APPENDIX A to K

Appendices used as as references in this Case
are already recorded in PACER

Legally filed at the
U.S. Court of Appeals
for the Fourth Circuit

Note: Appendices are double sided printed

FILED: November 30, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1435
(1:20-cv-00581-RDA-IDD)

CAROLINE S. ALASAGAS
Plaintiff - Appellant

v.

ANTONY J. BLINKEN, Secretary of State
Defendant - Appellee

ORDER

The court denies the petition for rehearing. Entered at the direction of the panel: Judge Wilkinson, and Judge Diaz.

For the Court
/s/ Patricia S. Connor, Clerk

FILED: December 8, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1435
(1:20-cv-00581-RDA-IDD)

CAROLINE S. ALASAGAS
Plaintiff - Appellant

v.

ANTONY J. BLINKEN, Secretary of State
Defendant - Appellee

MANDATE

The judgment of this court, entered July 22, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41 (a) of the Federal Rules of Appellate Procedure.

/s/ Patricia S. Connor, Clerk

FILED: July 22, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1435
(1:20-cv-00581-RDA-IDD)

CAROLINE S. ALASAGAS
Plaintiff - Appellant

v.

ANTONY J. BLINKEN, Secretary of State
Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1435

CAROLINE S. ALASAGAS
Plaintiff - Appellant

v.

ANTONY J. BLINKEN, Secretary of State
Defendant - Appellee

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Rossie David Alston, Jr., District Judge. (1:20-cv-00581-RDA-IDD)

Submitted: July 20, 2021 Decided: July 22, 2021

Before WILKINSON, AGEE, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Caroline S. Alasagas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Caroline S. Alasagas appeals the district court's order dismissing her employment discrimination action. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Alasagas' informal brief does not challenge the basis for the district court's disposition, she has forfeited appellate review of the court's order. See *Jackson v. Lightsey,* 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Alasagas, Caroline S

From: Robins, Karen L
Sent: Friday, November 5, 2021 3:01 PM
To: Satanek, John
Cc: Yaw, Collis D; Alasagas, Caroline S
Subject: CCM problem

John,

I would like to sit down with you next week regarding an allegation that was brought to my attention regarding the interaction that have occurred between Caroline Alasagas and Mike DeAvies.

Karen Robins
TCD Division Chief
Department of State
DS/T/ATA/TCD
Office: 571-226-9725
Cell: 202-705-7042

Recent email dated November 5, 2021 submitted as New Evidence at the U.S. Court of Appeals for the Fourth Circuit

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAROLINE S. ALASAGAS
Plaintiff

vs.

MICHAEL R. POMPEO
Secretary of State
Defendant

WRONG DOCKET NO.

Civil Action No. 1:20cv408

[Proposed] ORDER

Upon consideration of defendant's motion for an enlargement of time, it is hereby

ORDERED that defendant's motion is GRANTED; and it is hereby

ORDERED that on or before August 24, 2020, defendant shall answer or otherwise respond to plaintiff's complaint in the above-captioned action.

Date: _____

_____
UNITED STATES MAGISTRATE JUDGE

* Unknown Civil Action No.
* Violation of Rule 5A:26, Rules of Supreme Court of Virginia
* Correct Docket Case is 1:20-cv-00581-RDA-IDD

APPENDIX D1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAROLINE S. ALASAGAS
Plaintiff

vs.

MICHAEL R. POMPEO
Secretary of State
Defendant

WRONG DOCKET NO.

Civil Action No. 1:20cv408

MOTION FOR AN ENLARGEMENT OF TIME

Pursuant to Federal Rule of Civil Procedure 6, defendant, through his undersigned counsel, hereby respectfully moves this Court for an enlargement of time within which to answer or otherwise respond to the complaint in the above-captioned action. The good cause for this relief is as follows:

1. Plaintiff Caroline Alasagas commenced this civil action by filing a complaint in this Court on May 22, 2020 (Dkt. No. 1). Plaintiff then served a copy of that complaint and a summons upon the United States Attorney for this district via personal delivery on June 16, 2020. Accordingly, defendant is currently required to answer or otherwise respond to plaintiff's complaint on or before August 17, 2020. *See* FED. R. CIV. P. 12(a)(2); *see also* FED. R. CIV. P. 6(a)(1)(C).1

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* Unknown Civil Action No.
* Violation of Rule 5A:26, Rules of Supreme Court of Virginia
* Correct Docket Case is 1:20-cv-00581-RDA-IDD

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAROLINE S. ALASAGAS
Plaintiff

vs.

MICHAEL R. POMPEO
Secretary of State
Defendant

WRONG DOCKET NO.

