining verbal instructions, was slow to schedule requests, responded defensively to constructive criticism, and did not get along well with her coworkers. (See Ex. O to Ind. Defs.' Mot. Summ. J., Doc. No. 105-9.) The Individual Defendants also submit: (1) an affidavit from Henkin stating that she regularly received "[c]omplaints . . . from . . . staff members regarding [P]laintiff's substandard performance in mis-scheduling events and/or failing to communicate alerts of upcoming events"; and (2) two letters from Plaintiff's co-workers, recalling similar "scheduling issues" that they had with Plaintiff. (Henkin Aff. ¶ 17; Exs. P, Q to Ind. Defs.' Mot. Summ. J. Doc. Nos. 105-10, 105-11.) The State Defendants also note that Plaintiff describes in her diary complaints made about her work. (State Defs.' Mot. Summ. J. 2, 13–14; see also Ex. A1 to State Defs.' Mot. Summ. J. (CB Dep. 12–32), Doc. No. 103-2.)

Defendants have thus clearly satisfied their light burden to show that they had a legitimate, non-discriminatory reason to fire Plaintiff. Fuentes, 32 F.3d at 763.

Plaintiff has failed to show that the reason for her firing is pretextual. Plaintiff charges that: (1) Defendants never imposed discipline on Plaintiff before firing her; (2) Defendants fail to show that her performance violated any specific Pennsylvania Senate policies; (3) Plaintiff did not know that Defendants conducted an "informal review" before firing her; (4) Kline did not have the authority to terminate her; and (5) Plaintiff had been receiving increased responsibility at work.

(Pl.'s Mem. Law 2, 4, 7, 9–11, 14, 15; see also Pl.'s Statement of Facts ¶ 67, 76, 80–81, 85.) Even viewed generously, these allegations do not establish "weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in Defendant[s'] proffered reason[]" to render Defendants "unworthy of credence." Fuentes, 32 F.3d at 765 (quotation omitted); see also Joyce v. Taylor Health & Rehabilitation Ctr., LLC, No. 12-1124, 2014 WL 807472, at *7 (M.D. Pa. Feb. 28, 2014) ("Without more, Plaintiff's assertions that she 'had no real warning, no progressive discipline, nothing much to guide her' do nothing to cast doubt on Defendant's proffered reason for termination.").

Finally, even if Defendants' stated reason for firing Plaintiff *is* false, she does not identify *any* evidence that race- or national origin-based discrimination were the real reasons for her termination. Jones, 198 F.3d at 413. Rather, Plaintiff simply repeats arguments she made to show *prima facie* discrimination and offers her own belief that Defendants fired her because she was "the only African" in the office. (Bangura Dep. 101:23–102:2.) Plaintiff cannot, however, "simply rely on the facts that support her *prima facie* case to rebut [Defendants'] articulated reason, and assert that [Defendants'] intent is a question of fact that must be determined by a jury." Fieni v. Franciscan Care Ctr., No. 09-5587, 2011 WL 4543996, at *9 (E.D. Pa. Sept. 30, 2011). Similarly, Plaintiff's belief that she was fired because of her race or national origin cannot sustain her claim. Cross v. Brennan, No. 12-2670, 2016 WL 4689042, at *7 (D.N.J. Sept. 6, 2016) (citing Elliott v. Grp. Med. & Surgical Serv., 714 F.2d 556, 567 (5th Cir. 1983) (a "subjective belief of discrimination, however genuine, [cannot] be the basis of judicial relief.").

In these circumstances, Defendants are entitled to Judgment on Plaintiff's racial and national origin discrimination claims under Title VII and the PHRA.

2. Plaintiff's Title VII and PHRA Retaliation Claims

In Counts Two and Four, Plaintiff argues that Defendants impermissibly retaliated against her for protected activities. (TAC ¶¶ 83–85, 89–92.) Title VII prohibits employers from retaliating against employees who have "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing [under Title VII]." 42 U.S.C. 2000e-3; Jones, 19 F. Supp. 2d at 420–21 (PHRA and Title VII analyzed similarly). The *McDonnell Douglas* burden-shifting framework applies to retaliation claims. Jones, 19 F. Supp. 2d at 420–21.

To establish *prima facie* retaliation, Plaintiff must first show that: "(1) she engaged in protected activity[;] (2) she experienced an adverse employment action[;] and (3) there was a causal link between her involvement in the protected activity and the adverse employment action." Hatch v. Franklin Cty., No. 17-3293, 2018 WL 6839640, at *5 (3d Cir. 2018) (citing Krouse v. Am. Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997)). Plaintiff must also show that her employer knew that she engaged in the alleged protected activity. Griffin-El v. Beard, No. 06-2719, 2013 WL 228098, at *5 (E.D. Pa. Jan. 22, 2013) (citing Laskaris v. Thornburgh, 733 F.2d 260, 265 (3d Cir. 2014)).

Plaintiff has met this initial burden: Plaintiff's termination indisputably qualifies as an adverse employment action, and the evidence, viewed in Plaintiff's favor, indicates that she engaged in several protected activities shortly before she was fired.

Plaintiff argues that she engaged in nine protected activities before she was fired, including: (1-4) emailing Henkin or Williams about Jones' conduct on May 13, 2014, August 13, 2014, August 23, 2014, and September 2, 2014; (5) meeting with Williams and Henkin about Jones; (6) texting Henkin about her co-workers' discriminatory remarks on July 10, 2014; (7) filing a workers' compensation claim on September 4, 2014; (8) emailing Henkin about an accommodation on September 8, 2014; and (9) emailing Kline about legal plans on September 11,

2014. (Pl.'s Mem. Law 1–2, 28, 58; see also Pl.'s Statement of Facts ¶¶ 34, 37, 44, 47, 55, 60, 69, 73.)

Of these nine, only five constitute protected activity: (1) emailing Williams about Jones on August 23, 2014; (2) texting Henkin about remarks on July 10, 2014; (3) filing a workers' compensation claim on September 4, 2014; (4) emailing Henkin about an accommodation on September 8, 2014; and (5) emailing Kline about legal plans on September 11, 2014. See Daniels v. Sch. Dist. of Philadelphia, 776 F. 3d 181, 193 (3d Cir. 2015) (protected activities include filing formal and informal discrimination charges); Butler v. BTC Foods, Inc., No. 12-0492, 2014 WL 336649, at *7 (E.D. Pa. Jan. 30, 2014) (informal request for leave); Smith v. R.R. Donnelly & Sons Co., No. 10-1417, 2011 WL 4346340, at *3 (E.D. Pa. Sept. 16, 2011) (workers' compensation claim); Harcum v. Shaffer, No. 06-5326, 2007 WL 4167161, at *8 (E.D. Pa. Nov. 21, 2007) (citing Anderson v. Davila, 125 F.3d 148, 163 (3d Cir. 1997)) (stating intent to pursue legal recourse).

