APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1365

NONNA Y. SOROKINA,
Appellant

v.

THE COLLEGE OF NEW JERSEY

On Appeal from the United States District
Court for the District of New Jersey
(D.C. Civil No. 3:19-cv-20674)
District Judge: Honorable Robert Kirsch

Submitted Under Third Circuit
L.A.R. 34.1(a) on January 17, 2025

Before: PHIPPS, FREEMAN, and CHUNG, *Circuit Judges*

(Opinion filed: May 5, 2025)

OPINION*

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

FREEMAN, *Circuit Judge.*

Dr. Nonna Y. Sorokina appeals the District Court's order granting her former employer, the College of New Jersey (the "College"), summary judgment on her claims of gender, pregnancy, and national-origin discrimination and retaliation. She also appeals certain limitations the District Court placed on discovery. We will reverse the summary-judgment order insofar as it granted summary judgment on Sorokina's gender-discrimination and retaliation claims concerning the non-renewal of her employment contract. In all other respects, we will affirm the summary-judgment order. We also will affirm the discovery order.

I[1]

Sorokina was born in Ukraine. From 2016 to 2020, she was a tenure-track Assistant Professor in the Department of Finance (the "Department") within the College's School of Business. She first applied for a position in the Department in 2015, and she was interviewed by a search committee comprised of three Department professors (Dr. Susan Hume, Associate Professor; Dr. Thomas Patrick, Professor and then-chair of the Department; and Dr. Sueng Hee Choi, then-Associate Professor) and the then-Dean of the School of Business, Dr. William Keep. The College hired a man of Korean descent for that position. During the hiring process, Patrick made a comment about Sorokina's appearance. Another position soon became available, and the College offered it to Sorokina. She accepted the offer and began teaching in Fall 2016.

Sorokina became pregnant in 2017 and expected to give birth late that year. That summer, she requested an

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[1] Because we write for the parties, we recite only the facts pertinent to our decision. We recount the facts in the light most favorable to the party opposing summary judgment.
Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 265 (3d Cir. 2014).

accommodation to teach her Spring 2018 courses in a "blended" manner—i.e., teach in person once a week and otherwise teach online. Keep denied this request. Keep explained that the College "do[es] not teach blended courses during the academic semester and there is no desire to establish that precedence." ECF No. 114-18 at 2.[2] However, he changed Sorokina's schedule so that she would teach four sections of a half-unit undergraduate course starting later in Spring 2018. Sorokina accepted this change. In December 2017, she gave birth to a child.

In a later interview about Sorokina's request, Keep stated, "Being pregnant and teaching a blended course could have posed a problem. It is not easy to schedule and plan when you are pregnant." ECF No. 121-7 at 2. He also acknowledged that the College had permitted two male professors to teach online during semesters when they were living abroad. Keep said those "exceptions" were "experimental[,] with the approval of the provost." *Id.*

After the birth of Sorokina's child in December 2017, various College faculty members asked Sorokina about her plans for future children. She "always" told them that "we love kids, we love having big families. It's in our national tradition as Jewish to have a lot of kids." App. 311.[3]

In 2018, Sorokina helped develop a new MBA program at the College. That fall, however, Keep and the Interim Dean of the School of Business, Dr. Bozena Leven, removed Sorokina from the program, placing a record of the removal in her file. They cited unsatisfactory contributions

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[2] All citations to ECF numbers refer to the District Court's docket.

[3] Sorokina's appellate brief misrepresents the record regarding what she told College faculty about her plans to have future children. For instance, she argues that she "announced that she was trying to get pregnant during the party to honor Dean Keep's transfer to an Interim Provost in Summer [2018]" and "spoke openly about her active attempts to get pregnant on several other occasions[,] including the Finance Department's party at her home on September 9, 2018." Appellant's Br. at 21. In support of these arguments, she cites her deposition, which contains no such testimony.

and unprofessional conduct. Specifically, they stated that Sorokina would not accept that she could teach only one MBA course, could not use an undergraduate textbook, and could not obtain and use Bloomberg terminals for her course due to cost constraints. They also stated that she refused requests to modify her proposed MBA course syllabus to differentiate it from her undergraduate courses, and that she inappropriately sought to choose who would teach another MBA course, which was beyond her role as a junior faculty member.

In November 2018, Sorokina suffered a miscarriage. Sorokina has submitted no evidence that anyone at the College knew of that pregnancy at the time.

In December 2018, Sorokina shared concerns of discrimination with a College Equal Employment Opportunity Officer ("EEO Officer"), and the College began an internal investigation. That same month, Sorokina informed the College that she had "initiated a filing" with the Equal Employment Opportunity Commission ("EEOC"). ECF No. 114-21 at 30. On March 11, 2019, she emailed the College EEO Officer, providing details of her allegations of pregnancy and national-origin discrimination and stating that she would soon file a formal charge of discrimination with the EEOC.

On April 22, 2019, an obstetrics report described Sorokina as being pregnant with less than eight weeks of gestation. As with her Fall 2018 pregnancy that ended in a miscarriage, Sorokina has submitted no evidence that anyone at the College knew of her Spring 2019 pregnancy at the time of the events giving rise to this case.

The College initially hires tenure-track professors for a three-year term. At the end of the second year of employment, those professors must apply for reappointment to a fourth year. If they successfully obtain reappointment to a fourth year, they proceed to the third-year-review process to assess their teaching, scholarly activity, and service.

That process includes four levels of evaluation: (1) the Finance Department's Promotion and Reappointment

Committee ("PRC"), (2) the Dean, (3) the Provost, and (4) the President; all of whom participate in a recommendation to the Board of Trustees. The third-year-review process may result in an appointment to one or two additional years of employment, or a contract non-renewal.

The College reappointed Sorokina to a fourth year (2018–2019), based on the unanimous agreement of Patrick, Choi, and Keep. In Spring 2019, Sorokina began her third-year-review process. Three professors—Patrick, Hume, and Dr. Herbert Mayo—sat as the PRC. On April 2, the PRC recommended that Sorokina not be reappointed. Its report praised Sorokina's scholarly achievements but listed deficiencies in teaching and service. For instance, it reported that some of Sorokina's students struggled or were disengaged, and Sorokina often cancelled or arrived late to classes. With respect to service, it stated that Sorokina had made misrepresentations in professional communications, had been removed from the MBA program, was unwilling to work with others, and did not "pull [her] own weight" in the Department. App. 339. It also mentioned that Sorokina sent an email to the Department Chair claiming that she worked harder and better than others. Finally, it stated that the Department had been supportive of Sorokina and that its change to her Spring 2018 schedule had, "in effect, provided her with an additional seven weeks of paid maternity leave." *Id.*

Hume disagreed with the PRC's recommendation and did not sign it. She objected that the PRC's report omitted facts, was misleading, and was developed without collaboration among the three committee members. She issued a separate recommendation that Sorokina's contract be renewed based on teaching excellence and commitment to service. (Although Hume's recommendation did not mention gender discrimination, she referred to Sorokina as a "role model" in a "male-centered major and industry profession." App. 343. Hume later testified that Patrick engaged in "gender microaggressions" and bullied female colleagues. App. 273.)

On April 10, 2019, Sorokina provided a written

response to the PRC report and claimed that it was issued in retaliation for her report of discrimination. Among other things, she asserted that she only cancelled classes for snow days and when she participated in conferences, and she started classes on time but began with casual interactions with students. She also responded that the two courses she designed for the MBA program complied with management's initial requirements, and she was not provided an opportunity to adjust the courses in response to new requests.

On April 16, 2019, Sorokina filed an EEOC charge of discrimination based on sex, gender, pregnancy, and national origin, and retaliation.

Meanwhile, Sorokina's review process continued. Dr. Jane Wong, Dean of Humanities and Social Sciences, conducted Sorokina's second-level review and concurred with the PRC's recommendation that the College not renew Sorokina's contract. In a report dated May 1, 2019, Wong commended Sorokina's scholarship but agreed with the PRC that Sorokina's teaching and service fell below expectations. Wong noted that peer evaluations of Sorokina's teaching had worsened during Sorokina's third year, and Wong found Sorokina's responses to student complaints of lateness and cancelled classes to be incredible. Wong also opined that Sorokina had not contributed to the College's "spirit of service and citizenship," pointing to several instances of unprofessional conduct addressed by the PRC. App. 349. Addressing Sorokina's characterization of the PRC report as retaliatory, Wong said Patrick admitted knowing Sorokina made allegations of discrimination but Patrick denied knowing any details of the allegations.

Dr. David Blake, Interim Vice Provost for Faculty and Academic Planning, conducted the third-level review. In a letter dated June 3, 2019, he recommended against renewing Sorokina's contract. Echoing the PRC's and Wong's reviews, he commended Sorokina's scholarship but cited a lack of improvement in her teaching, her "difficulty maintaining productive, working relationships with [her]

colleagues," and her "unprofessional conduct." App. 354.

College President Kathryn Foster conducted the fourth-level review and declined to renew Sorokina's contract. Foster issued her decision in a June 30, 2019 letter, citing deficiencies in teaching and service and relying on the evaluations by the PRC, Wong, and Blake. The College later hired a man of non-Ukrainian descent to replace Sorokina.

In July 2019, the College completed its investigation of Sorokina's internal EEO complaint, which Sorokina had amended to include a retaliation claim after the non-renewal of her contract. The College determined that the allegations of pregnancy discrimination, national-origin discrimination, and retaliation were unsubstantiated.

Sorokina sued the College in November 2019, bringing claims for discrimination and retaliation under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act ("PDA").[4] Following discovery, the District Court granted summary judgment for the College on all claims.

II[5]

> We exercise plenary review of an order granting summary judgment. *Blunt v.*

Lower Merion Sch. Dist., 767 F.3d 247, 265 (3d Cir. 2014). Summary judgment is appropriate only 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). A dispute of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[W]e view

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[4] Sorokina also brought similar claims under the New Jersey Law Against Discrimination, but she has not pursued them on appeal.

[5] The District Court exercised subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1367. This Court has jurisdiction under 28 U.S.C. § 1291.

the underlying facts and all reasonable inferences" from them "in the light most favorable to the party opposing the motion." *Blunt*, 767 F.3d at 265 (citation omitted).

Title VII prohibits employers from discriminating against employees based on their protected characteristics, including sex or national origin, or retaliating against employees based on their protected activity, including opposition to discrimination. 42
U.S.C. §§ 2000e-2(a)(1), 2000e-3. The PDA "makes clear that Title VII's prohibition

against sex discrimination includes pregnancy discrimination." *Peifer v. Bd. of Prob. & Parole*, 106 F.4th 270, 276 (3d Cir. 2024).

The Title VII claims here are subject to the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). As a first step, the plaintiff must establish a prima facie case. *Id.* at 802. To make a prima facie case of discrimination, the plaintiff must show that: "(1) [she] is a member of a protected class;
(2) [she] was qualified for the position [she] sought to attain or retain; (3) [she] suffered an adverse employment action; and (4) the action occurred under circumstances that could give rise to an inference of intentional discrimination." *Qin v. Vertex, Inc.*, 100 F.4th 458, 473 (3d Cir. 2024) (cleaned up). A prima facie case of pregnancy discrimination has an additional requirement: the plaintiff must also show that the employer knew she belonged to the protected class when the employer took the adverse employment action. *Geraci v. Moody-Tottrup, Int'l, Inc.*, 82 F.3d 578, 581 (3d Cir. 1996).

To make a prima facie case of retaliation, the plaintiff must show "(1) that she engaged in protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action." *Canada v. Samuel Grossi & Sons, Inc.*, 49 F.4th 340, 346 (3d Cir. 2022) (cleaned up and citation omitted).

If the plaintiff makes her prima facie case, the burden shifts to the employer "to articulate some legitimate, nondiscriminatory reason" for its challenged employment action. *McDonnell Douglas*, 411 U.S. at 802. If the employer does so, the burden then shifts back to the plaintiff "to show that the defendant's proffered reason is merely pretext for intentional discrimination" or retaliation. *Qin*, 100 F.4th at 474 (cleaned up); *Canada*, 49 F.4th at 346.

A.

