Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1337

SHENIQUA L. WATSON,

Plaintiff - Appellant,

v.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., Senior District Judge. (3:19-cv-00466-JAG)

Submitted: September 1, 2022 Decided: September 15, 2022

Before NIEMEYER and KING, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Sheniqua L. Watson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sheniqua L. Watson appeals the district court's orders granting Defendant's motion to dismiss her claims of race discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (Title VII), and 42 U.S.C. § 1981, and granting summary judgment in favor of Defendant on Watson's remaining claims of racial discrimination under Title VII, and gender discrimination, in violation of the Equal Pay Act, 29 U.S.C. § 206(d). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Watson v. Va. Dep't of Agric. & Consumer Servs.*, No. 3:19-cv-00466-JAG (E.D. Va. Mar. 13, 2020; Mar. 12, 2021). 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

21a
Appendix C

FILED: September 27, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1337
(3:19-cv-00466-JAG)

SHENIQUA L. WATSON

Plaintiff - Appellant

v.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Defendant - Appellee

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

FILED: December 13, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1337
(3:19-cv-00466-JAG)

SHENIQUA L. WATSON

Plaintiff - Appellant

v.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Defendant - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: December 21, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1337
(3:19-cv-00466-JAG)

SHENIQUA L. WATSON

Plaintiff - Appellant

v.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Defendant - Appellee

M A N D A T E

The judgment of this court, entered September 15, 2022, 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

Appendix F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SHENIQUA L. WATSON,
Plaintiff,

v. Civil Action No. 3:19-cv-466

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
Defendant.

OPINION

Sheniqua L. Watson has sued her former employer, the Virginia Department of Agriculture and Consumer Services ("VDACS"), alleging that VDACS discriminated against her based on her race and gender. Watson asserts claims for disparate treatment, hostile work environment, wage discrimination based on race, and retaliation under Title VII of the Civil Rights Act of 1964. She also asserts claims for race discrimination under 42 U.S.C. § 1981 and wage discrimination based on gender under the Equal Pay Act. VDACS has moved to dismiss for failure to state a claim. Because Watson has failed to state a claim for relief, the Court will grant the motion to dismiss. The Court, however, will grant Watson leave to file an amended complaint only as to her wage discrimination claims under Title VII and the Equal Pay Act.

I. BACKGROUND

A. Facts Alleged in the Complaint

Watson, an African American woman, began working at VDACS as an hourly employee in 2005. As an "Administrative and Office Specialist III," Watson worked part-time and earned $12 per hour. (Compl. ¶ 3.) For four years, Watson tried to obtain full-time employment with VDACS. In June, 2009, she became a full-time employee at VDACS as a "[L]ead [L]icensing

[S]pecialist" in the Office of Pesticide Services. (*Id.* ⁋ 6.) Watson earned an annual salary of $27,810—less than the $38,271 salary her predecessor, a white woman, earned. In 2012, Watson asked why she did not receive administrative support as her predecessor had. In May, 2012, Watson received a "write-up" for declining work product. She also requested an internal alignment,[1] which VDACS declined to give her. In January, 2013, Watson questioned why her salary was on the low end of the pay band.[2] Her supervisor, who was also her predecessor, told her "that the maximum pay was $36,621 with eighteen years of service." (*Id.* ¶ 9.) In March, 2013, Watson unsuccessfully interviewed for a new position in VDACS' Office of Charitable and Regulatory Programs.

After her interview, Watson began receiving negative comments in her employee evaluations for the first time in four years. A coworker also accused Watson of threatening her. Nevertheless, her overall employee evaluations indicated that she was meeting job expectations. In December, 2013, VDACS moved Watson's desk away from the rest of her team to an undesirable location near the restrooms. In December, 2013, Watson "filed a grievance due to a continued hostile work environment promoted and encouraged by management and human resources." (*Id.* ¶ 13.) She also received a transfer to the Office of Charitable and Regulatory Programs, where she retained the same job title and duties.

On October 22, 2014, Watson's supervisor "demoted" her by removing files from her desk and preventing her from processing registrations. (*Id.* ¶ 15.) Although her salary and job title

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[1] An internal alignment analyzes an employee's salary against a series of factors to determine whether the employee's salary matches his or her qualifications.

[2] The pay band ranged from $23,999 to $49,255.

remained the same, she essentially performed receptionist duties. Her new duties involved answering phone calls, processing mail, and "processing emailed extensions." (*Id.*)

Watson unsuccessfully asked management to reconsider the reduction in her responsibilities. She "complained about the demotion on numerous occasions[,] resulting in [her supervisor's] retaliating and micro-managing [her]." (*Id.* ¶ 17.) She says that management (1) checked in with her daily, (2) issued a written reprimand for turning in her time sheets late, (3) warned her to return voicemails faster, and (4) warned her to reduce her use of flex time. Meanwhile, her white coworkers received promotions and raises, "some within months of their initial hire." (*Id.* ¶ 16.) Watson then filed a Freedom of Information Act ("FOIA") request for her disciplinary file with VDACS.

In January, 2017, VDACS hired Joseph Cason, its first African-American manager in Watson's tenure. Cason was the lowest-paid manager with that title. Watson alleges that VDACS hired Cason to "invalidate her allegations" of racial discrimination. (*Id.* ¶ 23.) White employees filed complaints against Cason for raising his voice, banging his fists on the table during meetings, and poor management. Eventually, Cason stepped down from his position due to the "hostile work environment." (*Id.*)

In November, 2017, Watson filed further FOIA requests. She alleges that minority employees earned salaries at the lower end of the pay band and white employees earned salaries at the higher end of the pay band.

B. Watson's Previous Lawsuit and Procedural History

On March 4, 2015, Watson filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). She received a right to sue letter on September 28, 2016. She filed her initial complaint against VDACS on December 15, 2016. VDACS moved to dismiss

Watson's complaint for failure to state a claim. The Court referred the matter to Magistrate Judge Roderick C. Young. On December 22, 2017, Magistrate Judge Young recommended dismissing Watson's complaint with prejudice. *See Watson v. Va. Dep't of Agric. & Consumer Servs.*, No. 3:16cv985, 2017 WL 8220238 (E.D. Va. Dec. 22, 2017), *report & recommendation adopted in part*, 2018 WL 1277744 (Mar. 12, 2018). On March 12, 2018, the Court adopted Magistrate Judge Young's Report and Recommendation, but revised it to dismiss Watson's case without prejudice.

On August 1, 2018, Watson filed a second EEOC Charge. On August 14, 2018, she resigned from VDACS. She received a right to sue letter on March 26, 2019. Watson then filed this case. Liberally construed, Watson's complaint raises six claims: disparate treatment in violation of Title VII (Count One), retaliation in violation of Title VII (Count Two), hostile work environment in violation of Title VII (Count Three), disparate pay in violation of Title VII (Count Four), race discrimination in violation of 42 U.S.C. § 1981 (Count Five), and gender discrimination in violation of the Equal Pay Act (Count Six).[3] VDACS has moved to dismiss the complaint for failure to state a claim.

II. LEGAL STANDARD

VDACS has moved to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A Rule 12(b)(6) motion gauges the sufficiency of a complaint without resolving any factual discrepancies or testing the merits of the claims. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). In considering the motion, a court must accept all allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff. *Nemet Chevrolet, Ltd. V. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009) (citing *Edwards*

[3] In her complaint, Watson lists her Title VII claims as a single count. Because Watson's allegations appear to raise four different Title VII claims, the Court enumerates her Title VII claims as separate counts.

v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999)). The principle that a court must accept all allegations as true, however, does not apply to legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a Rule 12(b)(6) motion to dismiss, a complaint must state facts that, when accepted as true, state a claim to relief that is plausible on its face. *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When the plaintiff appears pro se, as Watson does here, courts do not expect the pro se plaintiff to frame legal issues with the clarity and precision expected from lawyers. Accordingly, courts construe pro se complaints liberally. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). This principle of liberal construction has its limits. *Id.* Courts do not need to discern the unexpressed intent of the plaintiff or take on "the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party." *Id.*

III. DISCUSSION

A. Title VII Claims

Watson asserts four claims under Title VII: disparate treatment (Count One), retaliation (Count Two), hostile work environment (Count Three), and disparate pay (Count Four).

1. Time-Barred Claims

VDACS contends that Watson's Title VII claims are time-barred because she relies on events that took place more than 300 days before she filed the operative EEOC Charge. "Before a federal court may assume jurisdiction over a Title VII claim, a claimant must exhaust the

administrative procedures enumerated in 42 U.S.C. § 2000e-5(b), including a determination by the EEOC as to whether 'reasonable cause' exists to believe the charge of discrimination is true." *McKelvy v. Capital One Servs., LLC*, No. 3:09cv821, 2010 WL 3418228, at *2 (E.D. Va. Aug. 20, 2010), *aff'd*, 431 F. App'x 237 (4th Cir. 2011) (per curiam). A plaintiff "may proceed and recover only on deliberate discrimination that occurred within the 300 days of filing [her] charge." *Perkins v. Int'l Paper Co.*, 936 F.3d 196, 207 (4th Cir. 2019). Although a plaintiff cannot obtain relief under Title VII based on time-barred conduct, a plaintiff may rely on that conduct "as 'background evidence in support of a timely claim.'" *McKelvy*, 2010 WL 3418228, at *2 (quoting *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)).

a. Count One: Disparate Treatment

In Count One, Watson asserts that she suffered disparate treatment in violation of Title VII. To state a disparate treatment claim under Title VII, a plaintiff must plead facts showing: "(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class." *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010). VDACS argues that Watson has failed to show that she suffered an adverse employment action.