Only one of Plaintiff's complaints about Jones—the August 23, 2014 email—is protected. To constitute protected conduct, internal complaints must include good-faith allegations of discrimination based on a protected category, such as race or national origin. Slagle v. Cty. of Clarion, 435 F.3d 262, 266–67 (3d Cir. 2006); Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1085 (3d Cir. 1996)); see also Seebald v. Praxair, Inc., No. 03-2172, 2004 WL 350912, at *10 (E.D. Pa. Jan. 21, 2004) (plaintiff must show, "by a preponderance of the evidence that [she] reasonably, albeit incorrectly, believed in good faith that [her] accusations were meritorious"); Coley-Allen v. Strong Health, 828 F. Supp. 2d 582, 588 (W.D.N.Y. 2011) ("[T]o allege that complaints to management comprised protected activity, a plaintiff must allege that she complained about acts of discrimination, and not other issues or work-related problems." (citing Foster v. Humane Society of Rochester & Monroe Cty., Inc., 724 F. Supp. 2d 382, 394–95

(W.D.N.Y. 2010))). Only Plaintiff's August 23, 2014 email references race or national origin. (See Ex. 23 to Pl.'s Br. Opp., Doc. No. 108-4 ("[Jones] made African jokes . . . [and] asked if I wanted to . . . just do work with the African community.").) The remainder of Plaintiff's emails state only that Jones excluded her, yelled at her, talked down to her, falsely accused her of not completing tasks, and created a "hostile work environment." (See Exs. 8, 16 to Pl.'s Br. Opp., Doc. No. 108-3; Ex. 24 to Pl.'s Br. Opp., Doc. No. 108-4.)

Although Plaintiff also complained about Jones to Henkin and Williams in person (alleged activity #5), there is no evidence that at those meetings Plaintiff gave either of her supervisors any reason to believe that Jones's behavior was tied to race or national origin. Plaintiff did not testify that she told Henkin or Williams at these meetings that she believed Jones was harassing her because of her race or national origin. (See generally Bangura Dep.; cf. Henkin Aff. ¶¶ 14 ("Plaintiff did not claim in [our May 14 meeting], and in fact never claimed that she was the target of any protected class activity and never claimed that she felt the harassment was based on Plaintiff's national origin or race as a natural born African-American as opposed to a native born African American."); id. at ¶ 19 ("Plaintiff again did not raise any issues of protected class discrimination based on national origin [at the August 20 meeting].")).) She also makes no reference to her race- or national origin-based concerns in her diary account of these in-person meetings. (See generally Ex. A1 to State Defs.' Mot. Summ. J. (CB Dep. 12–32), Doc. No. 103-2; Ex. C to State Defs.' Mot. Summ. J. (CB 6), Doc. No. 103-5.) Without these race- or national origin-based allegations, none of Plaintiff's complaints about Jones—aside from her August 23, 2014 email—constitutes protected conduct.

Finally, although ignored by Plaintiff, it is clear that her EEOC charge against the Individual Defendants—which was filed before she was fired—also constitutes protected conduct.

Daniels, 776 F. 3d at 193 (filing formal charges).

Plaintiff thus alleges six viable protected activities: (1) texting Henkin about remarks on July 10, 2014; (2) emailing Williams about Jones on August 23, 2014; (3) filing an EEOC charge against the Individual Defendants on August 29, 2014; (4) filing a workers' compensation claim on September 4, 2014; (5) emailing Henkin about an accommodation on September 8, 2014; and (6) emailing Kline about legal plans on September 11, 2014. The Individual Defendants do not dispute that they knew about these protected activities. Plaintiff does not identify any evidence, however, suggesting that the State Defendants knew about these activities. (See also Aff. of Donetta M. D'Innocenzo ¶ 12, Ex. E to State Defs.' Mot. Summ. J., Doc. No. 103-7 (the Senate's Chief Clerk's Office "did not receive, was not brought into, nor involved with any complaints of harassment, hostile work environment, and/or discrimination from Plaintiff . . . during her employment with the Senate."). With the retaliation claim against the State Defendants thus eliminated, Plaintiff must make out a *prima facie* case against the Individual Defendants. Griffin-El, 2013 WL 228098, at *5.

To complete her *prima facie* case, Plaintiff must identify evidence from which a reasonable factfinder purportedly could infer that Defendants "likely" fired her in retaliation for some of these activities. Carvalho-Grevious v. Delaware State Univ., 851 F.3d 249, 253 (3d Cir. 2017). At the *prima facie* stage, evidence of causation can include: (1) evidence of a temporal proximity unusually suggestive of retaliatory motive; (2) a pattern of antagonism against the plaintiff; (3) an employer's inconsistent explanation for taking an adverse employment action; or (4) any other evidence suggesting retaliatory animus. Daniels, 776 F.3d at 196.

The Parties agree that Defendants terminated Plaintiff on September 12, 2014. (Pl.'s Statement of Facts ¶ 74; State Defs.' Statement of Facts ¶ 27.) Plaintiff has shown that four of her

protected activities were close enough in time to her termination date to establish causation, including Plaintiff's: (1) filing an EEOC charge against the Individual Defendants on August 29, 2014 (two weeks); (2) filing a workers' compensation claim on September 4, 2014 (eight days); (3) emailing Henkin about an accommodation on September 8, 2014 (four days); and (4) emailing Kline about legal plans on September 11, 2014 (one day). See Shellenberger, 318 F.3d at 183 (ten days unduly suggestive); Hammond v. City of Wilkes Barre, 628 F. App'x 806, 808 (3d Cir. 2015) (two weeks).

Plaintiff cannot rely on timing alone to demonstrate that Defendants terminated her because she: (5) texted Henkin about her co-workers' remarks on July 10, 2014 (two months earlier); or (6) emailed Williams about Jones' conduct on August 23, 2014 (three weeks earlier). Thomas v. Town of Hammonton, 351 F.3d 108, 114 (3d Cir. 2003) ("[W]here the temporal proximity is not so close as to be unduly suggestive . . . timing plus other evidence may be an appropriate test."); Blakney v. City of Philadelphia, 559 F. App'x 183, 186 (3d Cir. 2014) ("We have . . . held that a temporal proximity greater than ten days requires supplementary evidence of retaliatory motive"); see also Tirk v. Dubrook, Inc., 238, 241 (3d Cir. 2016) (three-week gap insufficient). Plaintiff has also failed to identify any other evidence that would establish a causal link between her July 10, 2014 text or August 23, 2014 email and her termination. Plaintiff testified that during her August 20, 2014 meeting with Henkin and Jones, Henkin told Plaintiff that "if [she] didn't stop sending emails about complaints about [Jones]" then "maybe th[e] job [wasn't] for her." (Bangura Dep. 109:17–24.) Even if this is true, Henkin's statement does not establish retaliatory causation because none of Plaintiff's complaints about Jones (before the August 20 meeting) involved race- or national origin-based allegations. Accordingly, Plaintiff cannot rely on Henkin's statement to establish a retaliatory causal connection between her July 10, 2014 text or August 23, 2014 email

and her termination.

Plaintiff also points to texts from Mrs. Williams from August 20–21, 2014, telling Plaintiff to "start looking for another [job]" because "everyone has it out for you." (Ex. 19 to Pl.'s Br. Opp., Doc. No. 108-3.) These comments also do not establish retaliatory causation because Plaintiff engaged in only one "protected" activity (her July 10, 2014 text to Henkin) before these texts. Significantly, Mrs. Williams also stated in her texts that Williams was *not* planning to fire Plaintiff because of her colleagues' actions. (Id.) No reasonable factfinder could thus find a causal connection between Plaintiff's July 10, 2014 text or August 23, 2014 email and her termination based on Mrs. Williams's texts.

In any event, Mrs. Williams's comments are precisely the type of remarks that other courts have described as "stray" and "not probative of [retaliatory] intent." Fernandez v. Woodhull Med. and Mental Health Ctr., No. 14-4191, 2017 WL 3432037, at *9 (E.D.N.Y. Aug. 8, 2017) ("Remarks made by someone other than the person who made the decision adversely affecting the plaintiff have little tendency to show that the decision-maker was motivated by the discriminatory sentiment expressed in the remark." (quoting Tomassi v. Insignia Fin. Grp., Inc, 478 F.3d 111, 115 (2d Cir. 2007), abrogated on other grounds by Gross v. FBL Fin. Servs., 557 U.S. 167 (2009))). "[T]he more remote and oblique [such] remarks are in relation to the employer's adverse action, the less they prove that the action was motivated by discrimination." Id. (quoting Tomassi, 478 F.3d at 115). Mrs. Williams was not Plaintiff's supervisor, nor was she even employed by her husband. Moreover, there is no evidence that she played any role in Plaintiff's termination. In these circumstances, Mrs. Williams's texts do not support a causal connection.