Civil Action No. 1:20cv408

NOTICE OF WAIVER OF HEARING

PLEASE TAKE NOTICE that defendant hereby waives oral hearing on his motion for an enlargement of time in the above-captioned action, and thus agrees to have the motion decided
on the papers alone.
///
///

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* Unknown Civil Action No.
* Violation of Rule 5A:26, Rules of Supreme Court of Virginia
* Correct Docket Case is 1:20-cv-00581-RDA-IDD

Ref: Rules of Supreme Court of Virginia

(7) Clerk's notice of defects in a filing; striking documents; court orders.

(i) *Incorrect or missing fee.* If the clerk of court determines that an electronically filed document is defective because of an incorrect or missing filing fee, and

(A) if the clerk has been provided by the filing party with a credit or payment account through which to obtain payment of fees, the clerk shall immediately process payment of the correct fee through such credit or payment account; or

(B) if processing by the clerk of the proper payment through a credit or payment account authorized by the filing party is not feasible, notice shall be sent by the clerk electronically to the filing party, and all other parties who have appeared in the case.

(ii) *Document filed in the wrong case by counsel.* If the clerk of court determines prior to acceptance that an electronic document has been filed by counsel under the wrong case or docket number, the clerk shall notify the filing party as soon as practicable, by notice through the E-Filing system, by telephone, or by other effective means.

(iii) A copy of all notices transmitted by the clerk under this subpart (d)(7) shall be retained in the permanent electronic case file maintained by the clerk. A copy of any document stricken shall be retained by the clerk with a designation clearly reflecting that it was stricken and the date of such striking, as a record of its content and disposition.

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* *Ref: Rules of Supreme Court of Virginia Rules of Supreme Court of Virginia, Clerk's Notice of Defects in a Filing & Striking Documents*

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS

F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.

If an appellant fails to file a brief in compliance with these Rules, the Court of Appeals may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, the Court of Appeals may disregard any additional assignments of error raised by the appellee. If one party has complied with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

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* Ref: Rules of Supreme Court of Virginia Rules of Supreme Court of Virginia, Clerk's Notice of Defects in a Filing & Striking Documents

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAROLINE S. ALASAGAS *Plaintiff* vs. MICHAEL R. POMPEO Secretary of State *Defendant*	Civil Action No. 1:20-cv-00581 (RDA/IDD)

ORDER

These MATTERS are before the Court on Plaintiff's Motion for Sanctions [Dkt. 16], Motion to Deny the Counsel's Submittal & Responses to the Court ("Motion to Deny") [Dkt. 17] and Motion to Reinstate the Default for Entry ("Motion for Default") [Dkt. No. 18]. These matters can be resolved without oral argument, as such argument would not aid the decisional process. For the following reasons, it is hereby

ORDERED that Plaintiff's Motion for Sanctions [Dkt. 16], Motion to Deny [Dkt. 17] and Motion for Default [Dkt. No. 18] are **DENIED.** The Motions are denied because the argument Plaintiff makes in all three motions lacks merit. Defense counsel was not required to file a separate Notice of Appearance before filing a pleading or motion on behalf of Defendant. The Clerk is directed to forward copies of this Order to Plaintiff and all counsel of record. ENTERED this 11th day of September 2020.

/s/ Ivan D. Davis
United States Magistrate Judge

Alexandria, Virginia

APPENDIX G

COMMONWEALTH OF VIRGINIA
Virginia Employment Commission
P.O. BOX 1358 703 East Main Street
Richmond, Virginia 23218-1358

CAROLINE S ALASAGAS
P. O. BOX 100176
ARLINGTON VA 22210

SSN ***-**-3380-0
LOC 111
EFF. DATE: 12/30/18
MAIL DATE: 01/23/19

CLAIMANT NOTICE OF TELEPHONIC
FACT-FINDING INTERVIEW

A telephone fact-finding interview may be conducted by a Deputy of the Virginia Employment Commission in connection with your unemployment insurance benefits on the 4th day of February, 2019 at 2:00 o'clock p.m. ET.

WHETHER OR NOT YOU WERE DISCHARGED OR SUSPENDED FOR MISCONDUCT.

Issues such as pension, vacation, severance, holiday pay, etc. that may affect your entitlement to unemployment benefits may be discussed during this hearing.

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* Commonwealth of Virginia VEC: Initiated the Fact-Finding Interview of the Misconduct Charge filed by the Defendant without the Plaintiff's legal knowledge – December 14, 2018.

Standard Form 182
Revised March 2020
All previous editions not usable.