Sorokina did not establish a prima facie case of national-origin discrimination with respect to the non-renewal of her contract.[6] She contends that Choi sabotaged her contract renewal (by orchestrating Sorokina's removal from the MBA program and providing a negative peer review of Sorokina's teaching) based on anti-Ukrainian bias. She also points to the College's decision to hire a professor of non-Ukrainian origin when Sorokina first applied for a position and to hire another professor of non-Ukrainian origin to replace her. But Sorokina cites no evidence that would permit a reasonable inference that Choi's actions stemmed from anti-Ukrainian bias. Nor could a reasonable jury infer national-origin discrimination based solely on the College hiring professors who do not share Sorokina's national origin.[7]

B

Sorokina also did not establish a prima facie case of

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[6] Sorokina's Title VII claims were timely as to conduct that occurred on or after June 20, 2018—i.e., within 300 days of her April 16, 2019, EEOC charge. 42 U.S.C. § 2000e– 5(e)(1). That includes the College's removal of Sorokina from the MBA program in Fall 2018 and its non-renewal of her contract in April 2019.

[7] To the extent that Sorokina argues that her removal from the MBA program was the result of national-origin discrimination, that claim fails for similar reasons

pregnancy discrimination with respect to the non-renewal of her contract. She did not produce evidence that the participants in her third-year-review process knew that she was pregnant (whether because she informed them of her pregnancy or because she was noticeably pregnant) while they considered a contract renewal. So she has not shown that the employer knew she belonged to a pregnancy-related protected class. *Geraci*, 82 F.3d at 581.

She also asserts that the College discriminated against her based on her intention to become pregnant. *See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 206 (1991). But she points to no evidence that any relevant decisionmakers at the College knew during the contract-renewal process that she was trying to become pregnant, much less that they chose not to renew her contract on that basis.[8] *See supra* note 3.

C

Sorokina alleges that the College took two adverse employment actions based on gender discrimination: removing her from the MBA program and opting not to renew her contract. The College is entitled to summary judgment as to Sorokina's removal from the MBA program, but Sorokina's challenge to the non-renewal of her contract may proceed to trial.

We will assume without deciding that Sorokina established a prima facie case that the College removed her from the MBA program due to gender discrimination. In response, the College articulated several legitimate, non-discriminatory reasons for its action. *See supra* Section I (discussing Sorokina's position about the number of courses she would teach, her syllabus and textbook, the use of

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[8] Even assuming Sorokina established a prima facie case of pregnancy discrimination concerning her removal from the MBA program, that claim fails because the College has proffered legitimate, non-discriminatory reasons for her removal, and no reasonable jury could find that those reasons were pretextual. *See infra* Section II.C.

Bloomberg terminals, and who would teach another MBA course). Sorokina disputes certain facts underlying the College's articulated non-discriminatory reasons. But she "cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." *Fuentes v. Perskie*, 32 F.3d 759, 765 (3d Cir. 1994). She must demonstrate "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in the College's explanations such that a reasonable factfinder could rationally find the explanations were "either a post hoc fabrication or otherwise did not actually motivate the employment action." *Id.* at 764–65 (cleaned up). This she has not done.

Turning to the College's non-renewal of Sorokina's contract, the parties do not dispute that Sorokina established a prima facie case of gender discrimination or that the College articulated legitimate, non-discriminatory reasons for its action. And Sorokina has carried her burden to withstand summary judgment at the third step of the *McDonnell Douglas* scheme.

At *McDonnell Douglas*'s step three, Sorokina points to the College's denial of her request for blended teaching for the Spring 2018 semester after she expected to give birth to a child.[9] A reasonable jury could find the College's explanations for that denial lack credibility.

Keep claimed that as a "traditional face to face institution," the College did not wish to establish a precedent for the teaching of blended classes during academic semesters. App. 290. Yet the College permitted two male professors to teach fully online when those professors wished to spend academic semesters abroad. Moreover, Keep reasoned that teaching a blended course while pregnant "could have posed a problem," and that if

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[9] Although this conduct occurred outside the statute of limitations, it can still serve "as background evidence in support of a timely claim." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

Sorokina "had the baby while teaching an online course no one else would be able to take the course." ECF No. 121-7 at 2. But Sorokina's request concerned a timeframe after she would have given birth, not while she was pregnant. And even assuming Keep's concerns were valid, they would apply equally to non-blended teaching. *See Blunt*, 767 F.3d at 265.

During Sorokina's third-year-review process, the PRC stated that the Department's change to Sorokina's schedule in Spring 2018 (when she requested to teach blended courses after giving birth to a child) "in effect, provided her with an additional seven weeks of paid maternity leave." App. 339. Soon thereafter, the PRC faulted Sorokina for "fail[ing]" to "pull [her] own weight." Id. A reasonable jury could find that this PRC report injected discriminatory bias into the review process when it addressed her request for a childbirth-related schedule change alongside her capacity to support the department.

Additionally, Patrick made a comment about Sorokina's appearance during her interview process and otherwise treated female faculty members differently from male faculty members. A reasonable jury could find this evidenced gender bias by Patrick— one of the two professors who signed the PRC's report. Moreover, Patrick and Mayo wrote the PRC report without meaningful collaboration or discussion with the sole woman on the PRC, deviating from the College's regular process. *See Stewart v. Rutgers, The State Univ.*, 120 F.3d 426, 433–34 (3d Cir. 1997) (concluding that procedural and substantive inconsistencies by a PRC was evidence upon which a jury could find a "tenure denial was a product of discrimination"); *cf. Kairys v. S. Pines Trucking, Inc.*, 75 F.4th 153, 164 (3d Cir. 2023) (affirming pretext concerning an ERISA discrimination claim when, among other things, "circumstances surrounding [a termination] were unusual").

This evidence of gender discrimination, along with disputes about some bases for the PRC's recommendation (e.g., late and cancelled classes), could cause a reasonable

jury to disbelieve the PRC's explanations for its recommendation. *See Fuentes*, 32 F.3d at 764 n.7 (3d Cir. 1994) (explaining that "[i]f the defendant proffers a bagful of legitimate reasons, and the plaintiff manages to cast substantial doubt on a fair number of them, . . . a factfinder may rationally disbelieve the remaining proffered reasons"); *Tomasso v. Boeing Co.*, 445 F.3d 702, 707, 709 (3d Cir. 2006) (same, and explaining that "[e]ven if a rational factfinder would have to conclude that [an employer's] rationales played *some* role in [an employee's termination], the factfinder would not have to conclude that they provide a *sufficient* explanation"). A reasonable jury could also find that the discriminatory bias infecting the PRC's recommendation influenced the higher levels of review—i.e., that bias "bore a direct and substantial relation" to the College's non-renewal of Sorokina's contract. *McKenna v. City of Philadelphia*, 649 F.3d 171, 179 (3d Cir. 2011) (citing *Staub v. Proctor Hosp.*, 562 U.S. 411, 419–20 (2011)); *see also Delli Santi v. CNA Ins. Companies*, 88 F.3d 192, 200 (3d Cir. 1996) (collecting pre-*Staub* cases).[10] "[T]aken as a whole and viewed in a light favorable" to Sorokina's case, there is a "convincing mosaic of circumstantial evidence" upon which a reasonable jury could conclude that discriminatory bias more likely than not motivated or determined the College's decision to not renew Sorokina's contract. *Canada*, 49 F.4th at 349 (cleaned up). Therefore, we will reverse the District Court's order granting summary judgment to the College on Sorokina's gender-discrimination claim concerning this non-renewal.

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[10] The College argues that Sorokina forfeited her theory of "cat's paw" liability by not asserting it before the District Court. Although forfeiture is a close call on this record, we conclude that Sorokina argued scantly enough to preserve this theory for appellate review. *See, e.g.*, App. 186, 205 (arguing that Patrick engaged in gender discrimination before and during his time on the PRC); App. 210 (arguing that the PRC's review was the basis for the College's non-renewal of Sorokina's contract); App. 217–20 (addressing the higher-level reviewers' reliance on the PRC's report).

III

Sorokina's retaliation claim also withstands summary judgment. Sorokina engaged in protected activity when she reported discrimination to the College in December 2018 and had follow-up communications with a College EEO Officer. Those follow-up communications include Sorokina's March 2019 email detailing her allegations of discrimination and saying that she would soon file a formal charge of discrimination with the EEOC. Just three weeks after Sorokina sent that email, the PRC recommended that the College not renew Sorokina's contract. And Patrick—one of the two PRC members who signed the recommendation—admitted that he knew Sorokina had made a discrimination complaint.

The PRC's adverse recommendation satisfies the prima facie requirement of an adverse employment action. *See Daniels v. Sch. Dist. of Philadelphia*, 776 F.3d 181, 196 (3d Cir. 2015) (determining that a disciplinary warning constituted an adverse action because it "could have dissuaded a reasonable person in [the employee's] position from charging discrimination"). And the temporal proximity between Sorokina's protected conduct and the PRC's adverse recommendation supports an inference of causation. *Qin*, 100 F.4th at 477–78 (holding that six weeks of proximity between the plaintiff's complaint and an adverse employment action is "unusually suggestive of retaliatory motive" and enough for a jury to infer causation (citation omitted)); *Lupyan v. Corinthian Colleges Inc.*, 761 F.3d 314, 325 (3d Cir. 2014) ("Given the unusual nature of [plaintiff's] termination and its proximity to [her FMLA] leave, a jury could reasonably conclude that [plaintiff's] request for FMLA leave motivated this differential treatment.").

The College's decision not to renew Sorokina's contract also was an adverse employment action. *See Daniels*, 776 F.3d at 195–96. And just as a jury could find that the discriminatory bias infecting the PRC's

recommendation was a proximate cause of the non-renewal, it could find that retaliatory animus driving the PRC's recommendation was a proximate cause of the non-renewal. *See Crosbie v. Highmark Inc.*, 47 F.4th 140, 146 (3d Cir. 2022) (explaining that a retaliation claim under the cat's-paw theory requires a decisionmaker to rely on a non-decisionmaker's communication that was motivated by a desire to retaliate). At the second and third steps of the *McDonnell Douglas* scheme, Sorokina's gender discrimination and retaliation claims proceed in tandem. As discussed above, Sorokina's circumstantial evidence—taken as a whole and viewed in a light favorable to her—creates triable issues that the College discriminated against her when it declined to renew her contract. For the same reasons, that evidence creates triable issues that the College retaliated against her when the PRC recommended non-renewal of her contract and when the College declined to renew her contract.

IV

The District Court (through a Magistrate Judge) limited Sorokina to obtaining certain document discovery from the College's Finance Department. On appeal, Sorokina makes a cursory argument that broader discovery would have been proper. She provides no basis for us to conclude that the order was an abuse of discretion. *Anderson v. Wachovia Mortg. Corp.*, 621 F.3d 261, 281 (3d Cir. 2010). Therefore, we will affirm the order.

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For the foregoing reasons, we will affirm the District Court's discovery order and we will affirm in part and reverse in part the District Court's order granting summary judgment in favor of the College. We will reverse the summary-judgment order insofar as it

granted judgment for the College on Sorokina's gender discrimination and retaliation claims concerning the non-renewal of her employment contract.[11] In all other respects, we will affirm the summary-judgment order.

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[11] Judge Phipps dissents from the partial reversal of the summary-judgment motion. In his view, the record demonstrates that the College had legitimate, nondiscriminatory reasons for not renewing Sorokina's contract. There was a spate of poor student reviews describing how Sorokina cancelled a substantial portion of her classes; sent them PowerPoints instead of rescheduling; was frequently late to class; did not grade assignments in a timely manner; provided confusing and difficult-to-hear instructions; and was a generally ineffective professor. The volume of poor student reviews provides a legitimate, non-discriminatory reason for not renewing her contract, and Judge Phipps does not see a basis for concluding that that reason was pretextual, thus he does not believe that a reasonable jury could conclude that the College was motivated by discriminatory or retaliatory animus.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NONNA SOROKINA, Plaintiff, V. THE COLLEGE OF NEW JERSEY, Defendant.	Civil Action No. 19-20674 (RK) (DEA) OPINION

KIRSCH, District Judge

THIS MATTER comes before the Court on Defendant The College of New Jersey's ("TCNJ") Motion for Summary Judgment. (ECF No. 114.) Plaintiff Nonna Sorokina filed a brief in opposition, (ECF No. 120-1), and Defendant filed a reply brief, (ECF No. 127).[1] The Court has considered the parties' submissions and resolves the matter without oral argument pursuant to Federal Rule of Civil Procedure 78 and Local Civil Rule 78.1. For the reasons set forth below, Defendant's Motion for Summary Judgment is GRANTED.

I. BACKGROUND

In this case, Plaintiff Nonna Soroldna, a highly credentialed scholar hailing from Ulaaine, served as an Assistant Professor in the Finance Department of

[1] After the subject motion was fully briefed, this matter was transferred to the Undersigned on May 15, 2023. *(See* ECF No. 128.)