Accordingly, Plaintiff makes out a *prima facie* retaliation case only with respect to four protected activities: (1) filing an EEOC charge against the Individual Defendants on August 29,

2014; (2) filing a workers' compensation claim on September 4, 2014; (3) emailing Henkin about an accommodation on September 8, 2014; and (4) emailing Kline about legal plans on September 11, 2014. Yet, she again fails to show that Defendants' proffered reason for her termination (poor performance) is pretextual. Krouse, 126 F.3d at 501 (plaintiff must prove, by a preponderance of the evidence, that "retaliatory animus played a role in [her] employer's decisionmaking process and that it had a determinative effect on the outcome of that process").

To prove pretext, Plaintiff relies on the same arguments that I have already rejected, and mistakenly submits that all her protected activities were close enough in time to her termination to prove retaliation. (Pl.'s Mem. Law 9.) Plaintiff cannot, however, rely solely on temporal proximity to show pretext. Houston v. Dialysis Clinic, Inc., No. 13-4461, 2015 WL 3935104, at *11 (D.N.J. June 26, 2015) (citing El Sayed v. Hilton Hotels Corp., 627 F.3d 931, 933 (2d Cir. 2010)). Even if she could, Plaintiff fails to appreciate that she engaged in all but one of her viable protected activities *after* she was put on disciplinary leave. This intervening event severely weakens any inference of retaliatory animus. See id. (citing Mizusawa v. United States Dep't of Labor, 524 F. App'x 443, 448 (10th Cir. 2013) ("[I]nferring a causal relationship between the protected activity and the adverse action is not logical when the two are separated by an intervening event that independently . . . caused the adverse action."). Accordingly, Plaintiff has again failed to show that Defendants' reason for her termination is pretextual.

I will thus also enter judgment in favor of Defendants on Plaintiff's retaliation claims.

3. Plaintiff's Title VII Hostile Work Environment Claim

In Count Two, Plaintiff alleges that Defendants subjected her to a hostile work environment because of her race and national origin. (TAC ¶¶ 83–85.)

To establish a hostile work environment claim, Plaintiff must show that: (1) she suffered

intentional discrimination because of her race or national origin; (2) the discrimination was severe or pervasive; (3) the discrimination detrimentally affected her; (4) the discrimination would have detrimentally affected a reasonable person of the same race in her position; and (5) there is a basis for employer liability. Aman, 85 F.3d at 1081; Castleberry v. STI Grp., 863 F.3d 259, 263–64 (3d Cir. 2017) (citing cases).

Plaintiff argues that she was subject to a hostile work environment because of "various micro-aggressions inclusive of verbal, nonverbal, and environmental slights, snubs and insults . . . and discriminatory remarks related to Plaintiff's national origin" made by Jones and Plaintiff's other colleagues. (Pl.'s Mem. Law 9.) Plaintiff offers here the same mass of evidence I have discussed, including: (1) an incident when Jones told her to "speak English"; (2) an incident when a co-worker told Plaintiff to put a banana in her African headwear; and (3) "African jokes" made in the office. (Id. at 6; see also Bangura Dep. 99:18–100:16, 102:12–24, 112:2–113:2, 262:4–263:4, 269:3–5.). Plaintiff also charges that she was "treated differently" because she was "the only African" on staff. (Bangura Dep. 101:23–102:102:2; see also id. 94:20–25.)

Once again, Plaintiff offers no evidence other than her own averments that these incidents actually occurred. Abuomar, 2018 WL 5778247, at *4 ("[S]elf-serving averments alone are insufficient to withstand summary judgment."). Even if the averments were otherwise sufficient, they do not make out a hostile work environment. If these incidents occurred, they were grossly offensive. Yet, Jones is the only Defendant (or supervisor) alleged to have been involved. In her otherwise profoundly detailed averments, Plaintiff describes the incidents in only scant detail. (See Bangura Dep. 112:2–7, 112:16–113:2, 262:4–265:24.) Neither Williams nor Henkin was involved, nor (as I have discussed) has Plaintiff shown that Williams or Henkin failed to take appropriate corrective action. See supra Section III.B.1. No reasonable factfinder could

conclude—based on this evidence—that Plaintiff suffered severe or pervasive discrimination while working for Williams. See Harris v. Forklift Sys., 510 U.S. 17, 21 (1993) (factors to consider include the frequency of the discriminatory conduct and whether it was physically threatening or humiliating); Abuomar, 2018 WL 5778247, at *3 ("[A] plaintiff must point to 'extreme' conduct . . . 'offhand comments,' 'isolated incidents,' and 'mere utterance[s] of an ethnic or racial epithet which engenders offensive feelings in an employee' do not suffice.'" (citation omitted)); see also Hong, 993 F.2d at 1267 ("Evidence of a supervisor's occasional or sporadic use of a slur directed at an employees' race, ethnicity, or national origin is generally not enough to support a claim under Title VII."). Plaintiff has thus failed to establish the second element of a hostile work environment claim.

Plaintiff also fails to demonstrate that her co-workers' discriminatory conduct detrimentally affected her or would have detrimentally affected a reasonable person of the same race or national origin in her position. The record indicates that Plaintiff went to the hospital after her August 20, 2014 meeting with Henkin and Jones for a headache and depression. (Ex. 131 to Pl.'s Br. Opp., Doc. No. 108-9.) Plaintiff emailed Henkin that her existing anxiety and depression were "being aggravated by [her] hostile work environment." (Ex. 24 to Pl.'s Br. Opp., Doc. No. 108-4.) Plaintiff also testified that she developed, *inter alia*, Post-Traumatic Stress Disorder, Borderline Personality Disorder, and migraines because of the Individual Defendants' "actions and failure" (for which she now purportedly receives social security disability benefits). (Bangura Dep. 124:9–15, 225:9–11, 326:6–8; Interrog. 10; see also Pl.'s Mem. Law 13 (listing medications prescribed to Plaintiff after she was terminated).) As I discuss below, because Plaintiff refused to provide Defendants with her medical records, there is no evidence supporting her averred maladies. See infra Section III.B.5.

In any event, Plaintiff offers no evidence beyond her own arguments and testimony to establish that these actions would have detrimentally affected another employee of her national origin or race. See Preston v. Vanguard Grp., Inc., No. 14-07423, 2015 WL 7717296, at *8 (E.D. Pa. Nov. 30, 2015) ("While [Plaintiff] may contend that the alleged discrimination detrimentally affected her, her subjective belief that she was enduring a hostile work environment, absent even a scintilla of record evidence to support or corroborate her belief, is obviously not enough."); Libson v. United Nat. Group Ins. Co., No. 03-6207, 2006 WL 446072, at *6–7 (E.D. Pa. Feb. 21, 2006) ("Title VII does not protect a plaintiff who experiences conduct that is merely offensive or annoying, nor was Title VII designed to protect the overly sensitive plaintiff." (citations omitted)). Accordingly, Plaintiff has failed to establish the third and fourth elements of a hostile work environment claim.