"An adverse employment action is a discriminatory act that 'adversely affect[s] the terms, conditions, or benefits of the plaintiff's employment.'" *Supinger v. Virginia*, 167 F. Supp. 3d 795, 807 (W.D. Va. 2016) (quoting *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375 (4th Cir. 2004)). Adverse employment actions may involve "discharge, demotion, decrease in pay or benefits, loss of job title or supervisory responsibility, or reduced opportunities for promotion." *Boone v. Goldin*, 178 F.3d 253, 255 (4th Cir. 1999).

Watson relies on the following allegedly discriminatory events as adverse employment actions: (1) the demotion on October 22, 2014; (2) the "micromanagement" between 2014 and 2015; and (3) the denial of administrative support between 2009 and 2014.[4] Watson, however, may only seek relief based on conduct that occurred within 300 days of her EEOC Charge. *See Perkins*, 936 F.3d at 207. Watson filed the operative EEOC Charge on August 1, 2018. Thus, Watson cannot rely on events that occurred before October 5, 2017. Because the demotion, micromanagement, and lack of administrative support all occurred before October 5, 2017, those events "cannot form the basis of a Title VII lawsuit." *McKelvy*, 2010 WL 3418228, at *2.[5]

Because Watson relies on time-barred conduct and otherwise fails to state a plausible disparate treatment claim, the Court will dismiss Count One with prejudice.

b. Count Two: Retaliation

In Count Two, Watson asserts that VDACS retaliated against her after she filed a grievance in December, 2013, and after she complained about the demotion in October, 2014. To state a claim for retaliation, a plaintiff "must show (1) [she] engaged in a protected activity, (2) that a materially adverse employment action was taken against [her], and (3) that a causal connection

[4] Watson does not identify the precise dates on which she experienced the alleged micromanagement or denial of administrative support. Nevertheless, her allegations appear to be based on events that took place on or before August 19, 2015. (*See* Compl. ¶¶ 8-18.)

[5] Even if Watson's allegations regarding micromanagement and administrative support were timely, those allegations do not qualify as adverse employment actions. Watson's allegations of micromanagement—warnings, poor performance reviews, and reprimands—do not constitute adverse employment actions. *Cf. Thorn v. Sebelius*, 766 F. Supp. 2d 585, 598 (D. Md. 2011), *aff'd*, 465 F. App'x 274 (4th Cir. 2012) (per curiam) (holding that neither a counseling letter nor a change to a new scheduling system constituted an adverse employment action). Similarly, Watson's allegation that VDACS denied her the administrative support it afforded her white predecessor does not constitute an adverse employment action. The lack of administrative support may have made Watson's job more difficult, but it did not result in a "significant change in employment status." *Lacasse v. Didlake, Inc.*, 712 F. App'x 231, 237 (4th Cir. 2018) (per curiam).

existed between the protected activity and the alleged adverse action." *Holleman v. Colonial Heights Sch. Bd.*, 854 F. Supp. 2d 344, 354 (E.D. Va. 2012). With respect to the second element, "an employer's conduct must be 'so materially adverse as to dissuade a reasonable employee from engaging in protected activity'" and the plaintiff "must show that her protected activity serves as the 'but-for' cause of her employer's adverse action." *Michael v. Va. Commonwealth Univ.*, No. 3:18cv125, 2018 WL 3631888, at *3 (E.D. Va. July 31, 2018) (quoting *Hinton v. Va. Union Univ.*, 185 F. Supp. 3d 807, 831 (E.D. Va. 2016)).

Watson alleges that VDACS twice retaliated against her. First, she asserts that she "filed a grievance due to a continued hostile work environment" in December, 2013, and that her supervisor retaliated by "demoting" her on October 22, 2014. (Compl. ¶¶ 13, 15.) Second, Watson alleges that her supervisor retaliated against her after she "complained about the demotion on numerous occasions." (*Id.* ¶ 18.) The alleged retaliatory events she experienced after complaining about the demotion all appear to have taken place on or before August 19, 2015. (*Id.*) As the Court explained above, Watson cannot seek relief under Title VII for retaliation based on events that occurred more than 300 days before she filed the operative EEOC Charge. *See Perkins*, 936 F.3d at 207. Because she relies on conduct that occurred outside the 300-day window, Watson cannot seek relief based on those events.[6]

[6] Even if Watson's retaliation claims were timely, she fails to state a plausible retaliation claim. First, as the Court explained in its Opinion dismissing Watson's first lawsuit, she "fails to show a causal connection between filing her [December, 2013] grievance and her October[,] 2014 change in responsibilities." *Watson*, 2017 WL 8220238, at *9. Second, the alleged retaliatory events she experienced after she complained about the demotion do not constitute "materially adverse employment action[s]." *Holleman*, 854 F. Supp. 2d at 354. The harmful conduct—daily desk checks, a "counseling memo" for turning in time sheets late, threats about the failure to return voicemail messages on time, and accusations of using too much "flex time"—would not "dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006); *see also Barnes v. Charles Cty. Pub. Schs.*, 747

In sum, Watson relies on time-barred conduct and otherwise fails to state a plausible retaliation claim. Accordingly, the Court will dismiss Count Two with prejudice.

2. Remaining Title VII Claims

a. Count Three: Hostile Work Environment

In Count Three, Watson asserts that VDACS maintained a hostile work environment in violation of Title VII.[7] To state a hostile work environment claim based on race, a plaintiff must plead facts showing that "(1) [s]he experienced unwelcome harassment; (2) the harassment was based on h[er] race; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Perkins*, 936 F.3d at 207-08. VDACS argues that Watson fails to plead facts to meet the "severe or pervasive" standard.

Watson's complaint "must clear a high bar" to meet the severe or pervasive standard. *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 315 (4th Cir. 2008). To determine if conduct qualifies as severe or pervasive, courts consider the totality of the circumstances, including (1) frequency; (2) severity; (3) whether the conduct was physically threatening or humiliating, or merely an offensive utterance; and (4) whether the conduct unreasonably interfered with the plaintiff's work performance. *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 270-71 (2001).

F. App'x 115, 119 (4th Cir. 2018) (per curiam) ("An employee is not insulated from discipline simply because [s]he engaged in protected activity.").

[7] "Unlike an allegation of discrimination grounded in discrete acts, when a Title VII claim based on a hostile work environment is alleged, a court is not necessarily constrained in its analysis to only consider actions that occurred within 300 days of filing the EEOC Charge." *Edwards v. Murphy-Brown, L.L.C.*, 760 F. Supp. 2d 607, 620 (E.D. Va. 2011) (explaining the "continuing violation" doctrine). Thus, although Watson bases her hostile work environment claim on events that occurred outside the 300-day window, the Court will consider whether Watson states a plausible claim for relief.

Offensive epithets, simple teasing, and offhand remarks will not satisfy the test. *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015).

Here, Watson argues that her supervisor "began to make the work environment hostile by checking [her] desk daily . . . and scrutinizing [her] time." (Dk. No. 11, at 23). Additionally, she alleges that her coworkers treated her with "indifference, [would] not speak[ ] [to her], slam[ed] doors [in] [her] presence[,] . . . and extend[ed] daily lunch invitations to all other non-Black team members[,] intentionally ignoring [her]." (Compl. ¶ 23.) Despite the undesirable behavior of her coworkers and supervisors, Watson's allegations do not meet the severe or pervasive standard. Title VII prohibits "extreme" conduct that "must . . . amount to a change in the terms and conditions of employment." *Faragher*, 524 U.S. at 788. It does not create "a 'general civility code,'" nor does it impose liability for "the ordinary tribulations of the workplace." *Id.* (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998)). Watson alleges that she experienced "rude treatment by [coworkers]," "callous behavior," and "personality conflict[s]" during her time at VDACS, but those experiences fall short of a plausible hostile work environment claim. *Sunbelt Rentals, Inc.*, 521 F.3d at 315. Because Watson fails to plead that she experienced severe or pervasive harassment, the Court will dismiss Count Three with prejudice.

b. Count Four: Disparate Pay

In Count Four, Watson asserts a claim for wage discrimination under Title VII.[8] To state a disparate pay claim under Title VII, a plaintiff must plead facts showing "that (1) she is a member

[8] Because the "continuing violation" doctrine applies to wage discrimination claims under Title VII, a plaintiff may seek relief based on conduct that occurred outside the 300-day window if she can "show an actual Title VII . . . violation within the statute of limitations." *See Becker v. Gannett Satellite Info. Network, Inc.*, 10 F. App'x 135, 138 (4th Cir. 2001) (per curiam). Watson alleges that she resigned from VDACS on August 14, 2018, so she presumably suffered the alleged wage discrimination after October 5, 2017.

of a protected class; (2) she was paid less than an employee outside the class; and (3) the higher paid employee was performing a substantially similar job." *Kess v. Mun. Emps. Credit Union of Balt., Inc.*, 319 F. Supp. 2d 637, 644 (D. Md. 2004). VDACS argues that Watson fails to plead facts showing that higher-paid white employees at VDACS performed substantially similar work.