Defendant TCNJ. Plaintiffs employment at TCNJ began in the fall of 2016. Plaintiff originally interviewed in 2015, but TCNJ chose another candidate for the position, and TCNJ only offered Plaintiff the position after a new spot opened several months later. Plaintiff accepted the position. After two positive reviews led to a contract renewal for a fourth year, TCNJ chose not to renew Plaintiff's contract for a fifth year.

Plaintiff contends that TCNJ' s decision not to renew her contract constituted discrimination based on gender, national origin, and pregnancy, as well as retaliation for filing an internal complaint and a charge with the EEOC regarding same. Defendant argues that its decision was based on a thorough review by numerous supervisors and colleagues who determined that Plaintiff failed to satisfactorily perform the duties required of her role, including in the quality of her teaching and unprofessional conduct toward colleagues. Plaintiff contends that these justifications are pretext for discrimination.

On November 11, 2019, while she was still employed at TCNJ, Plaintiff filed the subject lawsuit asserting eight (8) causes of action, including discrimination under Title VII of the Civil Rights'Act of 1964, 42 U.S.C § 2000e *et seq.* ("Title VII") and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* ("NJLAD"). (ECF No. 1.) Under Title VII, Plaintiff brought claims for gender discrimination (Count One), national origin discrimination (Count Two), pregnancy discrimination (Count Three), and retaliation (Count Four). Plaintiff also alleged the same state claims under the NJLAD (Counts Five through Eight). *(Id.)* Plaintiff sought, *inter alia,* both compensatory and punitive damages from Defendant. *(See id.)*

Following the close of discovery, Defendant moved for summary judgment on January 17, 2023. (ECF No. 114.) Defendant filed a brief supporting its Motion, ("Def. Br.," ECF No. 114-2), Plaintiff filed a brief in opposition, (Opp'n," ECF No. 120-1), and Defendant filed

a reply brief, ("Reply," ECF No. 127). In support of its Motion, Defendant also filed a Statement of Facts. ("Def. SOP," ECF No. 114-1.) Plaintiff filed a Supplemental Statement of Facts. ("Pl. SOP", ECF No.125.)[2] Along with their Reply Brief, Defendant submitted a Counter Statement of Facts. ("Def. SOF2," ECFNo. 127-1.)

A. Plaintiff's Background

Plaintiff served as a "tenure track Assistant Professor in the School of Business, Department of Finance" at TCNJ. (Def. SOP ¶1.) Plaintiff, who was born and raised in Ukraine, came to the United States in 1999. (Pl. SOF 11.) Plaintiff is well-credentialed in her field of study: she earned a Diploma of Specialist in Finance and Banking at Donetsk State University in 1998; a Master of Business Administration ("MBA") with a concentration in Finance from Cleveland State

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[2] Plaintiff notified the Court that she had filed an incorrect version of her Supplemental Statement of Facts, filing a draft instead of the final version. *(See* ECF No. 125.) Plaintiff submitted the correct version, (ECF No. 124), which the Court will accept. However, pursuant to Local Civil Rule 56. l(a), Plaintiff failed to file "a responsive statement of material facts, addressing each paragraph of the movant' s statement, indicating agreement or disagreement." A party's failure to contest results in "any material fact not disputed shall be deemed undisputed for purposes of the summary judgment motion." *Id.; see Contreras v. United States,* No. 19-12870, 2022 WL 970192, at *1 (D.N.J. Mar. 31, 2022) (plaintiff's failure to submit a response to the defendant's statement of facts resulted in "each of the thirty-three facts set forth in the [defendant's facts] be deemed admitted and undisputed for purposes of this Motion"); *Owens v. Am. Hardware Mut. Ins. Co.,* No. 11-6663, 2012 WL 6761818, at *3 (D.N.J. Dec. 31, 2012) ("Without compliance with the Rule, the Court is left to sift through often voluminous submissions in search of-sometimes in vain-the undisputed material facts."). Notwithstanding Plaintiff's significant lapse, the Court has ventured to parse the record to identify any facts in dispute.

University in 2007; and a Ph.D. in Finance with a minor in Applied Statistics from Kent State University in 2014. (Def. SOF¶¶ 34-36.)

B. Plaintiff's Hiring at TCNJ

In 2015, TCNJ, "a public university and part of New Jersey's public system of higher education," began recruiting for an Assistant Professor in the Finance Department. (Def. SOF ¶¶ 2, 19.) The "search committee" comprised three professors ofTCNJ's Finance Department, housed within its School of Business: Dr. Susan Hume ("Hume"), an Associate Professor of Finance, who served as committee chair; Dr. Thomas Patrick ("Patrick"), the then-Department chair and a Professor of Finance; and Dr. Sueng Hee Choi ("Choi"), who at the time was an Associate Professor in the Finance Department and who now chairs the Department. *(Id.* ¶¶ 3, 8, 9, 10, 20.) The search committee received one hundred and twenty-five (125) applications for the position, ultimately interviewing twenty-eight (28) candidates for the role and choosing three (3) to visit campus. *(Id.* ¶¶ 21, 25.) Plaintiff was among those chosen, as was Dr. Tae-Nyun Kim ("Kim"). *(Id.* ¶26.) The committee, along with Dr. William Keep ("Keep"), who at the time served as the Dean of the School of Business, interviewed the three finalists.[33] *(Id.* ¶¶ 5, 6, 21.) The committee made a rec01mnendation, and Keep made the final hiring decision. *(Id.* ¶ 24.) The committee unanimously recommended Kim for the position based on a stronger interview than Plaintiff. *(Id.*¶ 31.) Plaintiff was the committee's second choice. *(Id.)* Kim, like Plaintiff, was well- credentialed, holding a Bachelor of Business Administration from Korea University, a Master's Degree in Applied Statistics from the Ohio State University, and a Ph.D. in Finance from

[3] Keep served as the Dean from 2016-2018, and as Interim Provost from 2018-2020. *(Id.*,r6.) He currently serves as a Professor of Marketing. *(Id.* ,r 5)

Rutgers, the State University of New Jersey. *(Id.*¶¶ 37-39.)

Plaintiff believed she was a "stronger candidate" than Kim based on their respective resumes. ("Pl. Dep. Tr.," ECF No. 114, Ex.Cat 123:7-20.) Plaintiff believed that only "personal preference" or bias could explain the choice to hire Kim over her. *(Id.)* Hume testified that the decision was "unanimous" to hire K.im based on the strength of his interview. ("Hume Dep. Tr.," ECF No. 121, Ex. B at 24:4-9.) However, Hume also testified that during the interview process, Patrick made an unprofessional comment about Plaintiff, asking if "we really want to hire someone that looks like that." *(Id.* at 28:1-4.)

A few months after Plaintiff's interview, another role opened in the Finance Department. (Def. SOF, 40.) This role was subsequently offered to Plaintiff. (Id. ¶ 42.) However, as she had already renewed her contract at her previous employer for the upcoming school year, she requested to defer her start date at TCNJ until the Fall of 2016, which was allowed. (Id. ¶¶ 42-43.)

C. Plaintiff's Pregnancy and Schedule Changes

Plaintiff began at TCNJ in the Fall of 2016. *(Id.,*43.) Following her first year, in December 2017, Plaintiff gave birth to her fourth child. (Pl. SOFir 2.) During the prior summer, while Plaintiff was pregnant, Plaintiff reached out to Patrick about her Spring 2018 course schedule. (Def. SOF,

65.) Plaintiff explained that TCNJ' s maternity benefits would not pay her full salary, and she would prefer to keep working instead. *(Id.)* She requested to teach "blended" courses, in which she would teach on campus once per week, "meet[ing] simultaneously with two sections of a course" and "cover[ing] the remaining part with ample on-line support." *(Id.* ¶¶ 65-66.) Patrick forwarded the request to Keep, who spoke to the Human

Resources Department and the Provost, who made the final call. *(Id.* ¶¶ 67-70.) While Plaintiff's request to teach a blended course was denied, Keep offered to modify Plaintiff's schedule to enable her to "teach four sections of the ½ unit course FIN 201 to begin in the latter part of spring semester," which would allow her to earn her full salary despite "being able to stay home during the beginning of the spring semester" with her child. *(Id.* , 70.) Plaintiff accepted this arrangement, calling it "a practical solution for me and good for the baby, indeed." (Id. ii 71.)

In the Summer and Fall of 2018, Plaintiff participated in organizing TCNJ's MBA program. (Id, . 51; see ECF No. 114, Ex. L.) This included designing syllabi for classes andchoosing textbooks for the course. (Def. SOF,. 53.) However, Plaintiff was removed from theMBA program by Interim Dean Dr. Bozena Leven ("Leven") and Keep following disagreements and what they believed was unprofessional conduct of Plaintiff. (Id.¶□52-55.)

D. TCNJ's Reappointment and Promotions Policy

TCNJ makes promotion and contract renewal (i.e., reappointment) decisions for its professors guided by its "Reappointment and Promotions Document" (the "RPD"). *(See* ECF No. 114, Ex. T.) Tenure track professors, such as Plaintiff, are initially hired for three-year terms. *(Id.* at -063.)[4] After each year, until the faculty member receives tenure (which occurs after year five (5), their performance is reviewed by their colleagues, including the "Department Promotion and Reappointment Committee" ("PRC") and the Dean of their respective school. *(Id.* at -057.) While the reviews are similar each year, the Court focuses on the review

[4] The Court refers to page numbers in exhibits by the last three digits of the Bates number.

and process following a faculty member's third year, as that review is central to this case.

TCNJ faculty apply for reappointment at least one year in advance, such that following the third year, the faculty member is either reappointed for a fifth and sixth year, only a fifth year, or their contract is not renewed. *(Jd.)*[5] The third-year review encompasses an extensive performance evaluation by the PRC, Dean, Provost, and President. *(Id.)* The faculty member submits, *inter alia,* her CV, student evaluations, peer reviews of the faculty member's teaching, scholarly publications, and course syllabi to the PRC. *(Id.* at -102.) These materials "serve as the basis for a serious conversation between the candidate and the PRC regarding progress toward reappointment and tenure." *(Id.* at -064.) The PRC writes "an evaluation report to the Dean ... that summarizes the candidate's progress." *(Id.* at -065.) The faculty member may respond to the report. *(Id.)* The Dean then reviews the candidate's materials, including the PRC report, and may meet with the chair of the PRC, the department chair, and the faculty member. (Id.) The Dean then "writes an independent evaluation report and recommendation to the Provost" concerning the faculty member's reappointment. (Id.) This process continues, with the Provost then reviewing the dossier, followed by the President. (Id. at -065-66.) The President makes the final recommendation to the Board of Trustees, which generally adopts the President's Recommendation. (Id. at -066.)

The faculty member's review focuses on three areas: teaching, "scholarly/creative/professional activity," and service. *(Id.* at -048.) Of these tluee categories, teaching is the most important quality, and "high quality teaching" is deemed "essential for

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[5] Likewise, following the second year, the faculty member applies for reappointment to a fourth year, and after the fifth year, the faculty member applies for reappointment to a seventh year and tenure. *(Id.* at -057.)

reappointment." *(Id.)*

E. Non-Renewal of Plaintiff's Contract

Plaintiff received favorable reviews following her first and second years at TCNJ and was appointed to a fourth year for the 2018-2019 school year. (Def. SOF¶¶ 114-16; *see* ECF No. 114, Ex. S.) In the Spring of 2019, following her third year, Plaintiff applied for a fifth and sixth year. (Def. SOF¶ 117.) Plaintjff's PRC comprised Patrick, Hume, and Professor Herbert Mayo ("Mayo").[6] ("PRC Review," ECF No. 114, Ex. U at -185.) On April 2, 2019, Patrick and Mayo, who authored the PRC Review, found Plaintiff's student evaluation scores "reasonable," but found many "areas of concern." *(Id.* at -179.) For example, the PRC pointed to cancelled classes, Plaintiff's tardiness, and students' struggles in her courses. *(Id.* at -179-80.) Overall, the PRC believed Plaintiff "does not aspire to be a teacher of the first order." *(Id.* at -180.) With respect to her scholarly achievements, the PRC "was pleased with her research productivity" and commended her numerous publications. *(Id.* at -181.) However, the PRC also found Plaintiff's service lacking. The PRC pointed to Plaintiffs removal from the MBA program and disagreements with colleagues, her struggles with her student advisees, and her damage to "department morale," including by sending "an email to the department chair in which she claimed that she worked harder and better than anyone else in the department." *(Id.* at -183.) The PRC did not recommend Plaintiff for reappointment. *(Id.)*

Hume did not sign the review and submitted her own recommendation on the same day. *(See* ECF No. 114, Ex. V.) Hume wrote that Plaintiff's teaching and service rose to a high quality such that Plaintiff's contract should be renewed. *(See id.)* Plaintiff responded

[6] Mayo has since retired, but at the time was a Professor of Finance. (Def. SOF ¶¶ 13-14.)

to the PRC Review on April 10, 2019, arguing it was "defective" and "an obvious and illegal act of retaliation in response to my report of discrimination." (ECF No. 114, Ex. W.)[7] Plaintiff also responded to many of what she asserted were false claims in the PRC Review. *(Id.)*

On May 1, 2019, Dr. Jane Wong ("Wong") next reviewed Plaintiff's application for reappointment. (ECF No. 114, Ex. X.)[8] Wong "concur[red]" with the PRC in finding Plaintiff's teaching did not meet the standard for reappointment. *(Id.* at -200.) While she found Plaintiffs scholarship work admirable, her "unprofessional conduct" toward her colleagues did not align with TCNJ's "spirit of service and citizenship." *(Id.* at -201.) Wong did not recommend Plaintiff for a fifth year. *(Id.* at -202.) Plaintiff submitted a response to Wong's recommendation on May 6, 2019. (ECF No. 114, Ex. Y.)