Finally, even if Plaintiff could establish that she was detrimentally affected by intentional, severe, or pervasive discrimination at work, Plaintiff fails to show that the Commonwealth or the State Senate (her formal employers) or Henkin or Williams (her supervisors) should be liable for this discrimination under a theory of *respondeat superior*. Employers may be liable for employee harassment only if they "failed to provide a reasonable avenue for complaint, or alternatively, if they knew or should have known of the harassment and failed to take prompt and appropriate remedial action." Huston v. Procter & Gamble Paper Prods. Corp., 568 F.3d 100, 104 (3d Cir. 2009) (citation omitted).

The record indicates that the Senate had a "Prevention of Workplace Harassment" Policy in place during Plaintiff's tenure, which appears to provide a reasonable avenue for voicing workplace grievances. (Prevention of Workplace Harassment, Ex. F to State Defs.' Mot. Summ. J., Doc. No. 103-8.) Regardless, Plaintiff fails to show that her employers did not take prompt or

appropriate remedial action in response to the hostile remarks alleged. Plaintiff presents no evidence that the State Defendants knew about these remarks.

Plaintiff alleges that the Individual Defendants knew about these hostile remarks and failed to investigate them. (See Bangura Dep. 112:21–24, 264:10–12; Interrog. 1–2.) But the record does not support her claims. Plaintiff admits that she did not tell anyone about Jones's comment to "speak English." (Bangura Dep. 100:7–16.) Moreover, she fails to show that she told her supervisors about any of these hostile remarks beyond: (1) sending one passing text to Henkin on July 10, 2014 about "insensitive and discriminatory remarks" in a lengthy text chain about job duties for an African community event; and (2) sending one email to Williams on August 23, 2014, reporting that Jones, *inter alia* made unspecified "African jokes." (Ex. 15 to Pl.'s Br. Opp., Doc. No. 108-3; Ex. 23 to Pl.'s Br. Opp., Doc. No. 108-4.)

Even if a reasonable juror could find, based on this evidence, that the Individual Defendants knew about these hostile incidents, Plaintiff fails to show that the Individual Defendants failed to investigate them. To the contrary, Plaintiff admits that Henkin and Williams met with her multiple times to address her workplace concerns. (See Bangura Dep. 108:25–109:24; see also Ex. A1 to State Defs.' Mot. Summ. J. (CB Dep. 12–32), Doc. No. 103-2; Ex. C to State Defs.' Mot. Summ. J. (CB 6), Doc. No. 103-5 (documenting meetings with Henkin or Williams on May 14, 2014, May 28, 2014 and August 20, 2014).) In these circumstances, no reasonable factfinder could conclude that Plaintiff's employers should be liable for her hostile work environment claims.

Accordingly, I will also enter Judgment in favor of Defendants and against Plaintiff on her hostile work environment claim.

4. Plaintiff's §§ 1981 and 1983 Claims

In Count One, Plaintiff brings her same discrimination, retaliation, and hostile work

environment claims under 42 U.S.C. §§ 1981 and 1983. (TAC ¶¶ 80–82.) Generally, the legal elements of claims under §§ 1981 and 1983 are identical to those under Title VII. Jones, 19 F. Supp. 2d at 421 (§ 1981); Flores v. Danberg, 84 F. Supp. 3d 340, 351 (D. Del. 2015), aff'd 706 F. App'x 748 (3d Cir. 2017) (§ 1983). Under §§ 1981 and 1983, Plaintiff must prove purposeful discrimination through the *McDonnell Douglas* burden-shifting framework. Id. As I have discussed, Plaintiff's conclusory, subjective allegations of generalized racial or national origin bias do not establish discriminatory intent. Accordingly, Plaintiff's claims under §§ 1981 and 1983 also fail, and I will enter judgment in favor of Defendants and against Plaintiff on her §§ 1981 and 1983 claims.

5. **Plaintiff's ADA and PHRA Disability Discrimination Claims**

Finally, in Counts Three and Four, Plaintiff alleges that Defendants discriminated and retaliated against her because of her actual or perceived health problems and disabilities in violation of the ADA and PHRA. (TAC ¶¶ 89–92.) The ADA prohibits employers "from discriminating against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms conditions, and privileges of employment." Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 306 (3d Cir. 1999) (citing 42 U.S.C. § 12112(a)); see also Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996) (analysis of ADA claim applies to PHRA claims). The *McDonnell Douglas* burden-shifting framework also applies to ADA discrimination claims. Walton v. Mental Health Ass'n of Se. Pennsylvania, 168 F.3d 661, 667–68 (3d Cir. 1999).

To establish a *prima facie* case of ADA discrimination, Plaintiff must show that:

> (1) [s]he is a disabled person within the meaning of the ADA; (2) [s]he is otherwise qualified to perform the essential functions of the job, with or without reasonable

> accommodations by the employer; and (3) [s]he has suffered an otherwise adverse employment decision as a result of discrimination.

Taylor, 184 F.3d at 306 (citing Gaul v. Lucent Tech., 134 F.3d 576, 580 (3d Cir. 1998)).

Plaintiff fails to make out this *prima facie* case. Even assuming that Plaintiff was qualified to perform the essential functions of her job and that Defendants' rejection of her request to work from home was an adverse employment action, Plaintiff fails to show that she is disabled.

A plaintiff is disabled under the ADA if she: (1) has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Kelly, 94 F.3d at 105. Plaintiff alleges that she suffered from numerous health problems while working for Williams, including: (1) depression; (2) anxiety; (3) chronic migraines; and (4) carpel tunnel syndrome and arm-mobility limitations. (TAC ¶ 23.) Plaintiff testified that the Individual Defendants knew she suffered from these conditions. (Bangura Dep. 83:19–84:5; see also Ex. C to State Defs.' Mot. Summ. J., Doc. No. 103-5.) The record does not support Plaintiff's allegations or arguments. Although the record shows that Plaintiff sought medical treatment for a headache and depression after her August 20, 2014 meeting with Henkin and Jones, Plaintiff's own testimony otherwise contradicts her disability allegations. (Ex. 131 to Pl.'s Br. Opp., Doc. No. 108-9; Bangura Dep. 123:5–17 (social security denied Plaintiff's initial claim for disability benefits based on her medical reports); 326:6–8 ("[Y]our defendants' actions made me fully disabled as of the day I was terminated and not before.")).

Plaintiff also has not offered sufficient evidence to support her disability claim beyond her own self-serving allegations, August 21, 2014 hospital visit summary, and the curriculum vitae of physicians who treated her after her termination. (See Exs. 54, 55 to Pl.'s Br. Opp., Doc. No. 108-5; Ex. 131 to Pl.'s Br. Opp., Doc. No. 108-9.) Once again, Plaintiff prevented Defendants from

obtaining her medical records, thus making her disability allegations impossible to prove. (See Ex. 51 to Pl.'s Br. Opp., Doc. No. 108-5 (revoking medical authorization for alleged discovery violations); see also Bangura Dep. 13:2–10 (Q: "And have you produced those medical records to us?" A: "I believe you guys have them from the Worker's Comp trial . . . and I thought I was going to . . . do the medical authorization this morning.").

In any event, Plaintiff fails to show that her alleged impairments were substantially limiting. An impairment is "substantially limiting" if it "limits the ability of an individual to perform a major life activity as compared to most people in the general population." 29 U.S.C. § 1630.2(j). Factors to consider include: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long-term impact of or resulting from the impairment. Ashton v. American Tel. & Tel. Co., 225 F. App'x 61, 66 (3d Cir. 2007) (citing 29 U.S.C. § 1630.2(j)(ii)); see also Taylor, 184 F.3d at 306–07 (disability determination should be made on a case-by-case basis).