When a plaintiff "base[s] her allegations 'completely upon a comparison to an employee from a non-protected class[,] . . . the validity of her [claim] depends upon whether that comparator is indeed similarly situated.'" *Lawrence v. Global Linguist Sols LLC*, No. 1:13cv1207, 2013 WL 6729266, at *4 (E.D. Va. Dec. 19, 2013) (quoting *Haywood v. Locke*, 387 F. App'x 355, 359 (4th Cir. 2010) (per curiam)). A plaintiff must plead facts showing that the comparators "dealt with the same supervisor, [were] subject to the same standards[,] and . . . engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Id.*

Here, Watson asserts that white "employees [are] given preference and hired at maximum salaries," while "[m]inority employees are hired . . . at the bottom to the middle of salary ranges." (Compl. ¶ 21.) She identifies the salaries of the following white VDACS employees:

Name	Race	Gender	Hire Date	Title	Salary
Alison Foster	White	Female	November, 2013	Compliance Officer	$42,500
Joel Maddux	White	Male	November 25, 2014	Compliance Officer	$42,500
Caly Emerson	White	Female	September 10, 2015	Registrations Analyst	$39,626
Kathryn Land	White	Female	February 10, 2016	Compliance Officer	$51,000
Alyssa Royer	White	Female	July 11, 2016	Compliance Officer	$51,000

(*Id.*)

Watson further alleges that VDACS "routinely pass[es] over minority employees for promotions." (*Id.* ¶ 22.) She points to various additional VDACS employees, including (1) Laura Hare, a white female, who received a $5,000 pay increase "within five months;" (2) Heather Hodges, a white female, who "was hired as a Compliance Officer [with]in one year;" (3) Joel

Maddux, a white male, who "was hired as a Compliance Officer within nine months" and now earns "over $75,000;" (4) Lindsay Barker, a white female, who "was hired out of college at $5,000 more than [Watson];" and (5) Alison Foster, a white female, who "was hired as the team leader of the registrations unit" despite "minimal work experience." (*Id.* ¶ 22(b)-(f).) Watson further asserts that other minority employees experienced "the same discriminatory pay tactic" as she did.[9] (*Id.*)

Watson does not plead sufficient facts to show that higher-paid white employees "w[ere] performing a substantially similar job." *Kess*, 319 F. Supp. 2d at 644. For example, Watson does not allege that the higher-paid white employees "dealt with the same supervisor, [were] subject to the same standards[,] and . . . engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Lawrence*, 2013 WL 6729266, at *4. In other words, Watson "fails to establish a plausible basis for believing" that the higher-paid white employees "were actually similarly situated." *Coleman*, 626 F.3d at 191.

Nonetheless, to give Watson an opportunity to comply with the pleading standard, the Court will grant Watson leave to file an amended complaint as to Count Four.[10] Accordingly, the Court will dismiss Count Four without prejudice.

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[9] Watson also identifies the salaries of various VDACS managers to support her allegation that Cason (the only African American manager) earned a lower salary than white managers. Because management-level employees were not similarly situated to Watson, she cannot rely on those employees as comparators to support her wage discrimination claim.

[10] The Court cautions Watson that a "formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Thus, Watson must plead sufficient facts to render her claim plausible that the higher-paid white employees "were actually similarly situated." *Coleman*, 626 F.3d at 191.

B. Count Five: § 1981 Claim

In Count Five, Watson asserts a race discrimination claim pursuant to 42 U.S.C. § 1981. Section 1981, however, "does not confer a private right of action against state actors." *Spellman v. Sch. Bd. of City of Chesapeake*, No. 2:17cv635, 2018 WL 2085276, at *12 (E.D. Va. Apr. 5, 2018), *report & recommendation adopted*, 2018 WL 2015810 (Apr. 30, 2018). Indeed, "when suit is brought against a state actor, § 1983 is the 'exclusive federal remedy for violation of the rights guaranteed in § 1981.'" *Dennis v. Cty. of Fairfax*, 55 F.3d 151, 156 (4th Cir. 1995). Because § 1981 does not apply to state actors such as VDACS, the Court will dismiss Count Five with prejudice.[11]

C. Count Six: Equal Pay Act Claim

In Count Six, Watson asserts a wage discrimination claim based on gender under the Equal Pay Act ("EPA").[12] To state a claim under the EPA, a plaintiff must plead facts showing "(1) that her employer has paid different wages to employees of opposite sexes; (2) that the employees hold jobs that require equal skill, effort, and responsibility; and (3) that such jobs are performed under similar working conditions." *Maron v. Va. Polytechnic Inst. & State Univ.*, 508 F. App'x 226, 232 (4th Cir. 2013) (per curiam). To meet the second element of an EPA claim, a plaintiff must

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[11] Because VDACS is not a "person" amenable to suit under § 1983, any amendment would be futile. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 67 (1989) (holding that state agencies "that are considered 'arms of the State' for Eleventh Amendment purposes" are not amenable to suit under § 1983).

[12] "The [EPA] has a two-year statute of limitations unless the plaintiff claims that the defendant's conduct was willful, in which case a three-year period applies." *Becker*, 10 F. App'x at 138 (citing 29 U.S.C. § 255(a)). Additionally, the Watson "may rely upon conduct outside the statue of limitations if she can show a continuing violation." *Id.* Here, Watson alleges that VDACS willfully violated the EPA. (Compl. ¶ 36.) Because she alleges that she suffered wage discrimination until her resignation on August 14, 2018, Watson asserts a timely EPA claim.

"adequately allege[ ] that her male comparators held jobs requiring 'equal skill, effort, and responsibility.'" *Reardon v. Herring*, 191 F. Supp. 3d 529, 547 (E.D. Va. 2016).

Liberally construed, Watson's complaint identifies three male employees as potential comparators: Joel Maddux, (compl. ¶¶ 21(b), 22(d)); Joseph Cason, (*id.* ¶ 23(c)); and Ehonam "Roger" Agbati, (*id.* ¶ 24). Watson asserts that Maddux initially earned $42,500[13]; Cason earned $42,000; and Agbati earned $35,936. (Dk. No. 4, at 20.) Watson says she earned $31,694. (*Id.*)

"[T]he burden falls on the plaintiff to show that the skill, effort[,] and responsibility required in her job performance are [substantially] equal to those of a higher-paid male employee." *Wheatley v. Wicomico County*, 390 F.3d 328, 332 (4th Cir. 2004). To show that a comparator male employee performed a "substantially equal" job, a plaintiff must allege that "a significant portion of the two jobs is identical." *Reardon*, 191 F. Supp. 3d at 547. Here, Watson does not plead facts showing "that the opposite sex comparators performed substantially similar work, received identical classification, and had comparable work experience." *Id.* at 548.

Nonetheless, to give Watson an opportunity to comply with the pleading standard, the Court will grant Watson leave to file an amended complaint as to Count Six. Accordingly, the Court will dismiss Count Six without prejudice.

IV. CONCLUSION

Because Watson fails to state a claim for relief, the Court will grant VDACS' motion to dismiss. The Court will dismiss Counts One, Two, Three, and Five with prejudice. The Court will dismiss Count Four (wage discrimination based on race under Title VII) and Count Six (wage discrimination based on gender under the EPA) without prejudice.

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[13] Watson alleges that Maddux earned $42,500 before his promotion "nine months later," after which he earned $76,322. (Dk. No. 4, at 20.)

The Court will issue an appropriate Order.

Let the Clerk send a copy of this Opinion to all counsel of record and to the pro se plaintiff.

Date: 12 March 2020
Richmond, VA

/s/
John A. Gibney, Jr.
United States District Judge

Appendix G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SHENIQUA L. WATSON,
Plaintiff,

v. Civil Action No. 3:19-cv-466

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
Defendant.

ORDER

This matter comes before the Court on the "addendum and opposition to Judge John Gibney's motions to dismiss" filed by the pro se plaintiff, Sheniqua L. Watson. (Dk. No. 18.) On March 13, 2020, the Court granted the defendant's motion to dismiss Watson's complaint. (Dk. Nos. 16, 17.) The Court, however, dismissed without prejudice Watson's wage discrimination claims under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. The Court granted Watson leave to file an amended complaint only as to those two claims and directed her to file an amended complaint within twenty-one (21) days.

On April 7, 2020, Watson filed this "addendum and opposition." (Dk. No. 18.) In her filing, Watson notes her "opposition to [the Court's] dismissals" and asserts that the Court has violated her procedural due process rights. (*Id.* at 1.) She also reiterates some of the arguments she advanced in previous filings. Accordingly, the Court will construe Watson's filing as a motion for reconsideration under Federal Rule of Civil Procedure 59(e).

Courts grant motions for reconsideration in the following circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available earlier; or (3) to correct a clear error of law or prevent manifest injustice." *LaFleur v. Dollar Tree Stores, Inc.*, No. 2:12-cv-363, 2014 WL 2121563, at *1 (E.D. Va. May 20, 2014).