AUTHORIZATION, AGREEMENT AND CERTIFICATION OF TRAINING	A. Agency code, agency subelement and submitting office number	B. Request Status *(Mark (X) one* Resubmission Initial Correction Cancellation
Section A – Trainee Information Please read instructions on Page 6 before completing this form		
1. Applicant's Name *(Last, First, Middle Initial)*	2. *Social Security Number/Federal Employee Number*	3. *Date of Birth (yyyy-mm-dd)*
4. *Home Address (Optional)*	5. *Home Telephone (Optional)*	6. *Position Level*

Full Social Security & Federal Employee Number is required

Agency Training Electronic Reporting Instructions

General Instructions:

1. **You must complete all questions in sections A-E on the training application. In addition, your financial institution must complete Section F, Certification of Training Completion and Evaluation section.**

2. **Electronic Requirements - An agency should only submit data for completed training events for which all mandatory data elements have been recorded.**

Note: National Security Concern brought by the Plaintiff that everyone must comply with SF-182 Social Security Number that caused the initial firing of the Plaintiff.

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* SF-182, representation of the actual form noting that everyone is required to submit the "Full Social Security/Federal Employee Number without exception as directed.

APPENDIX I

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAROLINE S. ALASAGAS *Plaintiff* vs. MICHAEL R. POMPEO Secretary of State *Defendant*	)	Civil Action No. 1:20-cv-581 (RDA/IDD)

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant Antony J. Blinken's ("Defendant") Motion to Dismiss Plaintiff Caroline S. Alasagas's ("Plaintiff") Complaint ("Motion"). Dkt. 12.[1] Plaintiff has been afforded the opportunity to file responsive materials pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), and she has responded with various motions. But as of the date of this Order, Plaintiff has not submitted a brief in opposition to the Motion. The Court dispenses with oral argument as it would not aid in the decisional process. Fed. R. Civ. P. 78(b); Loe. Civ. R. 7(J). The Motion is now fully briefed and ripe for disposition. Considering the Complaint and supporting exhibits, Dkt. 1, the Motion, Dkt. 12, Defendant's Memorandum in Support, Dkt. 13, and Defendant's Reply, Dkt. 22, the Court GRANTS the Motion for the reasons that follow.

[1]On January 26, 2021, Antony J. Blinken replaced Michael R. Pompeo as Secretary of State. Accordingly, pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes Blinken as the proper Defendant and the case caption reflects the same.

I. BACKGROUND

A. Factual Background

Plaintiff, proceeding *pro se*, is a former employee of GAP Solutions, Inc., a private company that performed subcontracted work for the United States Department of State's Foreign Service Institute. Dkt. 1, 1-4. She alleges she was terminated as an administrative assistant in violation of federal law. *Id.* at 5-7. As it must at the motion to dismiss stage, the Court accepts all facts alleged within the Complaint as true. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009); *Bell At!. Corp. v. Twombly,* 550 U.S. 544, 555 (2007).

In support of these allegations, Plaintiff alleges that she was unlawfully terminated on December 4, 2018. Dkt. 1-2. Apparently, Plaintiff required customers to provide their full social security numbers when filling out OPM SF-182 Forms, even though office policy and procedure only required that the last four digits be collected. Dkt. 1-6. Plaintiff also asked for credit card authorization forms from customers when they were not required. *Id.* Despite being reminded and retrained regarding new policies and procedures, Plaintiff continually disregarded them, "creating a resource impact" that caused "delays in emollment." *Id.* A representative from the State Department's Foreign Service Institute "spoke to the contracting company" about these issues with Plaintiffs performance. *Id.*

Plaintiff alleges that after she filed for unemployment compensation with the Virginia Employment Commission, Defendant "initiated" a "Misconduct Charge" with the Commission noting that Plaintiff was terminated for misconduct. Dkt. 1, 3. And while it may be that Defendant "initiated" the filing of this charge, it appears that the charge may have been actually filed by Plaintiffs employer, GAP Solutions, or its contractor, CTR

Management Group. *Id.* In her Complaint, Plaintiff argues that the Misconduct Charge was false and maintains that she was an exemplary employee. *See id.* She asserts she was subject to a hostile work environment because her work product and work schedule flexibility were subjected to heightened scrutiny. *Id.* at 4. In addition, she alleges she was subject to "targeted harassment " as a "short in stature 50+ year old, 5-foot older woman and... Pacific Islander." *Id.* at 6.