Although Plaintiff does not identify any specific life activities that had been affected by her alleged impairments, she appears to suggest that these impairments affected her ability to work. (See Pl.'s Mem. Law 18 (arguing that she sought an accommodation in the form of an alternative work schedule).) The record does not support her argument. Plaintiff has repeatedly acknowledged that she was able "to do her job duties" at "all times" despite suffering from these health problems. (TAC ¶ 23; Bangura Dep. 83:19–84:5 ("I have had depression all my life. It's never impacted me from doing my job"); 290:12 ("My depression didn't affect my job.")) Moreover, to the extent Plaintiff sought an accommodation for her alleged impairments, her requested accommodation undermines her claim. The record shows that Plaintiff asked Henkin if she could work from home because "the idea of being in the office with [] Jones frightens me."

(Ex. 29 to Pl.'s Br. Opp., Doc. No. 108-4; see also Bangura Dep. 84:9–14 ("I didn't request a workplace accommodation for a disability from [Williams]. I requested a workplace accommodation from [Henkin] to work from home to get away from [Jones].") Plaintiff cannot show that her ability to work was substantially limited by alleging that she could work at home but not at the office simply because Jones made her anxious. Ashton, 225 F. App'x at 67.

As no reasonable juror could infer that Plaintiff suffered a significant limitation on her ability to work, Defendants are also entitled to summary judgment on Plaintiff's disability discrimination claim.

V. CONCLUSION

For these reasons, I will grant Defendants' Motions and enter judgment in favor of Defendants and against Plaintiff on all claims set forth in Plaintiff's Third Amended Complaint. An appropriate Judgment follows.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

February 28, 2019

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL BANGURA,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 16-3626**
	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA SENATE, et al.	:	
Defendants.	:	

JUDGMENT

AND NOW, this 28th day of February, 2019, upon consideration of Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion for Summary Judgment (Doc. No. 103), Defendants Marlene Henkin, Desaree Jones, and Anthony Williams's Revised Motion for Summary Judgment (Doc. No. 105), Plaintiff's Brief in Opposition to Defendants' Motions for Summary Judgment (Doc. No. 108), it is hereby **ORDERED** as follows:

1. Defendants' Motions for Summary Judgment (Doc. Nos. 103, 105) are **GRANTED**;
2. Judgment is entered in favor of Defendants the Commonwealth of Pennsylvania, the Pennsylvania Senate, Anthony Williams, Marlene Henkin, and Desaree Jones, and against Plaintiff Carol Bangura; and
3. The **CLERK OF COURT** shall **CLOSE** this case.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

Appendix D
Decision of State Court Ruling – Establishment of Prima Facie

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL BANGURA	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA SENATE/SENATE OF PENNSYLVANIA, et al.	:	NO. 16-3626

ORDER

AND NOW, this 15th day of March 2017, it is hereby ORDERED as follows:

1. Upon consideration of Defendants Marlene Henkin, Desaree Jones, and the Office of State Senator Anthony Williams' Motion to Dismiss for Failure to State a Claim (Doc. No. 10), Plaintiff's Response and Opposition to Defendants Senator Anthony Williams, Marlene Henkin, and Desaree Jones's Motion to Dismiss (Doc. No. 14), and Reply Brief of Defendants Marlene Henkin, Desaree Jones, and Anthony Williams (Doc. No. 21), the Motion (Doc. No. 10) is GRANTED IN PART and DENIED IN PART.

    a. Defendants' Motion to Dismiss is DENIED with respect to the claims of retaliation and discrimination based on disability and national origin under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the American with Disability Act, 42 U.S.C. §§ 12112–12117, and the Pennsylvania Human Relations Act, 42 Pa. Cons. Stat. 951 et seq.

    b. Defendants' Motion to Dismiss is GRANTED with respect to the claims of sexual harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Pennsylvania Human Relations Act, 42 Pa. Cons. Stat. 951 et seq. The claims are DISMISSED WITH PREJUDICE.

2. Upon consideration of Defendants Robert Kline and Pennsylvania Senate Democratic Caucus's First Motion to Dismiss under Rule 12(b)(6) (Doc. No. 11), Plaintiff's Response and Opposition to Defendant's Motion to Dismiss (Doc. No. 13), and Defendants Robert Kline and Pennsylvania Senate Democratic Caucus's Reply (Doc. No. 20), the Motion (Doc. No. 11) is GRANTED. All claims against Robert Kline and Pennsylvania Senate Democratic Caucus are DISMISSED WITH PREJUDICE. Robert Kline and Pennsylvania Senate Democratic Caucus are DISMISSED from this action.

3. Upon consideration of Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) and 12(e)

(Doc. No. 28) and Plaintiff's Response and Opposition (Doc. No. 34), the Motion (Doc. No. 28) is GRANTED IN PART and DENIED IN PART.

a. Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion to Dismiss is GRANTED with respect to the claim of sexual harassment and the claim of discrimination based on disability, national origin, and refugee status under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Pennsylvania Human Relations Act, 42 Pa. Cons. Stat. 951 et seq.

b. Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion to Dismiss is DENIED with respect to the claim of discrimination based on race under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Pennsylvania Human Relations Act, 42 Pa. Cons. Stat. 951 et seq.

c. Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion in the Alternative for a More Definite Statement Pursuant to Federal Rule of Civil Procedure 12(e) is DENIED.

4. Plaintiff may file an amended complaint on or before Tuesday, March 28, 2017.

I. Introduction

Carol Bangura brings this action, *pro se*, against her former employer, the Office of State Senator Anthony Williams; Marlene Henkin and Desaree Jones, employees in Senator Williams' office; the Pennsylvania Senate; the Pennsylvania Senate Democratic Caucus; the Commonwealth of Pennsylvania; and Robert Kline, the Director of Administration of the Democratic Leader of the Senate of Pennsylvania. Bangura asserts claims of employment discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the American with Disability Act, 42 U.S.C. §§ 12112–12117, and the Pennsylvania Human Relations Act, 42 Pa. Cons. Stat. 951 et seq. Bangura also asserts a claim for "comp time" wages of $3,197.25. The complaint contains more than two hundred paragraphs

and spans fifty-seven pages. Defendants, in three groups, each filed a motion to dismiss Plaintiff's complaint.

II. Background

Bangura was employed as a scheduler in the office of State Senator Anthony Williams from March to September 12, 2014. Compl. ¶¶ 1, 38. The complaint describes Bangura's difficulty in performing her work because of various medical conditions, such as migraines, carpel tunnel syndrome, and limited mobility in her arm, as well as interpersonal conflicts between her and other employees in the office. See, e.g., ¶¶ 47, 49, 51. Bangura states, on a few occasions, Marlene Henkin, the Director of Operations at Senator Williams' office, sat on or leaned on her desk in "close proximity" to her, and that Henkin's breasts brushed against Bangura's back when Henkin leaned over to look at Bangura's computer screen. Id. ¶¶ 56–58. In addition, Bangura asserts that she "was belittled, picked on, [and] intimidated" by Desaree Jones, the Deputy Director of Operations, who "criticized Plaintiff's work without proof of wrongdoing" and "yelled at Plaintiff during staff meetings in front of other staff members." Id. ¶ 51. In June, the office hired another scheduler, and Bangura no longer "actively participate[d] in scheduling." Id. ¶ 39. Bangura was "marginalized . . . and excluded from office events and perks such as tickets to concerts [and] NFL and NBA events . . . and WAWA Welcome America." Id. ¶ 92.