"[A] motion for reconsideration under Rule 59(e) is inappropriate if it asks the court to 'reevaluate the basis upon which it made a prior ruling' or 'merely seeks to reargue a previous claim.'" *Projects Mgmt. Co. v. DynCorp Intern., LLC*, 17 F. Supp. 3d 539, 541 (E.D. Va. 2014) (quoting *United States v. Smithfield Foods*, 969 F. Supp. 975, 977 (E.D. Va. 1997)).

Watson's filing does not meet any of three circumstances under which courts grant motions for reconsideration. Essentially, Watson seeks to "re-litigate issues already decided [and] highlight previously-available facts." *Wooten v. Commonwealth of Va.*, 168 F. Supp. 3d 890, 893 (W.D. Va. 2016). The parties previously briefed the issues raised in Watson's filing. Watson cannot now use a motion for reconsideration "to put a finer point on [her] old arguments and dicker about matters decidedly adversely to [her]." *Evans v. Trinity Indus., Inc.*, 148 F. Supp. 3d 542, 546 (E.D. Va. 2015). Thus, to the extent that Watson's filing is a motion for reconsideration under Rule 59(e), the Court DENIES the motion.

Nonetheless, Watson's filing does appear to assert facts relevant to her wage discrimination claims under Title VII and the Equal Pay Act. (*See* Dk. No. 18, at 6-11.) Accordingly, the Court will also construe Watson's filing as her amended complaint. The Court DIRECTS the defendant to respond to the amended complaint within fourteen (14) days of this Order.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record and to the pro se plaintiff.

Date: 23 April 2020
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SHENIQUA L. WATSON,
Plaintiff,

v. Civil Action No. 3:19-cv-466

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
Defendant.

MEMORANDUM ORDER

This matter comes before the Court on the defendant's motion to dismiss. (Dk. No. 20.) The plaintiff, Sheniqua L. Watson, has sued her former employer, the Virginia Department of Agriculture and Consumer Services ("VDACS"), alleging discrimination based on her race and gender. The Court previously dismissed all of the claims in Watson's initial complaint. The Court, however, dismissed without prejudice Watson's wage discrimination claims under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Equal Pay Act of 1963 ("EPA"). The Court further granted Watson leave to file an amended complaint only as to those two claims. Watson then filed a motion for reconsideration, which the Court construed as her amended complaint. VDACS has now moved to dismiss the amended complaint for failure to state a claim. For the reasons set forth below, the Court will deny the motion to dismiss.

I. FACTS ALLEGED IN THE AMENDED COMPLAINT[1]

Watson, an African American woman, began working at VDACS as an hourly employee in 2005. (Compl. ¶ 3.) In June, 2009, she became a full-time employee at VDACS as a "[L]ead

[1] Because the Court construed Watson's motion for reconsideration as her amended complaint, the Court will set forth the relevant allegations in Watson's initial complaint alongside any relevant allegations in her motion for reconsideration. (*See* Dk. No. 19.) The Court, however,

[L]icensing [S]pecialist" in the Office of Pesticide Services. (*Id.* ¶ 6.) In May, 2012, Watson received a "write-up" for declining work product. In 2013, she began receiving negative comments in her employee evaluations.

In January, 2014, Watson transferred to the Office of Charitable and Regulatory Programs as a Registrations Analyst. (*Id.* ¶ 14.) In this capacity, Watson's salary ranged from $29,785 to $31,694. She says that she earned a lower salary than other Registration Analysts and Compliance Analysts. (Dk. No. 18, at 7, 8.) Watson cites payment statistics from VDACS to support her Title VII pay discrimination claim and her EPA claim. On October 22, 2014, Watson's supervisor demoted her to a receptionist position. (Compl. ¶ 15.) Because of that demotion, Watson kept her title as "Registrations Analyst," but performed significantly fewer responsibilities. (*Id.*)

Watson contends that VDACS discriminated against her by paying her less than her white counterparts in violation of Title VII and by paying her less than her male counterparts in violation of the EPA.

II. LEGAL STANDARD

VDACS has moved to dismiss the amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A Rule 12(b)(6) motion gauges the sufficiency of a complaint without resolving any factual discrepancies or testing the merits of the claims. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). In considering the motion, a court must accept all allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)). The principle

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cautions Watson that her second amended complaint must stand entirely on its own. Watson may not refer to or rely on any previous filings in her second amended complaint.

that a court must accept all allegations as true, however, does not apply to legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a Rule 12(b)(6) motion to dismiss, a complaint must state facts that, when accepted as true, state a claim to relief that is plausible on its face. *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When the plaintiff appears pro se, as Watson does here, courts do not expect the pro se plaintiff to frame legal issues with the clarity and precision expected from lawyers. Accordingly, courts construe pro se complaints liberally. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). This principle of liberal construction has its limits. *Id.* Courts do not need to discern the unexpressed intent of the plaintiff or take on "the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party." *Id.*

III. DISCUSSION

A. Title VII Claim

First, Watson asserts a wage discrimination claim based on race under Title VII.[2] To state a wage discrimination claim under Title VII, a plaintiff must plead facts showing "that (1) she is a

[2] VDACS continues to argue that Watson's claims are time-barred because she relies on events that took place more than 300 days before she filed the operative EEOC Charge. As the Court explained in its Opinion on VDACS' motion to dismiss Watson's initial complaint, the "continuing violation" doctrine applies to wage discrimination claims under Title VII. Thus, a plaintiff may seek relief based on conduct that occurred outside the 300-day window if she can "show an actual Title VII . . . violation within the statute of limitations." *See Becker v. Gannett Satellite Info. Network, Inc.*, 10 F. App'x 135, 138 (4th Cir. 2001) (per curiam). Here, Watson alleges that she resigned from VDACS on August 14, 2018, so she presumably suffered the alleged

member of a protected class; (2) she was paid less than an employee outside the class; and (3) the higher paid employee was performing a substantially similar job." *Kess v. Mun. Emps. Credit Union of Balt., Inc.*, 319 F. Supp. 2d 637, 644 (D. Md. 2004). VDACS argues that Watson fails to plead facts showing that higher-paid white employees at VDACS performed a substantially similar job.

When a plaintiff "base[s] her allegations 'completely upon a comparison to an employee from a non-protected class[,] . . . the validity of her [claim] depends upon whether that comparator is indeed similarly situated.'" *Lawrence v. Global Linguist Sols LLC*, No. 1:13cv1207, 2013 WL 6729266, at *4 (E.D. Va. Dec. 19, 2013) (quoting *Haywood v. Locke*, 387 F. App'x 355, 359 (4th Cir. 2010) (per curiam)). Thus, a plaintiff must plead facts showing that the comparators "dealt with the same supervisor, [were] subject to the same standards[,] and . . . engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Id.*

Here, Watson sufficiently pleads that higher-paid white employees performed a substantially similar job to her. Watson includes a list and table of comparators and identifies the comparators' race, gender, hire date, title, and salary. (Dk. No. 18, at 7.) Watson's amended complaint lists additional comparators who also held the title of Registration Analyst. *Cf. Lawrence*, 2013 WL 6729266, at *4 (noting that the plaintiff's comparator, a manager, was not similarly situated to the plaintiff).

Watson also outlines the comparators' job descriptions to show that Registration Analysts perform substantially similar work. She asserts that all Registration Analysts perform the same

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wage discrimination after October 5, 2017. Watson, therefore, may rely on the "continuing violation" doctrine at this juncture.

duty: "to advise and register charitable organizations to be able to legally solicit for funds and donations in . . . Virginia." (Dk. No. 18, at 8.) She also alleges that her comparators reported to the same supervisor. (*Id.* at 8.) Accordingly, Watson adequately pleads that higher-paid white comparators performed substantially similar work. The Court, therefore, will deny the motion to dismiss Watson's wage discrimination claim under Title VII.

B. Equal Pay Act Claim

Next, Watson asserts a wage discrimination claim based on gender under the EPA.[3] To state a claim under the EPA, a plaintiff must plead facts showing "(1) that her employer has paid different wages to employees of opposite sexes; (2) that the employees hold jobs that require equal skill, effort, and responsibility; and (3) that such jobs are performed under similar working conditions." *Maron v. Va. Polytechnic Inst. & State Univ.*, 508 F. App'x 226, 232 (4th Cir. 2013) (per curiam). To meet the second element of an EPA claim, a plaintiff must "adequately allege[ ] that her male comparators held jobs requiring 'equal skill, effort, and responsibility.'" *Reardon v. Herring*, 191 F. Supp. 3d 529, 547 (E.D. Va. 2016). VDACS argues that Watson does not plead facts showing that male comparators held jobs that required equal skill, effort, and responsibility.