B. Procedural Background

This is the third suit Plaintiff has brought regarding the same events surrounding her termination. Plaintiff first brought two separate actions on November 25, 2019. The sole defendant named in her first suit was CTR Management Group, a federal contractor that subcontracted with Plaintiffs former employer. On February 6, 2020, the Court dismissed that case for failure to state a claim. *See* Order, *Alasagas v. CTR Mgmt. Grp.*, No. 1: 19-cv-1494 (E.D. Va. Feb. 6, 2020) (Dkt. 27) (*"Alasagas I"*). Plaintiff brought her second suit against her former employer, GAP Solutions, Inc., which the Court dismissed on March 6, 2020, after Plaintiff filed a notice of voluntary dismissal. *See* Order, *Alasagas v. GAP Sols. Inc.*, No. 1:19-cv-1496 (E.D. Va. Mar. 6, 2020) (Dkt. 36) (*"Alasagas II"*).

On May 22, 2020, Plaintiff commenced this civil action. Dkt. 1. Defendant moved to dismiss this Complaint on August 24, 2020. Dkt. 12. Plaintiff did not file an opposition to Defendant's Motion[2] Instead, she submitted

[2] In addition, Judge Davis has ordered Plaintiff to "refrain from filing discovery-related motions and motions that are duplicative and repetitive." Dkt. 34.

multiple motions-including a motion for sanctions, a "Motion to Deny the Counsel's submittal & Responses to the Court," and a Motion to Reinstate the Entry of Default. Dkt Nos. 16-18. Magistrate Judge Davis denied each of those Motions. Dkt. 20. On September 22, 2020, Defendant submitted a reply in support of his motion to dismiss. Dkt. 32. Plaintiff filed a Motion for Clarification regarding a hearing in this case on December 14, 2020. Dkt. 37.

II. STANDARD OF REVIEW

A. Rule 12(b)(l) Standard

A motion brought under Federal Rule of Civil Procedure 12(b)(l) tests a court's subject matter jurisdiction. *Berry v. Gutierrez,* 587 F. Supp. 2d 717, 722 (E.D. Va. 2008). Defendants may attack subject matter jurisdiction by arguing that the complaint "fails to allege facts upon which subject matter jurisdiction may be based," accepting all facts alleged as true, or by arguing "the jurisdictional facts alleged in the complaint are untrue." *Id.* (citing *Adams v. Bain,* 697 F.2d 1213, 1219 (4th Cir. 1982)). In either case, the burden of proving subject matter jurisdiction falls on the plaintiff. *Zargarpur v. Townsend,* 18 F. Supp. 3d 734, 736 (E.D. Va. 2013).

B. Rule 12(b)(6) Standard

A Rule 12(b)(6) motion tests the sufficiency of a complaint. *Brockington v. Boykins,* 637 F.3d 503, 506 (4th Cir. 2011). "[T]he reviewing court must determine whether the complaint alleges sufficient facts 'to raise a right to relief above the speculative level[,]'" and dismissal is appropriate only if the well-pleaded facts in the complaint "state a claim that is plausible on its face.'" *Goldfarb v. Mayor & City Council of Baltimore,* 791 F.3d 500, 508 (4th

Cir. 2015) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 570 (2007)). 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 (citing *Twombly,* 550 U.S. at 556).

Yet "[c]onclusory allegations regarding the legal effect of the facts alleged" need not be accepted. *Labram v. Havel,* 43 F.3d 918, 921 (4th Cir. 1995); *see also E. Shore Mkts., Inc. v. J.D. Assoc. Ltd. P 'ship,* 213 F .3d 175, 180 (4th Cir. 2000) ("[W]hile we must take the facts in the light most favorable to the plaintiff, we need not accept the legal conclusions drawn from the facts... Similarly, we need not accept as true unwarranted inferences, unreasonable conclusions, or arguments."). And "[g]enerally, courts may not look beyond the four corners of the complaint in evaluating a Rule 12(b)(6) motion." *Linlor v. Polson,* 263 F. Supp. 3d 613, 618 (E.D. Va. 2017) (citing *Goldfarb,* 791 F.3d at 508)). Although a plaintiff pleading employment discrimination need not establish a prima facie case at the pleadings stage, she must still allege "facts sufficient to state all the elements of her claim." *Bass v. E.I. DuPont de Nemours & Co.,* 324 F.3d 761, 765 (4th Cir. 2003). Because Plaintiff is proceeding pro se, this Court liberally construes her filings. *Jackson v. Lightsey,* 775 F.3d 170, 177 (4th Cir. 2014)).

III. ANALYSIS

A. Collateral Estoppel

In light of the Court's ruling in *Alasasgas I,* the rules of issue preclusion-commonly known as collateral estoppel-are relevant to this case. "The preclusive effect of a federal-court judgment is determined by federal common law." *Taylor v. Sturgell,* 553 U.S. 880, 891, (2008) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.,* 531 U.S. 497,

507-08 (2001)). According to those rules of federal common law, issue preclusion applies when:

> (1) the "identical issue" (2) was actually litigated (3) and was "critical and necessary" to a (4) "final and valid" judgment (5) resulting from a prior proceeding in which the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue.