Bangura alleges on August 13, 2014, she complained to Henkin about harassment by Jones. Id. ¶ 12. Subsequently, on August 21, Henkin informed Bangura that she had been placed on paid leave until September 2. While on paid leave, on August 29, Bangura filed a charge with the U.S. Equal Employment Opportunity Commission (EEOC) against the office of State Senator Anthony Williams, alleging Marlene Henkin and Desaree Jones discriminated against her

because of her disability and retaliated against her after she complained about Jones's harassment. EEOC Charge 3244 (Doc. No. 13–2, at 2–3). On September 10, Robert Kline, the Director of Administration of the Democratic Leader of the Senate of Pennsylvania, asked to discuss Bangura's harassment claims with her, and Bangura responded that she wanted to seek legal advice first. Compl. ¶¶ 36–37. On September 12, Bangura received an email from Kline informing her that the Pennsylvania Senate has terminated her employment for poor performance. Id. ¶ 38.

Following her termination, Bangura filed numerous additional complaints to the EEOC and Pennsylvania Human Rights Commission. On September 16, 2014, Bangura filed an EEOC charge against the office of State Senator Anthony Williams, again alleging discrimination based on disability and national origin, and retaliation. EEOC Charge 3396 (Doc. No. 13–2, at 23–4). On November 3, 2014, Bangura also filed EEOC charges against the Pennsylvania Senate, EEOC Charge 272 (Doc. No. 13–2, at 11–12), and the Pennsylvania Senate Democratic Caucus, EEOC Charge 276 (Doc. No. 13–2, at 19–20), asserting in both complaints that she was discharged in retaliation for speaking up about workplace discrimination she experienced. The EEOC issued letters of Dismissal and Notice of Rights for EEOC Charges 3244, 272, and 276 on April 19, 2016. (Doc. No. 13–2 at 7, 15, 27). Bangura then filed this action on July 1, 2016. Subsequently, Bangura moved for entry of default judgment against the Commonwealth of Pennsylvania and the Pennsylvania Senate, and this Court denied the motion. Bangura then appealed this Court's order to the Third Circuit Court of Appeals, which dismissed the appeal for lack of appellate jurisdiction. All Defendants have filed motions to dismiss and the motions are ripe for disposition.

III. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) authorizes dismissal of a complaint for "failure to state a claim upon which relief can be granted." A complaint need only contain "a short and plain statement of the claim" that pleads "enough facts to state a claim to relief that is plausible on its face." Fed. R. Civ. P. 8(a)(2); Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007). In reviewing the sufficiency of a complaint, a court must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, the court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Connelly v. Lane Const. Corp., 809 F.3d 780,787 (3d Cir. 2016). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

In assessing the sufficiency of a complaint, the court may consider the pleadings, public record, orders, exhibits attached to the complaint, and documents incorporated into the complaint by reference. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). In deciding a motion to dismiss, the court may consider "the allegations contained in the complaint, exhibits attached to the complaint and matters of public record," and any "undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." Pension Benefits Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). Otherwise, a plaintiff with a legally insufficient claim could survive a motion to dismiss "simply by failing to attach a dispositive document on which it relied." Id.

Given that Plaintiff proceeds *pro se*, her pleading is liberally construed and her complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007). Ordinarily, a plaintiff must be afforded an opportunity to amend her complaint when it is dismissed for failure to state a claim, unless a curative amendment "would be inequitable or futile." Phillips v. Cnty. of Allegheny, 515 F.3d 224, 245 (3d Cir. 2008).

IV. Discussion

At the outset, the Court notes, as the Defendants point out, the complaint fails to specify the claims against each group of Defendants and does not identify which paragraphs support which claims. This section proceeds in three parts, as the three motions to dismiss Bangura's claims are considered in turn.

a. Claims Against Marlene Henkin, Desaree Jones, and the Office of State Senator Anthony Williams

First, the motion submitted by Marlene Henkin, Desaree Jones, and the Office of State Senator Anthony Williams argues that the claims for retaliation and discrimination are time-barred and that she failed to exhaust administrative remedies with respect to the sexual harassment claim.

i. Timeliness

Under Title VII of the Civil Rights Act, an individual who has been issued a Notice of Dismissal and Right to Sue has ninety days from the date he or she receives the notice to file a lawsuit. See 42 U.S.C. § 2000e–5(f)(1); McGovern v. City of Phila., 554 F.3d 114, 115 n. 1 (3d Cir. 2009). The ninety-day statutory period is not a jurisdictional prerequisite to filing suit, but rather operates as a statute of limitations. 42 U.S.C.A. § 2000e–5. Although Rule 12(b) does not explicitly permit the assertion of a statute of limitations defense by a motion to dismiss, the so-

called "Third Circuit Rule" allows a defendant to assert a limitations defense in a Rule 12(b)(6) motion "if 'the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.'" Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (quoting Hanna v. U.S. Veterans' Admin. Hosp., 514 F.2d 1092, 1094 (3d Cir. 1975)). The complaint must facially show noncompliance with the limitations period and the affirmative defense must be clear on the face of the pleading to be subject to a Rule 12(b)(6) motion to dismiss. Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002). Nevertheless, under the rule established in Pension Benefits, in deciding a motion to dismiss, the court may consider "the allegations contained in the complaint, exhibits attached to the complaint and matters of public record," and any "undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." 998 F.2d at 1196. Therefore, a court may consider administrative documents, such as those from the EEOC, without converting the motion to dismiss to a motion for summary judgment. See e.g., Turlip v. N. Pocono School Dist., 2006 WL 547924, at * 4 n. 7 (M.D. Pa. March 6, 2006) (citing Pension Benefit, 998 F.2d at 1196) (holding that a court can consider documents that are part of the EEOC administrative record without converting motion to dismiss into motion for summary judgment); Khalil v. Rohm & Haas Co., 2005 WL 3111791, at *3 (E.D. Pa. Nov. 18, 2005); Rogan v. Giant Eagle, Inc., 113 F. Supp.2d 777, 781 (W.D. Pa. 2000), aff'd, 276 F.3d 579 (3d Cir. 2001); Arizmendi v. Lawson, 914 F.Supp. 1157, 1160-61 (E.D. Pa. 1996).

For this trio of Defendants, EEOC Charges 3396 and 3244 are relevant. Bangura did not submit the Dismissal and Notice of Rights for EEOC Charge 3396 as an exhibit or plead the date of issuance of the document in the complaint. The Defendants provide the Dismissal and Notice of Rights for EEOC Charge 3396, and point out that it was issued on September 30, 2014. EEOC

Charge 3396 Dismissal and Notice to Sue (Doc. No. 11–2, at 7). This Court may consider this exhibit in deciding this motion to dismiss because it is indisputedly authentic and the Plaintiff's claims are based upon them. Gokay v. Pennridge Sch. Dist., 2003 WL 21250656, at *2 (E.D. Pa. Feb. 28, 2003) (citing Pension Benefit, 998 F .2d at 1196). Therefore, when Bangura filed this suit in July 2016, she did so beyond the ninety-day period after receiving the Dismissal and Notice to Sue for EEOC Charge 3396.