"[T]he burden falls on the plaintiff to show that the skill, effort[,] and responsibility required in her job performance are [substantially] equal to those of a higher-paid male employee." *Wheatley v. Wicomico County*, 390 F.3d 328, 332 (4th Cir. 2004). To show that a comparator male employee performed a "substantially equal" job, a plaintiff must allege that "a significant portion

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[3] "The [EPA] has a two-year statute of limitations unless the plaintiff claims that the defendant's conduct was willful, in which case a three-year period applies." *Becker*, 10 F. App'x at 138 (citing 29 U.S.C. § 255(a)). A plaintiff "may rely upon conduct outside the statute of limitations if she can show a continuing violation." *Id.* Here, Watson alleges that VDACS willfully violated the EPA. (Compl. ¶ 36.) Because she alleges that she suffered wage discrimination until her resignation on August 14, 2018, Watson may proceed with her EPA claim at this juncture.

of the two jobs is identical." *Reardon*, 191 F. Supp. 3d at 547. In other words, a plaintiff must plead facts showing "that the opposite sex comparators performed substantially similar work, received identical classification, and had comparable work experience." *Id.* at 548.

Here, Watson pleads that at least two male comparators held substantially similar jobs.[4] Two of her male comparators were also Registration Analysts. (*See* Dk. No. 18, at 7.) Although Watson does not indicate the precise "level" of Registration Analyst of each comparator, "job descriptions and titles are not decisive." *Reardon*, 191 F. Supp. 3d at 547. Finally, she contends that the male comparators reported to the same supervisor. (*Id.*) Thus, Watson adequately alleges that her male comparators held jobs that required equal skill, effort, and responsibility. The Court, therefore, will deny VDACS' motion to dismiss Watson's EPA claim.

IV. CONCLUSION

For the foregoing reasons, the Court ORDERS as follows:

1. The Court DENIES the motion to dismiss Watson's amended complaint. (Dk. No. 20.)

2. The Court DIRECTS Watson to file a second amended complaint within twenty-one (21) days of this Order.[5] Her second amended complaint may only include (1) a disparate pay claim under Title VII and (2) a wage discrimination claim under the Equal Pay Act. In her second

[4] Watson identifies three male employees as comparators: Joel Maddox, Ehonam Agbati, and Joseph Cason. (Dk. No. 18, at 7.) She compares her 2014 salary as a Registrations Analyst to the 2014 salaries of Maddox, Agbati, and Cason. (*Id.*) Maddox, however, worked as a Compliance Analyst, which required different qualifications than the requirements for a Registrations Analyst. Thus, Maddox is not likely a proper comparator.

[5] Although the Court construed Watson's motion for reconsideration as her amended complaint, that document cannot be the governing complaint in this case because it does not comply with the requirements set forth in Federal Rule of Civil Procedure 8. *See* Fed. R. Civ. P. 8(a).

amended complaint, Watson may not refer to or rely on any previous pleadings or filings in this case or other cases. Once filed, the second amended complaint will become the operative complaint in this case. At the top of the second amended complaint, Watson must place the following caption: SECOND AMENDED COMPLAINT FOR CIVIL ACTION NO. 3:19-CV-466. The second amended complaint must comply with the following directives:

a. First, the second amended complaint should include a section titled "FACTS." In separately numbered paragraphs, Watson must set forth a short statement of facts giving rise to her claims for relief. To the extent possible, Watson should list the facts in the order in which they happened and provide specific dates. Watson may only set forth facts relevant to her claims for (1) disparate pay under Title VII and (2) wage discrimination under the Equal Pay Act. The second amended complaint shall only consolidate the relevant facts set forth in Watson's initial complaint and motion for reconsideration. Watson shall not include any new or additional facts not specifically pled in those two filings.

b. Next, the second amended complaint should include a section titled "CLAIMS." In separately titled subsections, Watson must clearly identify her legal claims for (1) disparate pay under Title VII and (2) wage discrimination under the Equal Pay Act. For each legal claim, Watson must explain why she believes the defendant is liable to her. Such explanation should refer to the specific number paragraphs in the "FACTS" section that support each legal claim.

c. Finally, the second amended complaint should include a section titled "RELIEF." Watson should include a list of the relief she seeks. If she seeks money damages, Watson should include the dollar amount of damages.

d. Failure to file a second amended complaint as directed will result in dismissal of this case with prejudice. *See* Fed. R. Civ. P. 41(b).

3. VDACS shall file an answer to the second amended complaint within fourteen (14) days of the date the plaintiff files her second amended complaint. After VDACS files its answer, the Court will schedule an initial pretrial conference in this case.

It is so ORDERED.

Let the Clerk send a copy of this Memorandum Order to all counsel of record and to the pro se plaintiff.

Date: 27 July 2020
Richmond, VA

/s/
John A. Gibney, Jr.
United States District Judge

Appendix I

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Sheniqua L. Watson,

Plaintiff,

v. Civil Action No. 3:19CV466

Virginia Department of Agriculture and Consumer Services,

Defendant.

INITIAL SCHEDULING ORDER

An initial pretrial conference in this case will be held at 8:30 a.m. on October 29, 2020, via conference call. You will receive an email with further instructions on how to join into the conference line. At the conference, the case will be set for trial. Counsel for each party, or, if a party is not represented by counsel, the unrepresented party, shall appear. It is necessary for only one attorney for represented parties to attend the initial pretrial conference, provided that the attorney in attendance is authorized to set the matter for trial on a date certain.

No later than twenty-one (21) days before the initial pretrial conference, counsel and any pro se parties shall meet, pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, to formulate a discovery plan for the case. The Rule 26(f) meeting may occur by telephone. Counsel will orally report the results of the Rule 26(f) meeting at the pretrial conference. If the parties agree on a departure from the discovery procedures contained in the Federal Rules of Civil Procedure or the Local Rules, they shall tender an endorsed order at the pretrial conference.

No later than ten (10) days after the Rule 26(f) conference, the parties shall exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26(a). Absent leave of Court, the initial disclosures must occur, regardless whether a dispositive motion is pending. Disclosures shall be updated pursuant to Fed. R. Civ. P. 26(e). Timely updated disclosures shall include the disclosure of documents and witnesses to be used or offered for impeachment or rebuttal.

It is so ORDERED.

Entered: September 21, 2020

/s/
John A. Gibney, Jr.
United States District Judge

IF THIS CASE IS SETTLED PRIOR TO THE CONFERENCE, PLEASE CALL CHAMBERS AT (804) 916-2870. THANK YOU.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SHENIQUA WATSON,
Plaintiff,

v. Civil Case No. 3:19cv466

VIRGINIA DEPARTMENT OF
AGRICULTURE & CONSUMER SERVICES,
Defendant.

INITIAL PRETRIAL ORDER

This case is scheduled for trial with a jury on April 28, 2021, at 9:00 a.m.

1. **Contact Information.** Counsel shall disclose to each other their email addresses as well as street addresses, which shall not be a post office box. Pro se litigants shall not be governed by this rule, and counsel need not disclose a street address to pro se litigants.

2. **Answer and Joinder.** Any party who has not done so shall file an answer within ten (10) days of the date of this Order, notwithstanding any pending dispositive motions. In extraordinary cases, the Court will modify this requirement on motion of a party.

Any motion to join additional parties shall be filed within thirty (30) days of the date of this Order. Any such motions that do not comply with this provision will be entertained only upon the showing of good cause.

Motions to amend pleadings shall be filed in accordance with Federal Rule of Civil Procedure 15(a).

3. **Discovery.** All discovery shall be completed by **December 31, 2020**. Written discovery shall be served such that the responses are due by no later than **December 31, 2020**.

No party shall take more than five (5) depositions of non-party witnesses. Parties must request leave of Court to take more than five non-party depositions. For purposes of this

paragraph, a deposition of a non-party entity under Fed. R. Civ. P. 30(b)(6) shall count as one deposition, even if the entity designates multiple witnesses to testify.

Counsel shall serve all discovery requests by e-mail. In addition, a hard copy shall be served. Pro se litigants, however, are not required to serve discovery by e-mail, and represented parties are not required to serve pro se litigants by e-mail.

4. **Expert Witnesses.** The parties will disclose the information required under Rule 26(a)(2) on the following schedule: Party with the burden of proof on an issue by **November 27, 2020**; opposing party by **December 11, 2020**; rebuttal expert(s) by **December 18, 2020**. Motions, by either party, challenging the designation of experts shall be filed by at least **December 31, 2020**.

Each party may call only one expert per discipline absent Court order.

5. **Settlement.** Counsel shall notify the Court immediately of any settlement. The parties must present a final order within fifteen (15) calendar days of notification. If such an order is not timely submitted, the action will be dismissed by the Court with prejudice on the basis of the representation that the action has been settled.

6. **Motions.** Motions for summary judgment shall be filed by no later than **January 21, 2021**. Each side shall have twenty-one (21) days to respond to the other party's motion for summary judgment.

Motions in limine shall be filed so that they can be fully briefed before the final pretrial conference, at which time the Court will rule on them. If no final pretrial conference is scheduled, motions in limine shall be filed so that they mature for hearing by no later than **April 19, 2021**.

The parties may request oral argument on any motion, but it is the Court's policy, pursuant to Local Civil Rule 7(J), not to hear oral argument if a motion may be decided without an oral hearing. Local Civil Rule 7(E) is hereby abrogated insofar as it renders motions withdrawn for

failure to set a hearing within thirty (30) days of filing. A party need not contact the Court to schedule a hearing if it does not, in fact, desire a hearing on its motion. Parties are encouraged to request oral argument in order to provide experience to relatively new lawyers.