McHan v. Comm'r, 558 F.3d 326,331 (4th Cir. 2009) (quoting *Collins v. Pond Creek Mining Co.,* 468 F.3d 213,217 (4th Cir. 2006)).

Considering Plaintiffs earlier lawsuit against CTR Management Group in *Alasagas I* that the Court dismissed in February of 2020, the doctrine of defensive non-mutual collateral estoppel governs this case.[3] That doctrine applies when "a stranger to the [earlier] judgment, ordinarily the defendant in the second action"-here, Defendant-"relies upon a former judgment as conclusively establishing in [its] favor an issue." *Musselwhite v. Mid-At/. Rest. Corp.,* 809 F. App'x 122, 128 (4th Cir. 2020) (citations omitted). "Defensive non-mutual collateral estoppel is permitted if the party being collaterally estopped 'had a full and fair opportunity to litigate' the issue in the earlier suit" and if the requirements of collateral estoppel mentioned above are met. Id.; see also In re *Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004) ("[W]hen a defendant employs the doctrine 'to prevent a plaintiff from asserting a claim the plaintiff has previously litigated and lost against another defendant,' it is known as "'defensive collateral estoppel. '") (quoting **Parklane Hosiery Co. v. Shore,** 439 U.S. 322, 326 n.4 (1979)).

In its February 6, 2020 Order in *Alasagas I,* the Court denied Plaintiff's claims arising from precisely the same

set of facts against her employer: the identical issue of her allegedly unlawful termination on December 4, 2018. *See Order, Alasagas v. CTR Mgmt. Grp.,* No. 1:19-cv-1494 (E.D. Va. Feb. 6, 2020) (Dkt. 27). This issue was actually litigated, as the Court decided a motion to dismiss on the merits of Plaintiff's claims. Id. at 9-16. It was also critical and necessary to the Court's final judgment, which remains valid. Id. Plaintiff had a full and fair opportunity to litigate the issue. Although Plaintiff did not file an opposition to the defendant's motion to dismiss that case, she was notified of her right to do so as required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). See Dkt. 15. Accordingly, dismissal of this action is warranted pursuant to the collateral estoppel doctrine.

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[3] Although "nonmutual *offensive* collateral estoppel simply does not apply *against* the against government in such a way as to preclude relitigation" of many issues, *United States v. Mendoza,* 464 U.S. 154, 162 (1984) (emphases added), the United States may benefit from the doctrine of collateral estoppel when applied defensively to preclude litigation brought by a plaintiff who has already fully and fairly litigated the same issue against a non-government defendant. See *Johnson v. Pep Boys,* No. 2:04-cv-632, 2005 WL 6229590, at *7 (E.D. Va. June 14, 2005), *aff'd,* 164 F. App'x 385 (4th Cir. 2006) ("Although individual officials of the United States were not parties to that case, defensive collateral estoppel prevents Plaintiff from relitigating the timeliness issue against individual defendants in *Johnson III.*").

[4] Plaintiff brought the same federal anti-discrimination claims in *Alasagas I.* At the time Defendant moved to dismiss the Complaint in this case, the Court's order dismissing Plaintiffs lawsuit in *Alasagas I* remained sealed.

B. Title VII, ADA, GINA, and ADEA Claims

In addition, each of Plaintiffs claims fail on the merits. Plaintiff first asserts claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), the Genetic Information Nondiscrimination Act ("GINA"), and the Age Discrimination in Employment Act ("ADEA"). Dkt. 1, 5. Each of these federal statutes require that "[t]o be liable for employment discrimination, a defendant must have been the plaintiffs 'employer.'" *McAdory v. Vail Techn.*, No. 1:16-cv-886, 2017 WL 1822276, at *5 (E.D. Va. May 4, 2017) (citing 42 U.S.C. § 2000e-2 with respect to Title VII); *see* also 42 U.S.C. § 12111(5)(A) (regarding the ADA); 42 U.S.C. § 2000ff (regarding the GINA); 29 U.S.C. 6333(a)(l) (regarding the ADEA).