Dr. David Blake ("Blake"), the Interim Vice Provost for Faculty and Academic Planning, served as the third level review in Plaintiff's reappointment process. (ECF No. 114, Ex. Z.) On June 3, 2019, Blake opined that while Plaintiff's teaching and service records satisfied TCNJ's expectations; he nonetheless recommended not to reappoint Plaintiff for a fifth year. *(Id.* at -207.) Blake focused on poor student evaluations in his review, finding that students' various concerns outweighed the positive remarks Plaintiff received. *(Id.* at -205.) Blake also found troublesome Plaintiffs "difficulty maintaining productive, working relationships with [her] colleagues." *(Id.* at -207.) Plaintiff submitted a response to Blake's review. (ECF No. 114, Ex. BB.)

Finally, on June 30, 2019, President Kathryn Foster ("Foster") reviewed Plaintiffs application. (ECF No. 114, Ex. AA.) While Foster applauded Plaintiff's

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[7] As discussed below, Plaintiff filed an internal complaint of discrimination with TCNJ in the Fall of 2018 and a charge with the EEOC in the Spring of 2019.

[8] Wong serves as the Dean of the School of Humanities and Social Science. (Def. SOP ,r 17.)

accomplishments in scholarship, she found Plaintiffs teaching and service unsatisfactory. *(Id.)* Notably, she pointed to "a declining trajectory in peer and student evaluations." *(Id.* at -211.) In addition, Foster found Plaintiff's "non-substantive. and dismissive responses" to her reviews "[t]roubling" and "disquieting." *(Id.)* On Foster's recommendation the Board of Trustees did not renew Plaintiff's contract for a fifth year. *(Id.)*

F. Internal and EEOC Complaint

On November 15, 2018, Plaintiff filed a formal complaint of discrimination with TCNJ. (Def. SOF¶ 188.) Plaintiff alleged Leven, Interim Dean of the Business School and Choi, who had since been appointed Chair of the Finance Department, created a "hostile work environment"

and discriminated against her. (ECF No. 114, Ex. P.) TCNJ investigated Plaintiff's complaint but found it lacked merit. (Def. SOF¶194.) On April 10, 2019, Plaintiff filed a charge with the EEOC, alleging retaliation, sex, and national origin discrimination. (ECF No. 121, Ex. Z.) The EEOC issued its right-to-sue notice on September 3, 2019. (Def. SOF¶196.) Thereafter, Plaintiff initiated this lawsuit.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56 provides that the Court should 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 oflaw." Fed. R. Civ. P. 56(a). The Court must "view[] the facts in the light most favorable to the party against whom smmnary judgment was entered." *Marino v. Indus. Crating Co.,* 358 F.3d 241, 247 (3d Cir. 2004) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986)). A "material fact" is one that "might affect the

outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A "genuine dispute" about a fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the nonmoving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" *Marino v. Indus. Crating Co.,* 358 F. 3d 241, 247 (3d Cir. 2004) (quoting *Anderson,* 477 U.S. at 255).

The party moving for summary judgment has the initial burden of establishing its right to summary judgment. *See Celotex Corp.,* 477 U.S. at 323. To show that a material fact is not genuinely disputed, it "must ... cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, intenogatory answers, or other materials." Fed. R. Civ. P. 56(c)(l)(A). The moving party may also meet its burden by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(l)(B). Once the movant meets its threshold burden under Rule 56, the non-moving party

must present evidence to establish a genuine issue as to a material fact. *See Anderson,* 477 U.S. at 248; *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986) (the non-movant "must do more than simply show that there is some metaphysical doubt as to material facts.").

III. DISCUSSION

Defendant moves for summary judgment on all of

Plaintiff's claims. *(See generally,* Def. Br.) First, Defendant argues that Plaintiffs Title VII claims are untimely and that Plaintiff failed to exhaust her administrative remedies before the Equal Employment Opportunity Commission ("EEOC"). Second, Defendant argues that discovery has proven that Plaintiff was not subject to discrimination, and legitimate non-discriminatory reasons exist for any allegedly adverse employment actions.[9] The Court will address each claim in turn.

A. STATUTE OF LIMITATIONS AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Statute of Limitations

Defendant argues that any of Plaintiffs claims arising from actions prior to June 20, 2018 are time-barred, as Plaintiff failed to comply with Title VII's statute oflimitations. (Def. Br. at 9- 11.) Plaintiff counters, however, that the actions occurring prior to June 20, 2018 constitute "important background information that lay a solid foundation for her timely-filed claims." (Opp'n at 9.)

Prior to asserting a Title VII claim, a plaintiff must observe the law's procedural requirements and exhaust her administrative remedies. *See* 42 U.S.C. § 2000e-5(e)(1). In New Jersey, an individual must file a complaint with the EEOC within three hundred (300)

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[9] Defendant, a state entity, also argues that Plaintiffs NJLAD claims and claims for punitive damages are barred by New Jersey's sovereign immunity. In its opposition brief, Plaintiff concedes this point. (Opp'n at 2 n.1.) Therefore, the Court grants summary judgment to Defendant on Counts Five, Six, Seven, and Eight, as well as on Plaintiff's claims for punitive damages. *See Irene B. v. Philadelphia Acad. Charter Sch.,* No. 02-1716, 2003 WL 24052009, at *10 n.19 (E.D. Pa. Jan. 29, 2003) (dismissing claim conceded by plaintiff in opposition brief).

days[1010] of when "the alleged unlawful employment practice occurred." *See id; Nat'l R.R. Passenger Corp. v. Morgan,* 536 U.S. 101, 109 (2002). If not filed within this limit, the "claim is time barred." *Nat'l R.R. Passenger Corp,* 536 U.S. at 109. Following the EEOC's investigation, the EEOC issues a right-to-sue letter, which then enables a plaintiff to file suit. *Barzanty v. Verizon PA, Inc.,* 361 F. App'x 411, 413 (3d Cir. 2010). An individual has ninety (90) days to file a civil action following receipt of the EEOC's notice. 42 U.S.C. § 2000e-5(f)(1); *see also Burgh v. Borough Council of Borough of Montrose,* 251 F.3d 465, 470 (3d Cir. 2001) ("[I]f the complainant does choose to bring a private action, it must be filed within 90 days of the date on which the complainant has notice of the EEOC's decision not to pursue the administrative charge.").

In *Nat'l R.R. Passenger Corp. v. Morgan,* the Supreme Court expounded on the meaning of when "alleged unlawful employment practice occurred" for the purposes of triggering the limitations period. 536 U.S. at 110. The Court explained that "the term practice" refers "to a discrete act or single occurrence." *Id.* at 111 (internal quotation marks omitted). Moreover, "discrete acts that fall within the statutory time period do not make timely acts that fall outside the time period." *Id.* at 112. Therefore, the Court summarized, "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges" and "[e]ach discrete discriminatory act starts a new clock for filing charges alleging that act." *Id.* at 113. "The existence of past acts and the employee's prior knowledge of their occurrence, however, does not bar

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[10] As New Jersey has "a state or local agency to enforce a statute or ordinance against employment discrimination[,] ... a charge must be filed with the EEOC within 300 days of the alleged discrimination or within thirty days of notice of termination of state or local proceedings, whichever period expires first." *Cortes v. Univ. of Med. & Dentistry of New Jersey,* 391 F. Supp. 2d 298, 309-10 (D.N.J. 2005).

employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed," and plaintiff could "us[e] the prior acts as background evidence in support of a timely claim." *Id.* at 113. Here, Plaintiff filed her EEOC charge on April 16, 2019. *(See* Def. SOF, ¶ 195; ECF No.121, Ex. Z.) As such, her charge encompasses conduct that occurred on or after June 20, 2018, three hundred (300) days prior to her filing of the EEOC complaint. Any discrete acts that occurred before this date are barred under the statute of limitations and may not serve as the basis for Plaintiff's suit. *Nat'l R.R. Passenger Corp.* 536 U.S. at 111-12. However, the Court may tum consider these as supplemental evidence to Plaintiff's "timely claim[s]." *Id.* at 113.

2. Exhaustion of Administrative Remedies

Defendant argues that Plaintiff did not "file a charge for gender discrimination or retaliation with the EEOC," thereby failing to exhaust her administrative remedies as required. (Def. Br. at 11.) Plaintiff, on the other hand, avers that her EEOC charge properly referenced all of the alleged bases of discrimination raised in her federal complaint. (Opp'n at 11.)

Prior to bringing a Title VII suit, a plaintiff "must exhaust her administrative remedies by filing a timely discrimination charge with the EEOC." *Barzanty,* 361 F. App'x at 413 (citing 42 U.S.C. § 2000e-5(b), (e)(l), (f)(l)). After the EEOC investigates the charge and issues a right-to- sue letter, the plaintiff then may file suit. *Id.* However, this "suit is limited to claims that are within the scope of the initial administrative charge." *Id.* at 413-14 (citing *Antal v. Perry,* 82 F.3d 1291, 1296 (3d Cir. 1996)). "[T]he parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow

out of the charge of discrimination, including new acts which occurred during the pendency of the proceedings before the Commission." *Canete v. Barnabas Health Sys.,* No. 12-7222, 2013 WL 5305236, at *4 (D.N.J. Sept. 18, 2013) (quoting *Robinson v. Dalton,* 107 F.3d 1018, 1025-26 (3d Cir. 1997)). A plaintiff "is not strictly limited to those claims 'checked off in the box section on the front page of the Charge, nor even to the specific claims that the EEOC investigated pursuant to the Charge.'" *Id.* (quoting *Carr v. N.J.,* No. 09-913, 2010 WL 2539782, at *4 (D.N.J. June 17, 2010)). Instead, the plaintiff may pursue claims that "should have been included in a reasonable investigation conducted by the EEOC, based upon the information contained in the Charge." *Id.*

The Court agrees with Plaintiff that her federal discrimination claims are covered by her EEOC charge. In her charge filed April 16, 2019, Plaintiff checked the boxes for sex discrimination, national origin discrimination, and retaliation. *(See* ECF No. 121, Ex. Z at *1.) Moreover, she stated that she was a member of protected classes based on "Place of Origin" and "gender/pregnancy." *(Id.)* While the majority of the charge focuses on Plaintiff's pregnancy and national origin claims, Plaintiff discusses examples of gender disclimination, such as that Kim, "as a male, ... could not get pregnant." *(Id.* at *6.) Finally, Plaintiff explicitly stated she was the victim of "retaliation". *(Id.* at *8.). Because Plaintiff referenced pregnancy, national origin, and gender discrimination, as well as retaliation, for purposes of the subject motion, Plaintiff's federal suit was adequately premised by her EEOC charge.

B. TITLE VII

In Counts One through Four, Plaintiff brings claims against Defendant for violations of Title VII. (ECF No. 1 ¶¶ 130-165.) Defendant moves for summary judgment on all four of Plaintiffs claims, and thus the Court will address each in turn.