7. **Stipulations.** Counsel shall meet or confer by telephone by no later than **March 19, 2021**, in an attempt to enter into stipulations of fact. Each plaintiff's counsel shall file the agreed upon stipulations with the Clerk of Court by no later than **March 29, 2021**. This paragraph shall not apply to pro se litigants.

8. **Designation of Discovery.** By **March 19, 2021**, each plaintiff shall designate any discovery, including deposition excerpts, the plaintiff intends to introduce at trial. By **March 29, 2021**, each defendant shall designate any discovery the defendant intends to introduce, including "fairness" portions of deposition transcripts. Each plaintiff may designate any rebuttal discovery by **April 2, 2021**.

The parties must file their designations with the Court. In designating portions of depositions for use at trial, the parties must indicate the page and line numbers of excerpts.

In non-jury cases, by **April 8, 2021**, the parties should deliver to chambers summaries of deposition testimony, pursuant to the Local Rules.

Any objections to the use of designated discovery shall be filed by **April 8, 2021**, with a copy of the discovery objected to. Objections shall state the basis of the objection, and shall include a citation to the appropriate Federal Rule of Evidence, Order of this Court, or other authority.

Discovery not designated pursuant to this paragraph shall not be admitted into evidence.

Parties need not designate discovery materials used solely for impeachment or cross-examination.

9. **List of Witnesses.** By **March 19, 2021**, each plaintiff shall file a list of witnesses who may be called. By **March 29, 2021**, each defendant shall file a list of witnesses. Each plaintiff shall file a list of rebuttal witnesses by **April 2, 2021**. Witnesses named in the plaintiff's initial list of witnesses need not be listed as rebuttal witnesses. All parties' witness lists must include witnesses called exclusively for impeachment or rebuttal.

Any objections to witnesses identified shall be filed with the Court by **April 8, 2021**. Objections shall state the basis of the objection and shall include a citation to the appropriate Federal Rule of Evidence, Orders of this Court, or other authority.

Any witnesses not listed pursuant to this paragraph will not be allowed to testify.

10. **List of Exhibits.** Each plaintiff shall file a list of exhibits by **March 19, 2021**. Each defendant shall file a list of exhibits by **March 29, 2021**. Each plaintiff shall file a list of rebuttal exhibits by **April 2, 2021**. With each list, the parties will serve on opposing counsel copies of the exhibits. The exhibits shall be numbered and, if more than ten (10) in number or more than twenty (20) total pages, bound in notebooks. The parties shall include on the respective lists all exhibits that may be offered for demonstrative purposes.

Any objections to proposed exhibits shall be filed with the Court by **April 8, 2021**, with a copy of the exhibits objected to. Objections shall state the basis of the objection, and shall include a citation to the appropriate Federal Rule of Evidence, Orders of this Court, or other authority.

Any exhibit to which no objection is made shall be deemed admitted into evidence without further action by counsel.

Any exhibit not listed pursuant to this paragraph will not be admitted into evidence.

11. **Final Pretrial Conference.** At the final pretrial conference, the Court will rule on motions in limine and objections to exhibits and witnesses. Lead counsel for each party, and any

unrepresented parties, must attend the final pretrial conference. In some cases, the Court may not schedule a final pretrial conference. In those cases, the parties should call chambers to set a date to argue motions in limine.

12. **Voir Dire.** If this is a jury case, the parties shall file proposed voir dire questions by **April 23, 2021**.

13. **Jury Instructions.** If this is a jury case, each party shall file proposed instructions by **April 23, 2021**. The parties shall submit two copies, one with authority at the bottom and one without authority. The parties shall email these copies to chambers in WORD format. The parties can call chambers to obtain the appropriate email address.

The parties need only submit jury instructions on the substantive claims, as the Court has standard introductory and procedural jury instructions that it uses. The parties may request a copy of these instructions by contacting chambers.

14. **Proposed Findings of Fact and Conclusions of Law.** If this case is tried without a jury, the parties shall file proposed findings of fact and conclusions of law by **April 3, 2021**. The parties shall email a copy of the proposed findings and conclusions to chambers in WORD format.

15. **Pretrial Briefs.** The parties may file pretrial bench briefs on material issues expected to arise at trial. Pretrial briefs are encouraged by the Court. Pretrial briefs are due by **April 19, 2021**.

16. **Copies at Trial.** Counsel shall provide the Court with four (4) copies of exhibits on the day of trial, one for the judge, one for the courtroom clerk, one for the law clerk, and one for the witness. If more than ten (10) in number or more than twenty (20) total pages, the exhibits shall be bound in a notebook. If counsel wishes to publish an exhibit to the jury, counsel

shall display the exhibit electronically, provide a copy for each juror, or enlarge the exhibit so that all jurors can see it from the jury box.

17. **Technology.** The courtroom is equipped with screens for the viewing of evidence. Monitors are located on counsel tables, on the bench, and in the jury box. The courtroom has a document viewer that displays documents on the monitors; the parties may use the document viewer. Please visit the following website for complete information on the Court's evidence presentation system and technology:

http://www.vaed.uscourts.gov/resources/Court%20Technology/evidence_presentation_systems.htm

The courtroom is equipped to allow the parties to use personal laptop computers to aid in displaying evidence at trial. The Court does not provide computers for the use of parties. Before bringing a computer into the courthouse, counsel must request permission to do so by submitting the Request to Use the Court's Evidence Presentation System and Request for Authorization to bring in electronic device(s), which are attached to this Order. Counsel should confer with the deputy clerk to conduct a test of the courtroom technology before trial. Any party intending to use a computer to present evidence at trial must schedule a test of the equipment three (3) days before trial.

Counsel can no longer bring cellphones into the courthouse without a signed authorization form. No later than three (3) days before any scheduled court appearance, counsel should submit the above-referenced authorization form requesting permission to bring any cellphones or other electronic devices into the Court. While in the courthouse, telephones and calendars shall be turned off (not on silent or vibrate modes), except when in use on matters related to the case.

18. **Attorneys' Fees.** Any motion for an award of attorneys' fees will be addressed after trial, pursuant to Fed. R. Civ. P. 54 and Local Rule 54 (if fees are treated as costs by statute or rule). Such motions shall be governed by applicable statutory and/or decisional law. In

submitting a motion for an award of fees, a party must submit an affidavit or declaration itemizing time spent on the case, describing the work done, and the hourly rate of the person billing the case. In addition, a party must submit an affidavit or declaration from an expert to establish the reasonableness of the fees. Motions for attorneys' fees shall be accompanied by a brief.

/s/
John A. Gibney, Jr.
United States District Judge

Date: 29 October 2020
Richmond, VA

IF THIS CASE IS SETTLED PRIOR TO TRIAL, PLEASE CONTACT CHAMBERS AT (804) 916-2870.

Appendix K

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SHENIQUA L. WATSON,
Plaintiff,

v. Civil Action No. 3:19-cv-466

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
Defendant.

MEMORANDUM ORDER

This matter comes before the Court on cross-motions for summary judgment filed by the plaintiff, Sheniqua L. Watson, and the defendant, the Virginia Department of Agriculture and Consumer Services ("VDACS"). (ECF Nos. 34, 35.)

Watson, a black woman, worked at VDACS from 2005 to 2018. Watson, proceeding pro se, alleges that VDACS discriminated against her by paying her less than her white counterparts in violation of Title VII of the Civil Rights Act of 1964 and by paying her less than her male counterparts in violation of the Equal Pay Act ("EPA").

Both parties have moved for summary judgment.[1] Because Watson has not identified proper comparators to satisfy the elements of a prima facie claim for wage discrimination under Title VII or the EPA, the Court grants VDACS's motion and denies Watson's motion.

[1] VDACS's motion contains the proper notice required by *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), and Local Rule 7(K).

I. FACTS

VDACS hired Watson in 2005 as an Administrative and Office Specialist III in its Office of Consumer Affairs, where she made $12 per hour.[2] In 2009, Watson became a Certification Specialist in VDACS's Office of Pesticide Services, making $27,810 annually. In January 2014, at Watson's request, VDACS transferred Watson to its Office of Charitable and Regulatory Programs, where she worked as a Licensing and Registration Analyst. In October 2014, due to Watson's failure to meet VDACS's performance expectations, (ECF No. 36-1 ¶¶ 22-23),[3] VDACS altered Watson's job duties, essentially making her a receptionist. (*See* ECF No. 35, at 9 (Watson admits that her "main duties were now answering a main call center phone line, processing daily buckets of mail, filing away all of the Registration Analyst files[,] and processing all emailed and mailed extension request[s]."); *see also* ECF No. 36-1 ¶ 23.) Despite this "demotion," (ECF No. 35, at 9), Watson retained her title, salary, and benefits until she resigned from VDACS in August 2018. (ECF No. 36-1 ¶ 23.) From 2014 to her resignation, Watson claims she made between $29,785 and $31,694.

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[2] In 2002, Watson obtained a Bachelor of Fine Arts degree from Virginia Commonwealth University. (ECF No. 36-4, at 1-2.)