The federal civil rights claims Plaintiff brings against Defendant are based on Defendant's role in directing the Misconduct Charge to be filed, allowing the harassment that she faced at work to continue, and for causing her ultimate termination. *See generally* Dkt. 1. Yet in the Complaint, Plaintiff makes it quite clear that her employer was GAP Solutions, not the State Department. See Dkt. 1, 4. Her claims under Title VII, the ADA, the GINA, and the ADEA could only survive, then, if Plaintiff pleaded facts sufficient to show "joint employment" by her actual employer and the federal government. *See Butler v. Drive Auto Indus. of Am., Inc.*, 793 F.3d 404, 408-09 (4th Cir. 2015). To make that showing, an employee must allege facts that are evaluated under a multi-factor framework. See id. at 414-15 (quoting *Garrett v. Phillips Mills, Inc.*, 721 F .2d 979, 982 (4th Cir. 1983)). Plaintiff does not allege she was jointly employed by the State Department and does not plead facts sufficient for the Court to infer she meets the Fourth Circuit's standard. See generally Dkt. 1. Consequently, Plaintiff fails to state a claim under

any of the federal antidiscrimination statutes she invokes, and her claims must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) on this ground.

Even if Plaintiff could overcome this hurdle, her discrimination claims fail because she does not plausibly allege that her work conditions were due to protected class animus. *See Pueschel v. Peters*, 577 F .3d 558, 564-65 (4th Cir. 2009). Although Plaintiff identifies herself as a Pacific Islander, she does not allege that an individual of another race, color, or age was treated differently. The Complaint identifies one individual, "Mr. Solaiman Hotaki," Dkt. 1, 7, but does not allege any facts regarding this person's characteristics. And even if the Complaint's allegations regarding Mr. Hotaki were sufficiently detailed, a Title VII complaint alleging only that a plaintiff suffered differential treatment in favor of someone outside her protected class must be dismissed pursuant to Federal Rule 12(b)(6). *See McCleary-Evans v. Maryland Dep't of Trans.*, 780 F.3d 582, 588 (4th Cir. 2015).

Plaintiffs hostile work environment claim fails on the merits as well. The few conclusory allegations Plaintiff includes in her Complaint-that Mr. Hotaki was confrontational toward her and that her work product and work schedule were subjected to "heightened scrutiny"-fall short of stating a hostile work environment claim. *See, e.g., Perkins v. Int'l Paper Co.*, 936 F.3d 196, 208 (4th Cir. 2019); Combs-Burge v. Rumsfeld, 170 Fed. Appx. 856, 862 (4th Cir. 2006).

Defendant also argues that Plaintiff has failed to timely pursue administrative remedies as to her federal anti-discrimination claims because she failed to initiate a complaint with a State Department Equal Employment Opportunity ("EEO") counselor within the requisite time period after she was terminated. Dkt. 13, 4-5 (citing 29 C.F.R. 1614.I05(a)(l)). Plaintiff has maintained that the tragic death of her son on January 16, 2019 caused her to

miss the March 11, 2019 deadline to initiate EEO action. Dkt. 1-1. The Equal Employment Opportunity Commission ("EEOC") dismissed her complaint as untimely, and that determination was upheld on administrative appeal in a February 25, 2020 decision. *Id.* The Court sympathizes with Plaintiff and the trauma she must have experienced in losing a child. Even so, the standard the EEOC and federal courts apply to determine if a deadline should be equitably tolled or subject to equitable estoppel asks whether a plaintiff was so physically or mentally incapacitated by the loss of a loved one that she could not timely contact an EEOC counselor. *See Dkt. 1-1; see also, e.g., Crabill v. Charlotte Mecklenburg Bd. of Educ.,* 423 Fed. App'x 314, 321 (4th Cir. 2011) (holding that equitable tolling is granted "only sparingly"). Because Plaintiff does not set forth that she was so physically or mentally incapacitated that calling to speak with an EEOC counselor was "impossible," *Crabill,* 423 Fed. App'x at 321, her failure to timely pursue administrative remedies also counsels dismissal of her anti-discrimination claims. Dismissal under Federal Rule of Civil Procedure 12(b)(6) is accordingly appropriate on this ground as well. *See Edwards v. Murphy-Brown, LLC,* 760 F. Supp. 2d 607,613 (E.D. Va. 2011) ("[U]ntimeliness" claims should be addressed within the context of a 12(b)(6) motion.").

C. Equal Pay Act Claim

Plaintiff also brings a claim under the Equal Pay Act. *See* Dkt. 1, 6. This statute forbids "employers from paying an employee at a rate less than that paid to employees of the opposite sex for equal work." *Lovell v. BENT Solutions, LLC,* 295 F. Supp. 2d 611,618 (E.D. Va. 2003) (citing 29 U.S.C. § 206 (d)(1)). To establish a *prima facie* case of wage discrimination, a plaintiff must plead facts sufficient to show "(1) that the defendant employer pays different

wages to employees of opposite sexes; (2) that these employees hold jobs that require equal skill, effort, and responsibility; and (3) that such jobs are performed under similar working conditions." Lovell, 295 F. Supp. 2d at 618.