> Title VII makes it unlawful for "an employer ... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... sex[] or national origin." 42 U.S.C.A. § 2000e-2(a). Congress, in 1978, "amend[ed] Title VII of the Civil Rights Act of 1964 'to prohibit sex discrimination on the basis of pregnancy'" by passing the Pregnancy Discrimination Act ("PDA"), 42 U.S.C. § 2000e(k). Newport News Shipbuilding & Dry Dock Co. v. E.E.O.C., 462 U.S. 669, 670 (1983). In particular, the PDA defines "the terms 'because of sex' or 'on the basis of sex' [to] include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000e(k).

Title VII discrimination and retaliation claims are analyzed under the three-step burden shifting test laid out in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). At step one, a plaintiff must "carry the initial burden under the statute of establishing a *prima facie* case of [unlawful] discrimination," or alternatively, a *prima facie* case of retaliation. *Fuentes v. Perskie,* 32

F.3d 759, 763 (3d C4". 1994) (quoting *McDonnell Douglas,* 411 U.S. at 802).

At step two, if the plaintiff establishes a *prima facie* case, "the burden of *production* shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *Fuentes,* 32 F.3d at 763 (quoting *McDonnell Douglas,* 411 U.S. at 802) (emphasis in original). This reason, however, "need not ... actually motivate[] the [employment] decision." *Kautz v. Met-Pro Corp.,* 412 F.3d 463, 465 (3d Cir. 2005) (quoting *Stanziale v. Jargowsky,* 200 F.3d 101, 105 (3d Cir. 2000)). This is because "throughout this burden-shifting paradigm, the ultimate burden of proving intentional discrimination always rests with the plaintiff." *Fuentes,* 32 F.3d at 763. Moreover, the Third Circuit has described the employer's responsibility in the second- prong as a "light burden." *Id.*

If the employer meets its step two burden, at step three, the burden shifts back to the plaintiff to demonstrate "by a preponderance of the evidence that the employer's explanation is pretextual." *Id.* A plaintiff may demonstrate pretext in two ways. *See Klimek v. United Steel Workers Loe. 397,* 618 F. App'x 77, 80 (3d Cir. 2015). The plaintiff "must present some evidence 'from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.'" *Id.* (quoting *Fuentes,* 32 F.3d at 764). As the Third Circuit has explained:

> To discredit the employer's proffered reason ... the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory

> animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence.

Keller v. Orix Credit All., Inc., 130 F.3d 1101, 1108-09 (3d Cir. 1997) (quoting *Fuentes,* 32 F.3d at 765). In applying this analysis, the courts are cautious to not act as "'a super-personnel department' tasked with correcting unduly harsh employment actions." *Klimek,* 618 F. App'x at 80 (quoting *Brewer v. Quaker State Oil Ref Corp.,* 72 F.3d 326, 332 (3d Cir. 1995).

1. Gender and National Origin Discrimination Claims

a. Step One: Plaintiff's *Prima Facie* Burden

The Court first addresses Plaintiff's claims for gender and national origin under Title VII (Counts One and Two). To establish a *prima facie* claim, a plaintiff "must first establish that: (1) she is a member of a protected class; (2) she was qualified for the position in question; (3) she suffered an adverse employment action; and (4) that adverse employment action gives rise to an inference of unlawful discrimination." *Tourtellotte v. Eli Lilly & Co.,* 636 F. App'x 831,842 (3d Cir. 2016). Defendant does not contest the first two elements, *(see,*

e.g., Def. Br. at 22-25; Reply at 6), and as a result, the Court addresses only the third and fourth.

i. Adverse Employment Actions

Plaintiff points to four incidents in particular in which she alleges qualify as adverse employment actions, whether viewed singularly or together: (1) her reassignment to "more demanding and less rewarding undergraduate classes" in July 2017; (2) the non-renewal of her contract, thus ending her employment at TCNJ; 3) her receipt of a disciplinary letter in her personnel file in November 2018; and (4) her removal from teaching in TCNJ's MBA program in November2018.[11] (Opp'n at 15-20.)

An adverse employment action is "an action by an employer that is serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment." *Dor v. TD Bank,* No. 22-18955, 2023 WL 9017558, at *3 (D.N.J. Dec. 29, 2023) (quoting *Jones v. Se. Pa. Transp. Auth.,* 796 F.3d 323, 326 (3d Cir. 2015)). This includes "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits" that "in most cases inflicts direct economic harm." *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 761-62 (1998). "The absence of a direct economic impact, if not the *sine qua non* of an adverse employment action, is nevertheless an 'important factor' in deciding whether an employer's action is adverse." *Strain v. Univ. of Pittsburgh Med. Ctr.,* No. 04-1660, 2007 WL 951490, at *8 n.23 (W.D. Pa. Mar. 27, 2007) (quoting *Durham Life Ins. Co. v. Evans,* 166 F.3d 139, 152-53 (3d Cir.1999)).

First, and as discussed above, Plaintiff's claims

[11] Plaintiff also asserts this as an adverse employment action with respect to her pregnancy discrimination claim, (Opp'n at 25-26), and the Court will discuss *infra.*

for any adverse action related to Plaintiffs initial interview and non-hiring in 2015, and Plaintiffs reassignment to new classes in July 2017 are time barred under the statute limitations.[12] However, Plaintiff's allegations relating to her removal from the MBA program, and her disciplinary letter in November 2018 are timely.

Second, TCNJ' s decision not to renew Plaintiff's contract for a fifth year qualifies as an adverse employment action. *See Wilkerson v. New Media Tech. Charter Sch. Inc.,* 522 F.3d 315, 320 (3d Cir. 2008) ("failure to rehire can constitute an adverse employment action").

Third, the Court finds that the disciplinary record in Plaintiff's file-unaccompanied by any specific change in the terms of Plaintiff's employment-is not an adverse employment action. *See Deans v. Kennedy House, Inc.,* 587 F. App'x 731, 734 (3d Cir. 2014) (a temporary warning in the plaintiff's file which did not "effect a material change in the terms or conditions of his employment" was not an adverse employment action (citation omitted)); *Mieczkowski v. York City Sch. Dist.,* 414 F. App'x 441, 447 (3d Cir. 2011) (permanent disciplinary letter did not constitute adverse action where letter was not accompanied by any material changes, including hours, salary, and title). Here, the letter, in and of itself, is not an adverse employment

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[12] Even if timely, the record indicates that Plaintiff agreed to a change in schedule in July 2017 as an accommodation to her pregnancy. *(See* Def. SOP ,r,r65-71.) Indeed, Plaintiff referred to the "change in schedule" as "a practical solution for me and good for the baby." *(Id.* ,r 71.) This agreement belies any claim that this change in course schedule constituted an adverse employment action. *See Pikowski v. GameStop, Inc.,* No. 11-2732, 2013 WL 6498072, at *7 (D.N.J. Dec. 11, 2013) (plaintiff's agreed upon schedule changes did not constitute an adverse employment action (citing *Valdes v. State of N.J.,* No. 05- 3510, 2007 WL 1657354 (D.N.J. Jun. 6, 2007)). Moreover, with respect to Plaintiff's initial interview, there is ample evidence that Defendant chose to hire Kirn based on his superior interview.

action. As Plaintiff testified, the letter accompanied her removal from TCNJ' s MBA program. (Pl. Dep. Tr. at 146:16- 20.) However, TCNJ's decision to remove Plaintiff was separate from its issuance of the letter. *(See id.)* The letter was not accompanied with any reduction in pay, demotion, title change, or other material change in employment condition. As such, standing alone, the disciplinary letter in Plaintiff's file does not constitute an adverse employment action.

Fourth, Plaintiffs removal from teaching the MBA program also was not an adverse employment action. "[A] transfer, even without loss of pay or benefits, may, in some circumstances, constitute an adverse job action." *Torre v. Casio, Inc.,* 42 F.3d 825, 831 n.7 (3d Cir. 1994) (citing *Collins v. Illinois,* 830 F.2d 692, 702-04 & 702 n.7 (7th Cir.1987)). However, "[a]ctions like lateral transfers or changes of title generally have not been found to constitute adverse employment actions in the absence of evidence that there has been a material change in an employee's working conditions." *Fiorentini v. William Penn Sch. Dist.,* 665 F. App'x 229, 234 (3d Cir. 2016) (collecting cases); *Dennison v. Indiana Univ. of Pa.,* No. 20-1563, 2022 WL 3213657, at *9 (W.D. Pa. Aug. 9, 2022), *aff'd,* No. 22-2649, 2023 WL 8595426 (3d Cir. Dec. 12, 2023) (no adverse employment action where plaintiffs salary remained the same, notwithstanding a decrease in responsibilities).

In the case at bar, Plaintiff alleges that the removal resulted in an "instant[] downgrade[] from the prestigious Graduate faculty status to Undergraduate faculty" and a removal from any participation in choosing the MBA course curriculum. (Opp'n at 19.) Plaintiff claims this was "substantial and material" as she joined TCNJ, she claims, primarily to work in and develop the MBA program. *(Id.)* Plaintiff's "subjective belief that her reassignment was a 'demotion' is insufficient to create a genuine issue of material fact on this issue." *Fiorentini,* 665 F. App'x at 234-35; *see Love v. United Parcel Serv.,* No. 04-964, 2006 WL 2806565,

at *3 (W.D. Pa. Sept. 28, 2006) ("Plaintiff's subjective belief that a transfer is less desirable or demeaning cannot suffice."). Plaintiff does not allege Defendant decreased her salary, nor did her title change. Moreover, Plaintiff remained qualified for reappointment and tenure, as demonstrated by the PRC Review. Plaintiff offers no support that this transfer was a demotion "other than characterizing it as such." *Farmer v. Camden City Bd. of Educ.,* No. 03-685, 2005 WL 984376, at *15 (D.N.J. Mar.28, 2005) (no adverse employment action where "compensation, benefits and other terms of employment remained the same" following role change).[13]

Therefore, the Court finds that of the actions Plaintiff points as adverse employment actions, only the non-renewal of her contract qualifies.

ii. Inference of Discrimination

Finally, the Court turns to the fourth prong of Plaintiff's *primafacie* test-whether Plaintiff has shown "an inference of unlawful discrimination" tied to the claimed adverse employment actions. *Tourtellotte,* 636 F. App'x at 842. An inference of discrimination may be shown in two ways. Plaintiff "may either: (1) introduce evidence of comparators (i.e., similarly situated employees .who (a) were not members of the same protected class and (b) were treated more favorably under similar circumstances); or (2) rely on circumstantial evidence that otherwise shows a causal nexus between his membership in a protected class and the adverse employment action." *Greene v. Virgin Islands Water & Power Auth.,* 557 F. App'x 189, 195

[13] While a plaintiff may demonstrate an adverse employment action without "a loss of pay or benefits," courts have found this occurs when the plaintiff is transferred to a "dead-end job." *Farmer,* 2005 WL 984376, at* 14 (citation omitted). Plaintiff retained her position and continued to teach numerous classes at TCNJ, and as such, was not transferred to a "dead-end" job.

(3d Cir. 2014).