Before working at VDACS, Watson worked as a Collections Clerk/Customer Service Representative for Comcast Cablevision from 1995 to 1998, Customer Advocate for Anthem Blue Cross Blue Shield from 1998 to 2000, Emergency Communications Specialist for Security Corporation from 2002 to 2004, and Health Assessment Specialist for Health Management Corporation from 2003 to 2004. (*Id.* at 2-3.) None of these jobs involved interpreting or applying statutory or regulatory requirements.

[3] Watson denies that she failed to meet VDACS's performance expectations. (ECF No. 38, at 8.) But she produces no evidence to support that denial. Thus, the Court treats this fact as undisputed.

II. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure directs courts to grant summary judgment "if the movant shows that 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). In deciding a summary judgment motion, the court must draw all reasonable inferences in the non-moving party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Nevertheless, if the non-moving party fails to sufficiently establish the existence of an essential element to its claim on which it bears the ultimate burden of proof, the court should enter summary judgment against that party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Where parties file cross-motions for summary judgment, courts consider 'each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law.'" *Capitol Prop. Mgmt. Corp. v. Nationwide Prop. & Cas. Ins. Co.*, 261 F. Supp. 3d 680, 687 (E.D. Va. 2017) (quoting *Defs. of Wildlife v. N.C. Dep't of Transp.*, 762 F.3d 374, 392-93 (4th Cir. 2014)).

III. DISCUSSION

A. Watson's Summary Judgment Motion

1. EPA

Watson contends that VDACS violated the EPA by paying her less than two similarly situated male employees—Ehonam Agbati and Joseph Cason. (*See* ECF No. 35, at 26.) VDACS argues that Watson has not demonstrated that she had the same job as Agbati and Cason.[4]

[4] VDACS also argues that "Watson's [EPA] claim is not timely[] because she cannot demonstrate a continuing violation." (ECF No. 36, at 16.) Because the Court denies summary judgment to Watson and grants it to VDACS on other grounds, it assumes, without deciding, that the EPA's statute of limitations does not bar Watson's claim.

"The EPA prohibits gender-based discrimination by employers resulting in unequal pay for equal work." *EEOC v. Md. Ins. Admin.*, 879 F.3d 114, 120 (4th Cir. 2018). "To establish a prima facie case under the EPA, a plaintiff must demonstrate: (1) the employer paid different wages to an employee of the opposite sex, (2) for equal work on jobs requiring equal skill, effort, and responsibility, which jobs (3) all are performed under similar working conditions." *Evans v. Int'l Paper Co.*, 936 F.3d 183, 196 (4th Cir. 2019). The comparators and the plaintiff "must have virtually identical jobs." *Id.* Thus, "it is not enough to simply show that the comparators hold the same title and the same general responsibility as the plaintiff." *Id.* Instead, a plaintiff must show that the comparator "performed work 'virtually identical' (or the apparent synonym, 'substantially equal') to the plaintiff's in skill, effort, and responsibility." *Spencer v. Va. State Univ.*, 919 F.3d 199, 203-04 (4th Cir. 2019) (quoting *Wheatley v. Wicomico County*, 390 F.3d 328, 332-33 (4th Cir. 2004)). Even if a plaintiff establishes a prima facie claim under the EPA, an employer can escape liability by showing that a factor other than sex justified the pay discrepancy. *See Strag v. Bd. of Trs.*, 55 F.3d 943, 948 (4th Cir. 1995).

Watson has not shown that she, Agbati, and Cason held "virtually identical jobs." *Evans*, 936 F.3d at 196. Watson attempts to show this by pointing to the job title ("Registrations Analyst") and primary job duty ("Process Form 102") that she, Agbati, and Cason shared.[5] (ECF No. 35, at

[5] In addition, Watson points to "Plaintiff's Exhibit 21." (ECF No. 38, at 29, 32.) But she attached *zero* exhibits to her summary judgment motions. The Court, however, will construe Waston's exhibits attached to her memorandum in opposition to VDACS's first motion to dismiss as exhibits attached to her summary judgment motion and opposition to VDACS's summary judgment motion. In any event, exhibit 21 does not substantiate her claim. Exhibit 21 provides a breakdown of *Watson's* work responsibilities in January 2014, before VDACS drastically altered her job duties. (ECF No. 11-21.) It says nothing about Cason's or Agbati's work responsibilities.

Throughout her briefs, Watson makes sweeping statements about VDACS's alleged wrongdoing without providing any record citations to support them. Thus, Watson repeatedly fails to satisfy Rule 56(c)(1)'s requirement that a litigant support her factual positions with record citations. Her failure to attach exhibits to her summary judgment motion also led the Court to

8; *see also* ECF No. 38, at 25 ("All Analyst[s] had one fundamental task: advise and register charitable organizations to be able to legally solicit for funds and donations in the state of Virginia and processing form 102 applications.").)[6] But "it is not enough to simply show that the comparators hold the same title and the same general responsibility as the plaintiff," *Evans*, 936 F.3d at 196, and Watson's evidence proves only that. Thus, because Watson's evidence *only* shows that she shared the same job title and primary job duty as Agbati and Cason, she does not establish a prima facie EPA claim.[7]

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search the record to try to find the exhibits to which Watson referred; the Court had no obligation to assist Watson in this way. *See Maisha v. Univ. of N.C.*, No. 1:12cv371, 2015 WL 277747, at *1 (M.D.N.C. Jan. 22, 2015) (noting that the Court has no obligation to "scour the record . . . to find evidence to support or refute a party's factual statements"). In any event, allowing Watson's claims to proceed on this record, which consists of little more than her unsubstantiated, conclusory allegations, would violate "the affirmative obligation of the trial judge to prevent 'factually unsupported claims and defenses' from proceeding to trial." *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (quoting *Celotex*, 477 U.S. at 323-24).

[6] Watson also claims that VDACS "mislead [sic] the [C]ourt falsely alleging [that she] did not perform the same job duty as all ten comparators. Plaintiff Exhibit 53 consists of twenty[-]eight registration review summaries which [were] quality control from former team leader Michelle Townsend of form 102 registrations Plaintiff processed." (ECF No. 35, at 23; *see also* ECF No. 38, at 29, 32.) Watson did not submit Exhibit 53 with her summary judgment motion or with her opposition to VDACS's first motion to dismiss. She did, however, attach an Exhibit 53 to her reply to VDACS's answer to her second amended complaint. (ECF No. 28-1.) Federal Rule of Civil Procedure 8(a)(7) permits "a reply to an answer" only "if the court orders one." The Court did not order a reply in this case. Thus, Watson did not have leave to file the reply. Nevertheless, the Court will consider Exhibit 53.

Exhibit 53 seems to show Watson's registration review summaries that predate her "demotion." Exhibit 53 does not show how Watson performed vis-à-vis her alleged comparators. Thus, it does not help her establish either a prima facie EPA claim or a prima facie Title VII claim.

[7] The evidence also shows that Watson did not have comparable work experience to Cason and Agbati. Cason had an "extensive work history" that included "a demonstrated ability to interpret and apply statutory and regulatory requirements." (ECF No. 36-1 ¶ 84.) Similarly, Agbati had "demonstrated ability to interpret and apply statutory and regulatory requirements," and an educational background that demonstrated his "understanding of the basic principles in non-profit management and fundraising." (ECF No. 36-1 ¶¶ 93-94.) This shows that a factor other than sex—namely Cason's and Agbati's prior work and educational experiences—helps explain

2. Title VII

Watson also alleges a wage discrimination claim based on race under Title VII. (*See* ECF No. 35, at 25-26.) VDACS argues that Watson fails to show that she and higher-paid white employees at VDACS performed substantially similar jobs.[8]

To establish a prima facie wage discrimination claim under Title VII, a plaintiff must show "that (1) she is a member of a protected class; (2) she was paid less than an employee outside the class; and (3) the higher paid employee was performing a substantially similar job." *Kess v. Mun. Emps. Credit Union of Balt., Inc.*, 319 F. Supp. 2d 637, 644 (D. Md. 2004). "Where, as here, the prima facie case of wage discrimination is based on comparators, the plaintiff must show that she is paid less than [non-black employees] in similar jobs." *Spencer*, 919 F.3d at 207. Unlike under the EPA, "Title VII requires the compared jobs to be only 'similar' rather than 'equal.'" *Id.* Despite this difference, "Title VII's 'similarity' requirement . . . is not toothless: the plaintiff must provide evidence that the proposed comparators are not just similar in *some* respects, but 'similarly-situated *in all respects*.'" *Id.* at 207-08 (emphasis in original) (quoting *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992)).

To determine whether a plaintiff and her comparator have similar jobs, "courts consider 'whether the employees (i) held the same job description, (ii) were subject to the same standards, (iii) were subordinate to the same supervisor, and (iv) had comparable experience, education, and

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their higher salaries. Thus, even if Watson could establish a prima facie EPA claim, VDACS would still avoid liability.

[8] VDACS also argues that Watson's Title VII claim fails because she did not timely exhaust her administrative remedies. Because the Court denies summary judgment to Watson and grants it to VDACS on other grounds, the Court assumes, without deciding, that the administrative exhaustion requirement does not bar Watson's claim.

other qualifications—provided the employer considered these latter factors in making the personnel decision.'" *Id.* (quoting *Bio v. Fed. Express Corp.*, 424 F.3d 593, 597 (7th Cir. 2005)).