However, both EEOC Charges 3396 and 3244 set forth allegations of retaliation and discrimination based on disability and national origin. As to Charge 3244, although Defendants assert that the EEOC also issued a Notice of Dismissal and Right to Sue for this charge on September 30, 2014, in fact, the EEOC issued the Notice of Dismissal and Right to Sue for Charge 3244 on April 19, 2016. (Doc. No. 13–2 at 7). Given that Plaintiff filed this action prior to the expiration of the statutory period for EEOC Charge 3244, and EEOC Charges 3396 and 3244 both set forth allegations of retaliation and discrimination based on disability and national origin, the claims are not time-barred. Accordingly, Defendants Office of Senator Anthony Williams, Marlene Henkin, and Desaree Jones's motion to dismiss the claims of retaliation and discrimination based on disability and national origin is denied.

ii. Administrative Exhaustion

These three Defendants also argue that Bangura failed to administratively exhaust her sexual harassment claim prior to filing suit because Bangura did not raise any allegation of sexual harassment in her EEOC filings. In a Title VII action, a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief, and the parameters of the civil action in the district court are defined by the scope of the EEOC investigation. Mandel v. M&Q Packaging Corp., 706 F.3d 157, 163 (3d Cir. 2013). A plaintiff's claim must fall "fairly within

the scope of the prior EEOC complaint, or the investigation arising therefrom." Antol v. Perry, 82 F.3d 1291, 1295 (3d Cir. 1996). In such actions, failure to exhaust administrative remedies is an affirmative defense in the nature of statute of limitations. Williams v. Runyon, 130 F.3d 568, 573 (3d Cir. 1997). Given that failure to exhaust is an affirmative defense, the defendant bears the burden of pleading and proving that the plaintiff has failed to exhaust administrative remedies. Williams v. Runyon, 130 F.3d 568, 573 (3d Cir. 1997). Bangura did not complain of sexual harassment in her EEOC charges; instead she alleged harassment based on race, stating Desaree Jones subjected her to "harassing comments and/or treatment based on my being African[.]" EEOC Charge 3244 (Doc. No. 13–2, at 2–3). Therefore, the claim of sexual harassment against these three Defendants is not administratively exhausted and thus not properly before this Court, and the claim is dismissed with prejudice.

b. Claims Against Robert Kline and the Pennsylvania Senate Democratic Caucus

Next, Robert Kline and the Pennsylvania Senate Democratic Caucus also argue that the claims against them should be dismissed because she failed to exhaust administrative remedies.

i. Robert Kline

Kline also argues that Bangura's claims against him should be dismissed because Bangura's EEOC filings failed to identify Kline as the respondent. See Williams v. Runyon, 130 F.3d 568, 573 (3d Cir. 1997). A plaintiff who fails to identify an individual as a respondent in an EEOC submission fails to preserve her claims against that individual. Hildebrand v. Allegheny Cty., 757 F.3d 99, 113 (3d Cir. 2014). Thus Bangura failed to exhaust administrative remedies for her claims against Kline and those claims are dismissed with prejudice.

ii. The Pennsylvania Senate Democratic Caucus

The Caucus's arguments are two-fold. First, it argues that the only claim against it covered by EEOC Charge 276—the only EEOC filing that pertains to the Caucus—is the retaliation claim, and thus Bangura has failed to exhaust administrative remedies as to the claims based on sexual harassment, disability accommodation, and wages for "comp time." EEOC Charge 276 indicates Bangura only raised the retaliation claim against the Caucus. EEOC Charge 276 (Doc. No. 13–2, at 19–20). Therefore, Bangura's claims against the Caucus based on sexual harassment, disability accommodation, and wages for "comp time" are not properly before this Court and, accordingly, are dismissed with prejudice. See Hildebrand, 757 F.3d at 113.

Second, the Caucus contends Bangura's retaliation claim must fail because she admits that she was not employed by the Pennsylvania Senate Democratic Caucus. An employment relationship between the plaintiff and the defendant is a prerequisite to maintaining a Title VII action. See Covington v. Int'l Assoc. of Approved Basketball Officials, 710 F.3d 114, 119 (3d Cir. 2013). Bangura states that the Pennsylvania Senate Democratic Caucus was "never" her employer. Compl. ¶ 41. Therefore, the Caucus is not the proper party against whom to raise the retaliation claim, and the claim is dismissed with prejudice.

c. Claims Against the Pennsylvania Senate and Commonwealth of Pennsylvania

Defendants Pennsylvania Senate and Commonwealth of Pennsylvania fail to raise the affirmative defenses put forth by other Defendants and instead only seek dismissal of some of the claims—discrimination based on race, national origin, and refugee status; discrimination based on disability; and sexual harassment—for failure to state a claim for which relief could be granted. Their arguments regarding these claims are considered in turn below.

i. Discrimination Based on National Origin and Refugee Status

As to the claims of discrimination based on national origin and refugee status, under Title VII and the Pennsylvania Human Relations Act, Defendants argue that Bangura has failed to sufficiently plead a claim. The Court denies the motion to dismiss as to the claim of discrimination based on national origin, and grants the motion to dismiss as to the claim of race and refugee status.

"The proper analysis under Title VII and the [PHRA] is identical, as Pennsylvania courts have construed the protections of the two acts interchangeably." Weston v. Pennsylvania, 251 F.3d 420, 425 n.3 (3d Cir. 2001), overruled in part on other grounds by Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006); see also Dici v. Com. of Pa., 91 F.3d 542, 552 (3d Cir. 1996) ("Generally, the PHRA is applied in accordance with Title VII."). Title VII affords explicit protection to employees from adverse employment actions based upon race, color, religion, sex, or national origin. 42 U.S.C. § 2000e–2(a).

In the absence of direct evidence of discrimination, discrimination claims are subject to the burden-shifting framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).[1] Under this standard, a plaintiff must first establish a prima facie case of discrimination by showing: (1) the employee is a member of a protected class; (2) the employee is qualified for the position; (3) the employee suffered an adverse employment action; and (4) the action was taken under circumstances that give rise to an inference of unlawful discrimination. Jones v. School Dist. of Phila., 198 F.3d 403, 410–411 (3d Cir. 1999). If a plaintiff is successful, the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for the employment action. McDonnell Douglas, 411 U.S. at 802. Once a legitimate reason for the employment action is presented, the burden shifts back to the plaintiff to show that the

[1] The mixed-motive theory set forth in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), under which a plaintiff may show that an employment decision was made based on both legitimate and illegitimate reasons, does not apply here because Bangura asserts that she was not subject to any performance standards.

employer's proffered reason was in fact pretext for discrimination. Id. at 804. This framework applies equally to national origin discrimination under Title VII and the PHRA. Paradoa v. Phila. Hous. Auth., 610 F. App'x 163, 165 (3d Cir. 2015) (citing Jones v. School Dist. of Phila., 198 F.3d 403, 410–411 (3d Cir. 1999)); Kamara v. Horizon House, Inc., 2015 WL 9260031, at *5 (E.D. Pa. Dec. 18, 2015).

As to Bangura's claim of discrimination based on national origin, the allegations sufficiently plead the first and third factors under the McDonnell-Douglas framework, that is, Bangura is a member of a protected class as an individual from Sierra Leone, and she suffered an adverse employment action in being terminated from her job. In addition, complaint sufficiently alleges the second factor. See Sempier v. Johnson & Higgins, 45 F.3d 724, 729 (3d Cir. 1995) ("we determine a plaintiff's qualifications for purposes of proving a prima facie case by an objective standard"); Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 523 (3d Cir. 1992) (observing that, in "cases involving a dispute over 'subjective' qualifications . . . the qualification issue should often be resolved in the second and third stages of the McDonnell Douglas/Burdine analysis, to avoid putting too onerous a burden on the plaintiff in establishing a prima facie case").