Plaintiff points to Kim as her natural similarly situated employee for her gender and national origin discrimination claims. (Opp'n at 21.) Kim was hired one year before Plaintiff. (Def. SOF ¶ 31.) Plaintiff maintains she was more credentialed than Kim, allegedly evidenced by her experience in the financial industry and more valuable work experience. *(Id.; see* Pl. Dep. Tr. at 201:20-203: 1 ("I knew that there was no valid reason for Kim to be selected over me because I was a stronger candidate in every aspect of [a] fair evaluation, either teaching or research or industry experience or productivity.").) Plaintiff continues that Kim, despite his supposed inferior credentials, received a contract renewal and tenure. (Opp'n at 23-24; Pl. Dep. Tr. at 203:11-14.) Finally, Plaintiff alleges that, following the non-renewal of Plaintiff's contract, TCNJ hired Dr. Yutong Xie to replace her. (Opp'n at 23; ECF No. 121 at Ex. Y.)[14]

Plaintiff fails to offer any evidence for her inference of national origin discrimination beyond stating that Kim and Xie, who she believes are not IBaainian, were treated differently. "It is not enough simply to recite workplace grievances and state the ethnic backgrounds of the participants." *Skoorka v. Kean Univ.,* No. 16-3842, 2018 WL 3122331, at *12 (D.N.J. June 26, 2018). Plaintiff provides no support,

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[14] It is not clear to the Court that either Kirn or Xie are "similarly situated" to Plaintiff as she claims. "[E]mployees are similarly situated when their conduct on the job-or misconduct-is similar in nature." *Oakley v. Orthopaedic Assocs. of Allentown, Ltd.,* 742 F. Supp. 2d 601, 608 (E.D. Pa. 2010); *Wilcher v. Postmaster Gen.,* 441 F. App'x. 879, 881-82 (3d Cir. 2011) (explaining the "similarly situated" analysis "talces into account factors such as the employees' job responsibilities, the supervisors and decision- malcers, and the nature of the misconduct engaged in"). In the case at bar, Plaintiff fails to provide an y support that she, Kim, and Xie are similar beyond their educations and positions. For example, Plaintiff does not contend that Kirn had similar student evaluations or beleaguered worldng relationships with his colleagues.

beyond mere conjecture, that any of TCNJ's actions were based on the fact that she was Ukrainian. See *Williams v. Rowan Univ.,* No. 10-6542, 2014 WL 7011162, at *15 (D.N.J. Dec. 11, 2014) ("An inference based upon speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment" (quoting *Johnson v. Multi-Solutions, Inc.,* 493 F. App'x 289; 292 (3d Cir. June 28, 2012))); *Skoorka,* 2018 WL 3122331, at *14 (finding no inference of discrimination where Plaintiff "point[ed] to no other evidence-not even a stray derogatory remark" aside from subjective belief that actions were grounded in discrimination). As such, the Court finds that Plaintiff fails to demonstrate any of her alleged "adverse employment action[s] give[] rise to an inference of unlawful discrimination" based on Plaintiff's national origin. *Tourtellotte,* 636 F. App'x at 842. Therefore, the Court grants Defendants' summary judgment as to Count Two for national origin discrimination.[15]

Regarding her gender discrimination claim, Plaintiff cites comments by Patrick, who was both a member of the search committee that initially interviewed Plaintiff and on her PRC committee, and others in the department. (Opp'n at 21-23.) Specifically, Hume testified that Patrick made comments about Plaintiff that Hume viewed as "gender microaggressions" and bullying, (Hume Dep. Tr. at 25:1-14); Patrick commented on Plaintiff's appearance following her initial interview in 2015, *(id.* at 28:1-4); and, prior to her arrival at TCNJ, Hume was told "by other faculty members that the [finance] department ... has a difficult time giving women tenure," *(id.* at 68:2-8). Based on these allegations, albeit on a thin reed, the Court finds Plaintiff has satisfied her burden of demonstrating an inference of gender discrimination

[15] Even assuming *arguendo* that Plaintiff established a *prima facie* claim for national origin discrimination, Plaintiff fails to rebut Defendant's non-discriminatory reasons for their actions, as discussed below

pertaining to the non- renewal of her contract. As such, the Court turns its attention to the second prong of the *McDonnell Douglas* framework.

b. Step Two: Defendant's Nondiscriminatory Justifications

Under the second step of the burden-shifting test, Defendants must set forth a "nondiscriminatory reason for the unfavorable employment decision." *Fuentes,* 32 F.3d at 763. Here, with respect to the non-renewal of Plaintiff's contract, Defendant proffers that Plaintiff's "teaching and service did not meet the standards of the College." (Def. Br. at 27.)

As explained above, Plaintiff's third year review in the Spring of 2019 consisted of four layers of review: (1) the PRC (2) the Dean (3) the University Provost and (4) the President. *(See* ECF No. 114, Ex. T.) Plaintiff's PRC Review, submitted on April 2, 2019, reviewed Plaintiff's performance in three categories: (1) "Teaching," (2) "Scholarly/Creative/Professional Activity," and (3) "Service." *(See generally,* PRC Review; *see also,* ECF No. 114, Ex. T at -048-51 (explaining that faculty are "expected to demonstrate accomplishments and meet the standards in all three categories").)

Patrick, Hume, and Mayo served as the three members of Plaintiff's PRC. (PRC Review at -185.)[16] Regarding Plaintiff's teaching, while the PRC detennined that Plaintiff's student and peer evaluations were at acceptable levels, her "[peer] evaluators also suggest[ed] that increased student participation and interaction would be desirable," as "many students were silent during class, and [Plaintiff] did not ask for the students to answer problems or question to encourage participation." *(Id.* at -179.) Furthermore, "a large

[16] Plaintiff objected to Choi serving on the PRC, and TCNJ agreed to replace Choi with Mayo. (Def. SOP□r11s.)

number of classes ... had been cancelled" and resulted in the students "teach[ing] themselves the material." *(Id.)* Plaintiff also "often arrived late for classes." *(Id.* at -180.) Finally, the students in one of Plaintiff's classes lacked knowledge in Microsoft Excel, and given the course's "significant" use of the program, the PRC found Plaintiff "did not address how to apply Excel to the material necessary to correct the deficiency." *(Id.)* The PRC summarized its review of Plaintiffs teaching: "While [Plaintiff's] teacher evaluations scores are acceptable, if not outstanding, the general impression is that she does not aspire to be a teacher of the first order. Since teaching is a primary consideration for evaluating a faculty's performance, the committee cannot recommend an extension of her contract." *(Id.)*

The PRC next reviewed Plaintiff's performance in the scholarly, creative, and professional activity category. The review commended her scholarly work, noting that it was "pleased with her research productivity and encourage[d] her to keep up the good work." *(Id.* -181.) Of note, the PRC pointed to multiple publications during her tenure in professional journals, three presentations at conferences, nine speaking engagements, and six ongoing working papers. *(Id.* at -180-81.)

Finally, the PRC addressed Plaintiff's "Service." The PRC applauded her efforts to get TCNJ recognized as a Chartered Financial Analyst Institute, serving as a reviewer for multiple professional publications, and working with three "finance professional organizations." *(Id.* -181.) However, the PRC determined that Plaintiffs efforts to create two MBA-level courses fell far short of the department's expectations. *(Id.* at -182.) When faced with criticism for the courses, Plaintiff was "resistant to change." *(Id.)* Ultimately, Plaintiff was removed from the MBA program "[a]s a result of her unwillingness to adapt her courses" and her unrelenting desire to teach both MBA courses, notwithstanding "[i]t is a well-known fact that no department faculty member would be

allowed to teach more than one MBA course." *(Id.)* Furthermore, the PRC determined that she had inadequately performed her student advising duties, failed to submit the required materials to the PRC in a timely manner, and "misrepresented the department's discussion on data sources to be purchased for MBA students." *(Id.* at -183.) Finally, the PRC stated that she negatively affected department morale and did not get along with her colleagues. *(Id.)* In what can only be viewed as alienating and condescending, Plaintiff sent an email in which she claimed "she worked harder and better than anyone else in the department." *(Id.)* As such, the PRC did not recommend Plaintiff for renewal. *(Id.* -184.)

Patrick and Mayo were the only two signees of the PRC; Hume disagreed with the recommendation and authored her own review in which she recommended Plaintiff's contract be renewed. *(See* ECF No. 114 at Ex. V.) Hume stated, *inter alia,* that she believed Plaintiff's teaching "has grown," pointing to new methods which Plaintiff has used, above department average student evaluations, and her own positive peer evaluation of Plaintiff. *(Id.* at -235.) Moreover, Hume argued other professors also struggle to design MBA courses, and that Plaintiff "express[es] her opinions openly and with purpose, but thoughtfulness." *(Id.* at -236.)

In accordance with TCNJ's RPD, Plaintiff submitted her eleven (11) page response on April 10, 2019 in which she responded to the PRC's statement and ultimate recommendation. *(See* ECF No. 114, Ex. W.) This was submitted to the next level of review - Dean Wong, who also met with Patrick, Choi, and Plaintiff separately to discuss Plaintiff's performance. *(See* ECF No. 114, Ex. X.)[17]

Dean Wong ultimately recommended against reappointment for a fifth year, concluding that Plaintiff "does not meet the criteria ... in the area[s] of teaching

[17] Wong replaced Leven as "Plaintiff accused Leven of being anti-Semitic." (Def. SOF□[136.)

or service." *(Id.* at -202.) Wong examined Plaintiff's student evaluations, which she noted contained "considerable variability." *(Id.* at -198.) Wong also observed students expressed "dissatisfaction with several aspects" of Plaintiff's teaching, including: "1) class should be more interactive and less lecture;" "4) classes often started late;" "8) although she had asked students to provide midterm course feedback, she did not change anything and appeared to become defensive about what she was doing;" and "9) she did not focus enough on teaching the underlying concepts, instead focusing much time on the calculations." *(Id.)* With respect to her peer evaluations, Wong found that Plaintiff had received, for the most part, positive evaluations during her first two years, with "notably less positives" reviews during her third year. *(Id.* at -199.)

Wong also took into consideration Plaintiffs response to the PRC's statements, finding "it quite puzzling that students would assert" that classes were cancelled or started late if that were not the case, and noting that Plaintiff's assertion that she only cancelled certain classes due to snow was false as there were no snow days on Fridays "during the period in question." *(Id.)* Regarding the design of the two MBA classes, which Wong evaluated in the "Teaching" portion of her review,[18] Wong found Plaintiff's proposed syllabi failed to differentiate the class in meaningful ways as compared to her ungraduated courses. *(Id.* at -200.) Wong "unfortunately ... concur[red] with [Plaintiff's] PRC that her teaching, which is the primary consideration in the evaluation of a faculty member's performance," did not rise to the level of "teaching excellence." *(Id.)*

With respect to scholarship, Wong determined

[18] Wong included the discussion of the MBA syllabi in the "Teaching" section of her review as she found the "design of syllabi" an "integral part of one's teaching," notwithstanding the fact that the PRC Review included this discussion in their "Service" section. *(Id.* at -200.)

Plaintiff "[met] the criteria for tenure and promotion successfully." *(Id.* at -201.) In her review of Plaintiffs "Service," Wong noted that there were instances of "unprofessional conduct", which had been confirmed in her conversations with Choi and Patrick, including her disagreements with colleagues. *(Id.)*

Blake served as the next level of review following Keep's recusal based on Plaintiff's allegations of discrimination against him. *(See* BCF No. 114, Ex. Z; *see also* Def. SOF ,1 150.)
Blake also recommended that Plaintiffs contract not be renewed. *(Id.* at -204.) While Blake also praised Plaintiff for her scholarship, he found her "record of teaching and service ... inconsistent
... [and] raise[d] enough concerns" not to recommend Plaintiff's contract renewed. *(Id.* at -205.) He pointed to student evaluations that voiced "concerns about [her] time management, lack of organization, and difficulty returning graded assignments . . . ." *(Id.)* Blake also found "troubl[ing]" that Plaintiff was not "maturing as a teacher" based on his review of her student and peer evaluations over time. *(Id.* at -206.)

In reviewing Plaintiff's work in the MBA program, Blake focused on the "manner in which [Plaintiff] responded to ... requests" to update her proposed syllabi, noting Plaintiff was "not singled out" to make modifications, but others had not protested changes as Plaintiff had. *(Id.* at
-207.) Blake believed Plaintiff's "difficulty maintaining productive, working relationships with [her] colleagues ... dampen[ed] the morale of [her] colleagues." *(Id.)* In his view, Plaintiff's antagonistic relationships with her colleagues "threaten[ed] the success of' TCNJ. *(Id.)* Plaintiff also submitted a briefresponse to Blake's recommendation. *(See* ECF No. 114, Ex. BB.)