Here, Watson identifies one comparator from her tenure as a Certification Specialist in VDACS's Office of Pesticide Services—Vickie Rengers. She identifies seven comparators from her stint as a Licensing and Registration Analyst in the Office of Charitable and Regulatory Programs—Caly Emerson, Laura Hare, Lindsay Barker, Terri Larus, Heather Hodges,[9] Xembrelyn Mangrum, and Edievith Pollard (collectively, the "Licensing and Registration Analyst comparators"). Watson has not shown that these "proposed comparators are . . . 'similarly situated *in all respects*.'" *Spencer*, 919 F.3d at 207-08 (quoting *Mitchell*, 964 F.2d at 583).

As to Rengers, Watson claims that she and "Rengers had the exact same job, scanning and processing Commercial A, Commercial B and Reciprocal pesticide applications, conducting and grading the test of pesticide applicators, filing and maintaining applications electronically, working closely with pesticides business licensing and over seeing [sic] the annual pesticides commercial license renewal process." (ECF No. 35, at 4.) She cites to "Plaintiff Exhibit 8" to support this contention. Although Watson does not attach any exhibits to her summary judgment motion, the Court assumes Watson refers to Exhibit 8 of her memorandum in opposition to VDACS's first motion to dismiss. (ECF No. 11-8.) That Exhibit shows job postings for a Certification Specialist in the Office of Pesticide Services from 2009 and 2018. Those job postings provide a generic, high level description of the positions. They do not establish what the Certification Specialist

[9] Linda Cole, VDACS's Human Resources Director, says that Hodges "never worked as a Certification Specialist or a Licensing and Registrations Specialist, nor did she hold any type of administrative position comparable to Ms. Watson's position." (ECF No. 36-1 ¶ 47.) Watson offers no evidence to contradict that claim. Accordingly, the Court does not consider Hodges a potential comparator.

position entailed during Watson's tenure from 2009 to 2014. *See Spencer*, 919 F.3d at 208 (finding that a plaintiff's "broad generalizations" did not "show sufficient similarity to meet her burden under Title VII"). Nor does it show that Watson and Renger performed "a substantially similar job." *Kess*, 319 F. Supp. 2d at 644. Moreover, the uncontroverted evidence shows that Rengers made more than Watson because of her superior work performance and her decades of experience working for the Commonwealth before she became a Certification Specialist. (*See* ECF No. 36-1 ¶¶ 35-36.)[10]

Watson's attempt to show that she and the Licensing and Registration Analyst comparators performed substantially similar jobs also fails. Watson suggests that she and the Licensing and Registration Analyst comparators had similar jobs because they all had the same title and reported to the same supervisors. (ECF No. 35, at 8-9.) She also provides a high-level description of what Licensing and Registration Analysts do. (*See id.* at 6-7.) And she claims—without any support—that "[t]hese were the exact same job duties and functions performed by all other salaried Registration Analyst[s]." (*Id.* at 7.) But nothing in the record establishes that her high-level description reflects her and the Licensing and Registration Analyst comparators' actual job duties or that she and the Licensing and Registration Analyst comparators performed substantially similar jobs.[11]

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[10] Watson alleges that she and Rengers "reported to the same management." (ECF No. 35, at 4.) She does not provide a record citation to support that statement. Thus, the Court need not consider it. *See* Fed. R. Civ. P. 56(c)(3). But even if the Court did accept that allegation as true, it would not change its analysis because of the myriad differences between Watson and Rengers.

[11] Watson cites to "Plaintiff Exhibit 20," "Plaintiff Exhibit 21," and "Plaintiff Exhibit 41" to support her position. But, as mentioned above, she attached no exhibits to her summary judgment motions. Watson potentially refers to Exhibits 20, 21, and 41 to her memorandum in opposition to VDACS's first motion to dismiss. If so, those exhibits do not substantiate her claim. For example, Exhibit 20 is a 2014 advertisement for the Licensing and Registration Specialist position. (ECF No. 11-20.) The flyer gives a generic description of what the position entails. (*Id.*)

Indeed, the undisputed evidence establishes just the opposite. During a vast majority of Watson's time in the Office of Charitable and Regulatory Programs, she performed what she called "menial lower end duties," (ECF No. 35, at 9), because she failed to meet VDACS's performance expectations. (ECF No. 36-1 ¶ 23.) No evidence suggests that any of the Licensing and Registration Analyst comparators had similar performance issues; and VDACS did not need to "realign[]" their positions so that they had less expected of them. (*Id.*)[12] In other words, for almost all of Watson's tenure with the Office of Charitable and Regulatory Programs, she and the Registration Analyst comparators were not "subject to the same standards." *Spencer*, 919 F.3d at 207 (quoting *Bio*, 424 F.3d at 597). In addition, Watson and the Registration Analyst comparators

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Such "broad generalizations" do not "show sufficient similarity to meet [Watson's] burden under Title VII." *Spencer*, 919 F.3d at 208. Exhibit 21 provides a breakdown of *Watson's* work responsibilities in January 2014, before VDACS drastically altered her job duties. (ECF No. 11-21.) It says nothing about the responsibilities of the other Licensing and Registration Analyst comparators. And Exhibit 41 is a blank Form 102 used by the Office of Charitable and Regulatory Programs. (ECF No. 11-41.)

[12] Watson thinks that her "work performance was on par" with the other Licensing and Registration Analysts. (ECF No. 38, at 8.) She also suggests that VDACS constructively demoted her because none of the Licensing and Registration Analysts has "their positions . . . 're-aligned[,]' altered[,] or terminated for not reaching weekly goals." (ECF No. 35, at 11; *see also id.* at 8, 27, 30.) Watson cites "Plaintiff Exhibit 28" and "Plaintiff Exhibit 29" to support her position. She did not, however, attach these exhibits to her summary judgment motion.

Watson presumably refers to Exhibits 28 and 29 to her memorandum in opposition to VDACS's first motion to dismiss. If so, those exhibits do not support her contention. Exhibit 28 purports to show the performance of the Licensing and Registration Analysts as a group. (*See* ECF No. 11-28.) It does not show how each individual Licensing and Registration and Analyst performed so that the Court could compare his or her performance to Watson's performance. Moreover, the data in Exhibit 28 postdate Watson's "demotion" to a position in which she admits that she no longer processed registrations. (ECF No. 35, at 9.) The performance of people who processed registrations does not provide a useful comparison with someone who does not process registrations.

Exhibit 29 appears to show two Licensing and Registration Analyst employee work profiles that requires Licensing and Registration Analysts to process an average of seventy-five registrations weekly. (ECF No. 11-29.) But that does nothing to show how the Licensing and Registration Analyst comparators performed, let alone how they performed relative to Watson.

did not have similar "experience, education, and other qualifications." *Id.*[13] Accordingly, Watson does not establish a prima facie claim of Title VII wage discrimination.

* * *

Because Watson cannot establish either a prima facie EPA or Title VII claim, the Court denies her motion for summary judgment.

B. VDACS's Summary Judgment Motion

For the reasons discussed above, Watson cannot establish a prima facie case of wage discrimination under Title VII or the EPA. Accordingly, the Court grants VDACS's summary judgment motion.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Watson's motion for summary judgment, (ECF No. 35), and GRANTS VDACS's motion for summary judgment, (ECF No. 34). The Court DIRECTS the Clerk to close the case.

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[13] Some of the Licensing and Registration Analyst comparators had more extensive or relevant work experience than Watson (Larus, Barker, Emerson, Pollard, and Mangrum), and others had more relevant or advanced educational backgrounds (Hare, Barker, Pollard, and Mangrum). (ECF No. 36-1 ¶¶ 40-43, 51-81.) Watson obviously disagrees with VDACS's conclusion that these differences justified pay disparities between her and the Licensing and Registration Analyst comparators. (*See* ECF No. 35, at 13-14, 22.) But mere disagreement does not establish a prima facie Title VII wage discrimination claim. *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 281 (4th Cir. 2000) ("[N]o court sits to arbitrate mere differences of opinion between employees and their supervisors."); *see also DeJarnette v. Corning Inc.*, 133 F.3d 293, 298-99 (4th Cir. 1998) (observing that "Title VII is not a vehicle for substituting the judgment of a court for that of the employer" and that courts "do[] not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination." (quoting *Jiminez v. Mary Washington Coll.*, 57 F.3d 369, 377 (4th Cir. 1995) & *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 410 (7th Cir. 1997))).

Should Watson wish to appeal this Memorandum Order, she must file a written notice of appeal with the Clerk of Court within thirty (30) days of the date of entry. Failure to file a notice of appeal within that period may result in the loss of the right to appeal.

It is so ORDERED.

Let the Clerk send a copy of this Memorandum Order to all counsel of record and mail a copy via U.S. mail to the pro se plaintiff.

Date: 12 March 2021
Richmond, VA

/s/
John A. Gibney, Jr.
United States District Judge

Additional material from this filing is available in the Clerk's Office.