As to the fourth factor, that the termination was taken under circumstances that give rise to an inference of unlawful discrimination, the complaint alleges incidents of "African jokes" made in the office; that Jon Williams, an employee at the senator's office, "told Plaintiff to stop wearing 'African hats'" and "gave Plaintiff a banana and told Plaintiff to put it in her hat as Plaintiff was wearing a traditional head wrap"; and that Desaree Jones told Bangura to "speak English" when Bangura was speaking to her son on the phone. Compl. ¶ 102. "National origin" refers to the "country where a person was born, or, more broadly, the country from which his or

her ancestors came." Espinoza v. Farah Mfg. Co., Inc., 414 U.S. 86, 88 (1973). In some instances, courts have been willing to expand the concept of "national origin" to include claims from persons such as cajuns or serbs based upon the unique historical, political and/or social circumstances of a given region. Storey v. Burns Int'l Sec. Servs., 390 F.3d 760, 762 n. 3 (3d Cir. 2004). Therefore, that the jokes and comments were directed at Plaintiff's African—as opposed to Sierra Leonean—origin does not prevent a national origin discrimination claim. Consistent with Storey, other courts in this district have held that discriminatory comments based on a plaintiff's African-origin could support an inference of national origin discrimination, because "one's 'national origin' need not refer to a particular country, but 'is better understood by reference to certain traits or characteristics that can be linked to one's place of origin, as opposed to a specific country or nation.'" Frazier v. Exide Techs., 2012 WL 440398 at *3 (E.D. Pa. Feb. 13, 2012); see Kanaji v. Children's Hosp. of Phila., 276 F. Supp. 2d 399, 404 (E.D. Pa. 2003); see also 29 C.F.R. § 1606.1. In addition, Jones's comment to Bangura to "speak English" at the office supports an inference of discrimination in a few ways. First, courts have recognized "[t]he close relationship between language and national origin[.]" Raad v. Fairbanks N. Star Borough Sch. Dist., 323 F.3d 1185, 1195 (9th Cir. 2003), opinion amended on denial of reh'g, 2003 WL 21027351 (9th Cir. May 8, 2003) (noting, under 29 C.F.R. § 1606.7 (2003), in the context of speak-English-only rules, that "[t]he primary language of an individual is often an essential national origin characteristic"). In addition, the comment appears to be directed at Bangura's "foreignness." Frazier v. Exide Techs., 2012 WL 440398, at *3 (E.D. Pa. Feb. 13, 2012) (acknowledging successful national origin discrimination claims based on conduct or statements directed at employees' "foreignness"). Therefore, the allegations support an inference

of unlawful discrimination under Title VII and the PHRA, and Defendants' motion to dismiss the claim of discrimination based on national origin is denied.

In contrast, Bangura's allegations are inadequate to state a claim of discrimination based on refugee status. The complaint mentions Bangura as a "refugee" but does not set forth any other allegation of discriminatory conduct related to Bangura's refugee status. Accordingly, the claims of discrimination based on refugee status under Title VII and the PHRA are dismissed without prejudice.[2]

ii. Disability

"In order to make out a prima facie case of disability discrimination under the ADA, [the plaintiff] must establish that she (1) has a 'disability,' (2) is a 'qualified individual,' and (3) has suffered an adverse employment action because of that disability." Turner v. Hershey Chocolate U.S., 440 F.3d 604, 611 (3d Cir. 2006). The ADA defines "disability" with regard to an individual as either: (i) "a physical or mental impairment that substantially limits one or more of the major life activities of such [an] individual"; (ii) "a record of such an impairment"; or (iii) "being regarded as having such an impairment." 42 U.S.C. § 12102(1). The ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C § 12111(8); see Eshelman v. Agere Sys., Inc., 554 F.3d 426, 433 (3d Cir. 2009). Although the complaint alleges Bangura suffered from "aggravated health conditions, anxiety and migraine headaches with nosebleeds," and "carpel tunnel in right hand and limited range of motion in right arm," Compl. ¶¶ 35, 51, the complaint fails to plead

[2] The Commonwealth and the Pennsylvania Senate only present arguments for the dismissal of the discrimination claims based on national origin and refugee status, not discrimination based on race. See Memorandum of Law at 6–7 (Doc. No. 28). Therefore, to the extent Defendants Commonwealth and Pennsylvania Senate seek the dismissal of the race-based discrimination claim under Title VII and the PHRA, Defendants' motion to dismiss is denied.

that she is a "qualified individual" within the meaning of the ADA. This deficiency likewise undermines Bangura's PHRA claim, because an "analysis of an ADA claim applies equally to a PHRA claim." Eshelman, 554 F.3d at 433 n.3 (quoting Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 306 (3d Cir. 1999)). Therefore, Bangura's disability claims under the ADA and PHRA are dismissed without prejudice.

iii. Sexual Harassment

Defendants Commonwealth and Pennsylvania Senate argue Bangura has failed to sufficiently state a claim of sexual harassment. A plaintiff may establish that an employer violated Title VII by proving that sexual harassment created a hostile work environment. Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir.1999) (citing Meritor Sav. Bank v. Vinson, 477 U.S. 57, 66 (1986)). To establish a hostile work environment claim against an employer, a plaintiff must prove the following: (1) the employee suffered intentional discrimination because of their sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the existence of respondeat superior liability. Huston v. Procter & Gamble Paper Prod. Corp., 568 F.3d 100, 104 (3d Cir. 2009). Title VII is violated only "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult . . . that is sufficiently severe or pervasive to . . . create an abusive working environment." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (internal citations and quotation marks omitted). The Supreme Court has instructed lower courts "to determine whether an environment is sufficiently hostile or abusive by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an

employee's work performance." Faragher v. City of Boca Raton, 524 U.S. 775, 787–88 (1998) (internal citations and quotation marks omitted). Title VII requires that "conduct must be extreme" to constitute the kind of "change in the terms and conditions of employment" the statute was intended to target. Id. at 788 (internal citations and quotation marks omitted).

Bangura's allegations, taken together and as true, do not suffice to state a plausible claim under this standard. The main thrust of Bangura's allegations is that, on a few occasions, Henkin sat on or leaned on Bangura's desk in "close proximity" to her and a manner that invaded her personal space, and that Henkin's breasts brushed against Bangura's back when Henkin leaned over to look at Bangura's computer screen. Compl. ¶¶ 56–58. None of the facts alleged—even if plausibly construed as sexual—demonstrates any meaningful frequency of the allegedly harassing conduct towards Bangura. This handful of isolated instances do not represent the kind of pervasive prejudice, disparagement, and interference with one's job functions necessary to make out a plausible hostile work environment claim for purposes of Title VII. The complaint fails to state a claim of sexual harassment under Title VII or the PHRA, and the claims are dismissed without prejudice.

iv. Motion for a More Definite Statement under Rule 12(e)

Finally, Defendants Commonwealth and Pennsylvania Senate seek an order requiring a more definite statement. Rule 12(e) permits a party to move for a more definite statement when the adverse party's pleading "is so vague or ambiguous that the party cannot reasonably prepare a response." Such a motion is appropriate when a complaint does not include the facts necessary for the defendant to properly respond. Thomas v. Indep. Twp., 463 F.3d 285, 301 (3d Cir. 2006). However, when a complaint is filed by a *pro se* plaintiff, the pleadings are "held to less stringent standards." Erickson, 551 U.S. at 94. Plaintiff's complaint explains, albeit not clearly, the nature

of Plaintiff's grievance, when and how the injuries occurred, and the legal theory of liability. Significant portions of the complaint consist of details that reflect Plaintiff's attempt to plead factual allegations. The complaint provides Defendants sufficient notice of the claims against them and permits them to properly respond.

V. Conclusion

Based on the foregoing discussion, Defendants Marlene Henkin, Desaree Jones, and the office of State Senator Anthony Williams' Motion to Dismiss for Failure to State a Claim (Doc. No. 10) is granted in part and denied in part; Defendants Robert Kline and Pennsylvania Senate Democratic Caucus's First Motion to Dismiss under Rule 12(b)(6) (Doc. No. 11) is granted; and Defendants Commonwealth of Pennsylvania and Pennsylvania Senate's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) and 12(e) (Doc. No. 28) is granted in part and denied in part. Plaintiff may file an amended complaint on or before March 28, 1017.

BY THE COURT:

/s/ Legrome D. Davis

Legrome D. Davis, J.