President Foster served as the final decision maker in Plaintiff's reappointment process. (ECF No. 114, Ex. AA.) Foster concluded that Plaintiff had "clear strength and promise in [her] scholarship, a

mixed and ultimately insufficient record in teaching and, in service, a commendable record on behalf of [her] profession combined with a deficient record for [her] department and school." *(Id.* at -210.) Foster also found that Plaintiffs "largely non-substantive or dismissive responses to ... detailed and substantive concerns" voiced by the prior reviewers demonstrated a lack of "a desire to improve." *(Id.* at -211.) Foster was troubled by Plaintiff's "unprofessional conduct and working relationship within [her] department and school." *(Id.)* For these reasons, Foster chose not to renew Plaintiff's contract for a fifth year. *(Id.)*

Here, Defendant has set forth sufficient evidence for a reasonable factfinder to conclude that Plaintiff's poor performance was a legitimate, nondiscriminatory reason for the non-renewal of her contract. *See D'Alessandro v. City of Newark,* 454 F. App'x 53, 56 (3d Cir. 2011) ("[A] long history of poor performance satisfies the City's burden" under the second prong of *McDonnell Douglas."); Valente v. PNC Bank,* No. 20-1710, 2023 WL 5608943, at *8 (D.N.J. Aug. 30, 2023)
(finding that employee's poor performance constituted a legitimate and non-discriminatory reason for termination).

c. Step Three: Pretext

Because Defendant satisfied the second prong of *McDonnell Douglas,* the burden shifts back to Plaintiff to "show by a preponderance of the evidence that the employer's explanation is pretextual." *Fuentes,* 32 F.3d at 763. As noted above, Plaintiff must either point to evidence such that the factfinder may infer discrimination or establish "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in the proffered legitimate reason for termination. *Keller,* 130 F.3d at 1108-09, 1111; *see Lawrence v. Nat'! Westniinster Bank New Jersey,* 98

F.3d 61, 66 (3d Cir. 1996) (the plaintiff must "demonstrate that the employer's stated reasons were not its true reasons but were a pretext for discrimination" (quoting *Sempier v. Johnson & Higgins,* 45 F.3d 724, 728 (3d Cir. 1995)). Plaintiff sets forth several bases in an attempt to demonstrate that allegations of her poor performance, including those relied upon by the PRC and subsequent reviewers, were pretext.

i. Reassignment to Less Desirable Classes

Plaintiff first argues that Defendant's reasoning in reassigning her to "less desirable FIN201" courses and not allowing her to teach blended classes in July 2017 were done for discriminatory reasons. (Opp'n at 32-33.) As discussed above, these claims are time-barred under the statute of limitations applicable to Title VII actions. *See Nat'l R.R. Passenger Corp.,* 536 U.S. at 109. Notwithstanding, these actions are not pretextual. .

Plaintiff points to comments by Keep that "TCNJ does not offer blended classes in Spring and Fall" and "did not want to create a precedent," which she alleges are untrue because TCNJ previously allowed two male teachers to teach blended courses. (Opp'n at 32.)[1919] Plaintiff also points to testimony by Hume that TCNJ allows blended teaching. *(Id.* at 33.) Moreover, Plaintiff makes reference to Keep stating that "[b]eing pregnant and teaching a blended course could have posed a problem." *(Id.* at 5.)

That two male teachers were allowed to teach a blended course does not establish that rejecting Plaintiff's request amounts to gender or pregnancy

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[19] As discussed above, a blended course is one in which the professor meets with two sections of a class in person once per week and teaches the rest of the course through online materials. *(See* Def. SOF,,r65-66.)

discrimination. As Keep explained, "two professors who were abroad [were allowed] to teach online. Those were two exceptions. They were experimental with the approval of the provost." (ECFNo. 121, Ex. H.) Keep elaborated that TCNJ does not allow "blended courses during the academic semester and there is no desire to establish that preceden[t]." (Def. SOF, ¶ 70.) This was due to the fact that "TCNJ is a very traditional school that values the classroom experience." *(Id.* ¶ 78.)

While Defendant did not allow Plaintiff the option to teach a blended course, it found an accommodation to which she agreed and found "a practical solution for me and good for the baby." *(Id.¶* 71.) Defendant's accommodation allowed her "to stay home during the beginning of the spring semester" with the baby and "ensure[d] [Plaintiff's] full salary." *(Id. ¶* 70.) These actions supporting Plaintiff's pregnancy are inconsistent with discriminatory animus. *See Bames v. Off. Depot, Inc.,* No. 08-1703, 2009 WL 4133563, at *1 (D.N.J. Nov. 24, 2009), at *10 (finding a pay increase accompanied with disclosure of the plaintiff's protected status to her supervisor belied arguments of pretext).

To the extent Plaintiff points to Keep's comment that "[b]eing pregnant and teaching a blended course could have posed a problem," the full statement adds helpful context. Keep further explained: "It is not easy to schedule and plan when you are pregnant. If she had the baby while teaching an online course no one else would be able to easily take the course." (ECF No. 121, Ex. H.) The comment does not bespeak pregnancy or gender related animus. Keep does not claim that pregnant women are incapable of teaching at a high level; he merely explains that it was not wise to allow Plaintiff to teach a blended course that she may well not be able to teach to completion because of the impending childbirth. Further, this decision was made by the Provost, not Keep, who was Dean at the time.

Further, throughout her opposition, Plaintiff points to an additional comment by Keep, prior to being appointed Interim Provost, where he gave a speech at his farewell party in which he stated he "'can get rid of anybody' if he wished." (Opp'n at 3, 5, 33, 34, 37.) Plaintiff believes this comment demonstrates that Defendant was "motivated and prepared to 'get rid' of her" and "provides additional insight into why Wong and Blake were under additional pressure to support Keep's effort to terminate [Plaintiff] and recommended non-renewal of her contract." (Opp'n at 33-34.) Plaintiffs contention that this one comment, at a social event, demonstrates a conspiracy to discriminate against Plaintiff fails for a myriad of reasons. There is no support in the record that the comment was directed in any way against Plaintiff. As Hume testified, Keep made the comment "during [a] party" while giving a speech. (Hume Dep. Tr. at 91:4-25.) The comment does not reference Plaintiff, her gender, her pregnancy, or her national origin, nor is it in a context that would enable a factfinder to infer that Keep was discussing Plaintiff.

Notwithstanding the leap, even if the Court construed the comments as somehow relating to Plaintiff, they cannot form the basis of Plaintiff's discrimination claim. *See Roebuck v. Drexel Univ.,* 852 F.2d 715, 733 (3d Cir. 1988) (noting past statements "alone" failed to demonstrate discrimination.); *Ezold v. Wolf, Block, Schorr & Solis-Cohen,* 983 F.2d 509, 545 (3d Cir. 1992) ("Stray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision."). Keep played no role in Plaintiff's non-renewal, as he recused himself. *See Parker v. Verizon Pennsylvania, Inc.,* 309 F. App'x 551, 559 (3d Cir. 2009) ("declin[ing] to depart from the principle that ... stray remarks are rarely given great weight when made temporally remote from the decision to terminate" employee, where relevant

statements were made seven months prior to termination and "directly relate to the [termination] decision").

Finally, Plaintiff cannot establish pretext by stating Keep concocted a plan, in which Wong and Blake participated, with no evidence besides Plaintiff's speculative, unsupported belief. *Jones v. Sch. Dist. of Philadelphia,* 198 F.3d 403, 414 (3d Cir. 1999) (holding that "allegations in [plaintiff's] affidavit which he predicates on nothing more than his beliefs without having actual knowledge of them" failed to establish pretext); *Williams,* 2014 WL 7011162, at *15 ("An inference based upon speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." (quoting *Johnson v. Multi-Solutions, Inc.,* 493 Fed. Appx. 289, 292 (3d Cir. June 28, 2012))). As such, Plaintiff does not demonstrate Keep's comments or the denial of her request to teach blended classes establish pretext or allow a reasonable factfinder to infer same. *See Fuentes,* 32 F.3d at 765 ("To discredit the employer's proffered reason, however, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent."). Here, there is no evidence of discriminatory animus.

ii. Schedule Accommodations Due to Pregnancy

Plaintiff next argues that "Choi and Keep wanted to get rid of Plaintiff because pregnancy creates a substantial difficulty to accommodate changes in teaching schedules." (Opp'n at 33.) To support her claim that Defendant wanted to get rid of Plaintiff because of her pregnancy and accommodations, Plaintiff points to Keep's comment about "get[ting] rid of anybody," Choi "fablicating and supplying the inconect information to

Leven and Keep regarding Plaintiff's performance," and her male colleagues finding her pregnancy accommodations "irritating" because Plaintiff received more time off than her male co11eagues. *(Id.)* As discussed above, Keep' s comment fails to show pretext. With respect to pregnancy accommodations "initating" male professors, Plaintiff points to the PRC Review in which Mayo and Patrick discussed Plaintiff's pregnancy accommodation in which she only taught courses in the second half of the semester and characterized this as "an additional seven weeks of paid maternity leave." (PRC Review at -183.) While Plaintiff may believe this comment illustrates "irritation" on the part of her colleagues, there is no support in the record for such a claim. *Williams,* 2014 WL 7011162, at
*15. Finally, Plaintiff does not establish what infom1ation Choi allegedly "fabricated." Upon a review of Plaintiff's opposition, the Court believes Plaintiff is referring to Choi' s role in removing her from the MBA program and her "bad review of the same class that she positively reviewed just a year before." (Opp'n at 28, 34.) With respect to Choi's negative class evaluation, a subsequent negative review following a positive review fails to establish pretext. *See Kautz,* 412 F.3d at 474 (holding that "us[ing] past positive performance reviews to show that more recent criticism was pretextual fails as a matter of law").

iii. MBA Removal

Plaintiff next contends that her removal from the MBA program was discriminatory and done to create a pretext to subsequently not renew Plaintiff's contract. (Opp'n at 34.) Patrick and Mayo, who "had a history of prior discrimination of women," used Choi and Leven, Plaintiff contends, to discriminate against Plaintiff and remove her from the program. *(Id.)*

Keep and Leven testified to numerous reasons

why Plaintiff was removed from the MBA program, including: Plaintiff insisted on teaching two courses, despite a TCNJ rule that limited faculty to only teaching one MBA course; she wanted to choose who would teach the other MBA course, a task that was not her "role or responsibility [as] a junior faculty member;" she persisted in "us[ing] her undergraduate book at a graduate level," despite being asked to make the change;
and Plaintiff maintained that TCNJ should use Bloomberg as the "data source" even after she was told TCNJ did not have the money for the program. (Def. SOF¶¶51-53.) Plaintiff claims that Defendant's reasoning is unsupported. (Opp'n at 35.) For example, Plaintiff contends that she "never insisted on using an undergraduate book." (Id. at 34.) However, it is not enough to dispute Defendant's reasoning whether Plaintiff agreed or resisted to change a book-she must show weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" that undermine the given reasoning. Fuentes, 32 F.3d at 765. Whether it was a wise decision to remove Plaintiff from the MBA program, or whether she was removed for disagreeing with her superiors about the textbook or syllabi is not the focus of the inquiry. Klimek, 618 F. App'x at 80 (Courts are not a '"a super-personnel department' tasked with correcting unduly harsh employment actions." (quoting Brewer, 72 F.3d at 332)). Putting Plaintiffs subjective beliefs aside, Plaintiff does not demonstrate any discriminatory animus underlying Defendant's decision to remove her from the MBA program. With no evidence of pretext, let alone by a preponderance of the evidence, Plaintiff's claim regarding her removal from the MBA program fails. See Jones, 198 F.3d at 414.

iv. Contract Non-Renewal

Plaintiff argues that "[t]he whole non-renewal process is surrounded by inferences of true intent to remove Plaintiff at all costs." (Opp'n at 35.) Plaintiff does not elaborate on this conclusory assertion. The Court presumes that Plaintiff asserts that the Defendant's reasons in the PRC Review of poor performance are all pretext for discrimination. As discussed above, the Court has addressed many of these arguments; the Court discusses the remainder below, and holds that there is no evidence in the record of pretext for Plaintiff's allegations.

In her opposition, Plaintiff references Patrick's supposed gender related comments and actions, as well as the Finance Department's alleged difficult "time giving women tenure" to support an inference of gender discrimination. *(Id.* at 20-24.) Plaintiff first points to the fact that Patrick recommended Kim over Plaintiff for a position at TCNJ in 2015. Plaintiff contends that this decision could only be the case based on Patrick preferring a male, non-Ukrainian professor, as Patrick made a collllllent about her appearnnce. (Opp'n at 21-22.)[20] Hume also testified that Patrick was accused of gender discrimination against Leven. *(Id.* at 94:14-17.) Further, Plaintiff points to Hume's deposition testimony in which she stated that she was told, upon her arrival at TCNJ, "that the department ... has a difficult time giving women tenure." (Hume Dep. Tr. at 68:2-8.)

While Patrick's collllllent on Plaintiff's appearance may have been unkind and inappropriate, the idle, stray comment fails to establish pretext for Plaintiff's non-renewal. *See Roebuck,* 852 F.2d at 733;

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[20] In her deposition, Hume explained that despite Patrick's comment, the decision to offer Kim the job was "unanimous" and based on an agreement on "the strongest candidate after having the on campus interviews." (Hume Dep. Tr. at 23:17-23.) Kim had the stronger on campus interview. *(Id.* at 24:4-8.)