Plaintiff cannot establish a prima facie case of wage discrimination. Her employer was GAP Solutions, not Defendant, Dkt. 1, 4, and she fails to allege any facts regarding the wages earned by employees of the opposite sex. Accordingly, Plaintiff fails to state a claim for relief under the Equal Pay Act, and this claim must be dismissed pursuant to Rule 12(b)(6).

D. Revenue Sharing Act Claim

Plaintiff also alleges she is entitled to relief under the Revenue Sharing Act of 1972, codified at 31 U.S.C. § 6710-6720. *See* Dkt. 1, 6. The law requires the following in relevant part:

> [n]o person in the United States shall be excluded from participating in, be denied, the benefits of, or be subject to discrimination under, a program or activity of a unit of general local government because of race, color, national origin, or sex if the government receives a payment under this chapter.

31 U.S.C. § 6711. Plaintiff has failed to plead facts showing that she was "excluded from participating in, be denied, the benefits of, or be subject to discrimination under, a program or activity of a unit" operated by Defendant. *Id.* Furthermore, the State Department is not a "unit of local government," *id.*, and this provision does not apply to its acts or omissions. Plaintiffs Revenue Sharing Act is dismissed for failure to state a claim under Rule 12(b)(6).

E. COBRA Claim

Plaintiff also appears to bring a claim under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Dkt. 1, 9. COBRA requires a group health plan to provide an employee notice of her rights when (1) coverage under a group health plan commences and (2) a "qualifying event" occurs. *Middlebrooks v. Godwin Corp.*, No. 1:10-cv-1306, 2012 WL405080, at *5 (E.D. Va. Feb. 7, 2012) (citing 29 U.S.C. §§ 1166(a)(l) and (4)).

Again, because Defendant is not Plaintiffs employer, Defendant was not obligated to provide Plaintiff with the notices of group health plan rights COBRA contemplates. Further, Plaintiff has failed to allege any other facts to support a COBRA claim against Defendant. Her claim under COBRA is therefore dismissed for failure to state a claim pursuant to Rule 12(b)(6).

F. Whistleblower Protection Act Claim

Plaintiff also brings a claim for relief under the Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8), presumably because she fears reprisal for filing this lawsuit in current or future employment. The claim cannot proceed, however, because Plaintiff has failed to exhaust her administrative remedies with regard to this claim. Although Plaintiff presented a formal administrative complaint of discrimination, nowhere in that complaint did she mention the Whistleblower Protection Act or benefits to which she might be entitled. This failure is fatal to Plaintiffs claim: "Under no circumstances does the WP A grant the District Court jurisdiction to entertain a whistleblower cause of action directly before it in the first instance." *Stella v. Mineta,* 284 F.3d 135, 142 (D.C. Cir. 2002). As a result, Plaintiffs Whistleblower Protection Act claim is dismissed for lack of subject matter jurisdiction

under Federal Rule of Civil Procedure 12(b)(1). *See Tonkin v. Shadow Mgmt., Inc.*, 605 Fed. Appx. 194, 194 (4th Cir. 2015) (per curiam) (holding that whether an employee has administratively exhausted claim is a matter that impacts this Court's subject matter jurisdiction).

G. Social Security Act Claim

Plaintiff also seems to allege that Defendant violated the Social Security Act, 42 U.S.C. § 1320d-5. *See* Dkt. 1, 7. To the extent that this is one of Plaintiffs claims, it fails for a simple reason. The statute does not contain a private cause of action, instead authorizing the Secretary of Health and Human Services to levy a penalty against a "person" who violates the law and state attorneys general to sue in federal court on behalf of injured residents. *See* 42 U.S.C. 1320(d)-2(a)(l); *see also Hudes v. Aetna Life Ins. Co.*, 806 F. Supp. 2d 180, 195-96 (D.D.C. 2011).

Accordingly, Plaintiff's Social Security Act claim is dismissed because she fails to state a cognizable claim for relief under Rule 12(b)(6).

IV. CONCLUSION

For these reasons, Defendant's Motion to Dismiss, Dkt. 12, is GRANTED, and Plaintiff's Complaint is hereby DISMISSED. Because the Court finds that Plaintiff does not state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), the dismissal is WITH PREJUDICE as to all but one-the Whistleblower Protection Act claim. The Court finds there is no subject matter jurisdiction over Plaintiff's Whistleblower Protection Act claim, and the dismissal is WITHOUT PREJUDICE as to that claim.

To appeal this decision, Plaintiff must file a written notice of appeal with the Clerk of Court within 30 days of the date of entry of this Order. To effectuate a notice of appeal, Plaintiff must provide a short statement indicating a desire to appeal, including the date of the order Plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives Plaintiff's right to appeal this decision.

The Clerk is directed to enter judgment in Defendant's favor, forward copies of this Order to Plaintiff, *pro se*, and close this civil action.

It is SO ORDERED.

Alexandria, Virginia
March 31, 2021

/s/ Rossie D. Alston, Jr.
United States Magistrate Judge

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Caroline S. Alasagas, a/k/a
Catheryn P,[1]
Complainant,
v.
Michael R. Pompeo
Secretary, Department of State,
Agency.

Appeal No. 2019005830

Agency No. DOS-0279-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated August 21, 2019, dismissing a formal complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

[1] This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

BACKGROUND

During the period at issue, Complainant worked as a third-party Contractor at the Agency's Foreign Service Institute Registrar's Office in Arlington, Virginia.

On March 26, 2019, Complainant initiated EEO Counselor contact. Informal efforts at resolution were not successful.

On July 1, 2019, Complainant filed a formal EEO complaint claiming that the that the Agency discriminated against her based on race, sex, color, and age when:

1. On December 14, 2018, Complainant's assignment to the Department's Foreign Service Institute ("FSI") to provide services under a contract with her employer, Gap Solutions, was terminated; and

2. Complainant was subjected to a hostile work environment at FSI, characterized by but not limited to heightened scrutiny of Complainant's work product and works schedule flexibility.

In its August 21, 2019 final decision, the Agency dismissed the formal complaint for untimely EEO Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency determined that Complainant's initial EEO Counselor contact was on March 26, 2019, which it found to be beyond the 45-day limitation period.

The instant appeal followed. On appeal, Complainant argues, in pertinent part, that she timely contacted the EEO Counselor. Complainant further argues that the Agency did not consider that the 2018-2019 federal government shutdown occurred during the time she needed to contact the EEO Counselor.

Complainant also explains that after her termination, she subsequently applied for unemployment benefits and participated in a fact-finding interview on February 4, 2019, to discuss whether she was discharged on

December 14, 2018 for misconduct, to determine her eligibility for unemployment compensation. Complainant explains that during this interview, she was notified by the Virginia Employment Commission to file a complaint because the Agency submitted the misconduct filing without Complainant's knowledge.

Finally, Complainant asserts that the Agency failed to recognize the hardship she encountered after the death of her son, on January 16, 2019.

Complainant's remaining arguments on appeal relate to the merits of her two claims.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45)days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five (45) days of the effective date of the action.

Here, the EEO Counselor's Report reflects that Complainant initiated EEO contact on March 26, 2019, which is more than 45 days after Complainant's termination on December 14, 2018. Complainant had 45 days from her termination, or until January 28, 2019, to timely contact an EEO Counselor. It is immaterial that Complainant subsequently learned on February 4, 2019,

that the Agency submitted a misconduct filing related to her termination that impacted a determination on Complainant's unemployment eligibility. Because Complainant's termination is a personnel action,

Complainant had 45 days from the date of the personnel action to timely contact an EEO Counselor. EEOC regulations provide that the Agency or the Commission shall extend the time limits when the individual shows that he was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond his control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the Agency or the Commission. 29 C.F.R. §1614.105(a)(2).

However, Complainant has not presented any persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. Because Complainant's initial January 28, 2019 deadline to contact an EEO Counselor fell during the federal government shutdown, occurring from December 22, 2018 through January 25, 2019, Complainant received a 40-day extension.[2] Therefore, Complainant had until March 11, 20193 to timely contact an EEO Counselor. The record, however, reflects that Complainant did not initiate contact until March26, 2019.

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[2] The Commission extended all relevant complaint processing deadlines that fell within the period of the federal government shutdown by 40 calendar days.

[3] Because 40 days from January 28, 2019 fell on a Saturday (March 9, 2019), Complainant's new filing deadline was extended to the next business day which was Monday, March 11, 2019.

We also address Complainant's argument that she experienced a hardship in timely contacting the EEO Counselor after her son died on January 16, 2019. We acknowledge the trauma attendant with this tragic experience and we further acknowledge Complainant's explanation on appeal that it took considerable time for her to make funeral arrangements and gather her son's personal belongings, legal and hospitalization accounts, fact finding, and cause of death. However, Complainant has not demonstrated that she was either so physically or mentally incapacitated by the loss of her son that she could not timely contact an EEO Counselor on or before March 11, 2019. The Commission has consistently held, in cases involving physical or mental health difficulties, that an extension is warranted only where an individual is so incapacitated by his condition that she is unable to meet the regulatory time limits.

The Agency's final decision dismissing the formal complaint for untimely EEO Counselor contact is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material factor law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

February 25, 2020