Keller, 130 F.3d at 1112 (four or five month proximity between comment and adverse action too long to demonstrate animus). Further, Plaintiff fails to demonstrate that Patrick's alleged discrimination against Leven affected Patrick's review of Plaintiff, aside from her self-serving, conclusory allegation regarding same.[21] In addition, the broad, hearsay statement that the Finance Department was reluctant to offer women tenure, a colllllllent not attributable to any one person and made years before Plaintiff began at TCNJ, is too attenuated from Plaintiffs non-renewal to demonstrate pretext. *See Ezold,* 983 F.2d at 545 (finding irrelevant "[s]tray remarks ... by [non]-decisionmakers"); *Creely v. Genesis Health Ventures, Inc.,* 184 F. App'x 197, 200 (3d Cir. 2006) ("In this case, however, Mr. Creely has not presented evidence that Mr. Kirkland's actions infected the decisionmaking process at Crestview, even if Mr. Kirkland himself may have been discriminatorily motivated."); *Rose v. Woolworth Corp.,* 137 F. Supp. 2d 604, 610 (E.D. Pa. 2001) (finding no pretext where there was "no evidence" that supervisor's racist comments "were linked, temporally or otherwise, to the decision to fire Plaintiff).

Finally, Plaintiff claims, without support, that "Mayo and Patrick further discriminated against Plaintiff in 2019 when both were on her Promotion and Reappointment committee," as "[v]iewed together with events of prior discrimination . . . their true motive could be found by a reasonable factfinder as a pure act of gender and place of origin discrimination." (Opp'n at 23.) However, without more than her "subjective beliefs," Plaintiff cannot demonstrate that Mayo and Patrick recommended Plaintiff for non-renewal based gender or national origin discrimination rather than performance. *Shah v. New Jersey Off of Homeland Sec. & Preparedness,* No. 15-3233, 2018 WL 1535282, at *11

[21] Hume made reference to this supposed, but uncorroborated discrimination of Leven by Patrick. Aside from Hume's verbal reference, Plaintiff offered no additional proof of same.

(D.N.J. Mar. 29, 2018) (collecting cases for the proposition that a plaintiff's "subjective beliefs" that discrimination was the cause of an adverse action does not serve as the "requisite evidence of pretext to defeat summary judgment").

v. PRC Review

Plaintiff next argues that the PRC procedure TCNJ applied in her case contained "severe process violations," demonstrates a finding of pretext in TCNJ' s decision not to renew her contract. (Opp'n at 35.) While it is true that Hume did not sign the PRC Review, she noted that "several of the key items in teaching and service have omitted facts or are nrisleading in context," and she voiced that concern that "the PRC's recommendation was developed without collaboration or discussion with the three committee members," *(see* ECF No. 114, Ex. V. at -235), Hume "highlighted these [omitted or misleading facts] by section" in her letter, in which, as detailed above, Hume believed TCNJ should renew Plaintiffs contract. *(Id.)* Hume's review provides a rebuttal to the PRC Review. *(Id.)*

As the RPD explains:

> A PRC member may refuse to sign the recommendation only in the event that the member believes the recommendation does not accurately reflect the decision of the PRC or that there exists a violation of the process set forth in this document. Any PRC member who refuses to sign the PRC's report/recommendation is expected to send a written explanation for his/her refusal to sign to the appropriate

Dean.

(ECF No. 114, Ex. Tat -059-60.) Hume did just this, explaining that, in her opinion, Plaintiff's teaching and service rose to a level she believed justified a contract renewal. (ECF No. 114, Ex. V.) Moreover, Blake, in reviewing Plaintiff's material, requested "an explanatory letter" from Hume, which he reviewed prior to meeting with Plaintiff. (ECF No. 114, Ex. Z at -204.) While Hume disagreed with the PRC's recommendation, she voiced her concerns to Blake, who took them into account in making his recommendation. Finally, Wong, Blake, and Foster all conducted independent reviews Plaintiff's performance to arrive at their recommendation. *(See* ECF No. 114, Exs. X, Z, and AA.) While Hume may have disagreed with the PRC's conclusion, her concerns dealt with how Patrick and Choi weighed Plaintiff's performance record. Her letter made no mention of any discriminatory animus in the PRC Review or process.

Moreover, in her letter responding to the PRC Review, Plaintiff states that "the PRC's recommendation constitutes an obvious and illegal act of retaliation in response to [her] report of discrimination," and Plaintiff stated that she had "a reasonable belie[f] that report was shared with the members of the PRC." (ECF No. 114, Ex. W. at -186.) However, as Wong explained in her letter, Patrick told Wong that he "did not know any details of [Plaintiffs discrimination] claims," and Choi did not raise the issue with Wong. (ECFNo. 114, Ex. X at-201.) Further, Wong explicitly states that Plaintiff "did not share any details about her claims of discrimination" with her. *(Id.)* Plaintiff's self-serving belief and conclusory statement that the PRC report, and all subsequent reviews, were pervaded with discriminatory animus does not establish pretext. *Williams v. Borough of W Chester, Pa.,* 891 F.2d 458, 460 (3d Cir. 1989) ("[A] nonmoving party in such a case cannot defeat summary judgment simply by asserting that a jury might disbelieve an opponent's" testimony; rather the plaintiff

typically must put forward evidence to establish a dispute of material fact.). That Hume, who was one of six (6) individuals to weigh Plaintiff's performance, disagreed with the result does not "demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them 'unworthy of credence.'" *Fuentes,* 32 F.3d at 765 (quoting *Ezold,* 983 F.2d at 528) (emphasis in original)).

vi. Dean Wong's Report

Plaintiff next argues that "Dean Wong's selection for the review is highly suspicious." (Opp'n at 36.) In support, Plaintiff claims President Foster approached Wong "in private" to discuss "a special request" to review Plaintiff's reappointment request in place of Leven, and Wong was "perfect for the job" based on her "involve[ment] in another case of non-reappointment just a few years ago." *(Id.)* Further, Plaintiff attacks Wong's supposed "independent review" of Plaintiff's materials. *(Id.)* In support, Plaintiff points to the fact that Wong never spoke with Hume regarding her missing signature on the PRC Review, despite acknowledging this fact in her own review; and Wong's references to conversations she had with Choi, even though she "claimed she did not accept any additional evidence." *(Id.)* Finally, Plaintiff contends that Wong "relied on unfounded accusations that Plaintiff cancelled class and started classes late," which "could only be brought forward for discriminatory and retaliatory purposes." *(Id.)*

Plaintiff is correct that Wong declined to speak with Hume. However, Plaintiff errs in contending that Wong stated she would not consider any additional evidence. Instead, Wong stated she would not rely on any supplementary written materials that were provided to her by Patrick and Choi. On the other hand, Wong referenced a conversation she had with Choi, which was

explicitly allowed under the RPD. TCNJ's RPD directs the Dean to "meet[] with the chair of the PRC and chair of the department." (ECF No. 114, Ex. T at -065.) In this case, Wong met with Patrick and Choi. (ECF No. 114, Ex. X at -197, -199.) Wong, as she stated, did not rely on any written materials provided by Patrick and Choi. As such, it is not, as Plaintiff contends, that Wong claimed she did not use any additional evidence; instead, Wong did not rely on any additional written materials, instead relying on her conversation with Choi, which was allowed under the RPO.

That Wong did not speak to Hume, despite her absent signature on the PRC Review, fails to demonstrate pretext for gender, pregnancy, or national origin discrimination. Plaintiff "cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." *Fuentes,* 32 F.3d at 765. Plaintiff disputes certain of Wong's bases for faulting Plaintiff's performance. Plaintiff, for instance, claims that Wong e1Ted in finding Plaintiff cancelled classes, as Plaintiff had pre-approved travel for conferences on those days. (Opp'n at 37.) In addition, the clock in Plaintiff's classroom was ten minutes late, which caused students to believe Plaintiffs she started class late. *(Id.)* Plaintiff argues that Defendant and its employees could not "find substantial evidence to justify their denial" as "Plaintiff's file was so strong." *(Id.)*

Assuming *arguendo* Plaintiff is accurate, Plaintiff fails to "demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in" Wong's report. *Fuentes,* 32 F.3d at 765. Wong listed both Plaintiff's strengths, such as in her scholarship, and her weakness, including in her teaching. (ECF No. 114, Ex. X at -199-200.) Wong, for example, relied on the averages of Plaintiff's student evaluation scores to find "considerable variability" in these scores. *(Id.* at -

197.) Moreover, Wong listed eight (8) aspects in which students expressed issues with Plaintiff's classes; Plaintiff only disputed two. *(Id.* at -198.) Wong also noted that Plaintiff's peer reviews "were notably less positive" in her third year. *(Id.* at -199.) Finally, Wong compared Plaintiff's proposed MBA syllabi with those of her undergraduate courses and independently concluded that the proposals were insufficient. *(Id.* at -200.) While Plaintiff disputes aspects of Wong's review, Plaintiff fails to demonstrate that the Wong's detailed, six (6) page review as a whole "lacks credence." *Fuentes,* 32 F.3d at 765.

Nor does Plaintiff demonstrate "that an invidious discriminatory reason was more likely than not a motivating or determinative cause of [Wong's] action." *Id.* at 764. Plaintiff asserts, with no support, that Wong's report can only be based on "discriminatory or retaliatory purposes." (Opp'n at 36.) However, Plaintiff provides no factual basis for these statements. At most, Plaintiff points to the circumstances in which Foster approached Wong to replace Leven in the reappointment process. Wong testified that at "a celebratory event ... like a luncheon or dinner[,] [Foster] pulled [her] aside ... and just said a request will be coming from her and to keep an eye out for it." ("Wong Dep. Tr.," ECF No. 114, Ex. DD at 24:22-25:5.) Wong also testified that she had participated in over ninety-five (95) reappointment reviews, including only about five (5) which resulted in the candidate not being promoted or reappointed. (Wong Dep. Tr. at 18:10-17.) However, neither of these facts, as Plaintiff contends, establish that Wong was "perfect for the job" to participate in a conspiracy to terminate Plaintiff. (Opp'n at 36.) Plaintiff cannot baselessly assert discrimination with no facts supported in the record. *See Jones,* 198 F.3d at 414 ("[A]llegations in [plaintiff's] affidavit which he predicates on nothing more than his beliefs without having actual knowledge of them" failed to

establish pretext). As such, the Court finds Plaintiff fails to establish pretext with respect to Wong's report.

vii. Blake's Report

Plaintiff next asserts that Blake "was on a mission to remove" Plaintiff. (Opp'n at 38.) Plaintiff contends that he "agreed with PRC's and Wong's opinion at least seven times," including with the "made-up issues" of "'cancelled classes' and 'tardiness' despite the evidence that these were false and used as a pretext." (Id.)[22] Blake, however, focused on additional issues with Plaintiff's teachings, including a lack of preparation and late grades. (ECF No. 114, Ex. Z at-205.) He also cites to a lack of improvement in Plaintiffs student evaluations. *(Id.* at -206.) Plaintiff again cites no support for her assertion that Blake's review was pretextual.

viii. Foster's Decision Not to Renew Plaintiff's Contract

Finally, Plaintiff recycles her same arguments that Foster's ultimate recommendation is nothing "more than lipstick on a pig," rubber-stamping the alleged discrimination by the PRC and subsequent levels of review. (Opp'n at 38.) Further, Plaintiff argues that Foster relied on false information to support Plaintiff's non-renewal, such as that "Plaintiff only had lower, but still positive student evaluation scores in Spring 2018" because Keep reassigned her to more difficult classes. (Opp'n at 39.) Finally, Plaintiff alleges Foster did not

[22] The Court notes that Plaintiff attached "Travel Requests," which she alleges demonstrate that her cancelled classes were in fact approved by the administration. (See ECF No. 121, Ex. T.) One student review for the course "FIN201", which appears to be a mid-course review, that Blake quotes states that in Plaintiff's Spring 2018 class, Plaintiff had "cancelled 4 Friday classes thus far." (ECF No. 114, Ex. Z at - 206.) Plaintiff's submitted travel receipts appear to only show that Plaintiff missed one day of FIN201 instruction. (See ECF No. 121, Ex. T.)

"disclaim" knowledge of Plaintiff's EEOC complaint and simply relied on the discrimination in others' performance reviews to justify termination. (Opp'n at 39.)

As discussed above, Plaintiff's disagreement with Foster's review of her performance does not demonstrate pretext. *See Klimek,* 618 F. App'x at 80. Moreover, Plaintiff's reassignment to harder classes, while perhaps resulting in Plaintiff teaching classes she would have preferred not to, was not grounded in pretext. *See Atkinson v. LaFayette Coll.,* 460 F.3d 447,454 (3d Cir. 2006) ("The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is discrimination." (cleaned up)). For these reasons, the Court finds that Foster's recommendation was not pretext for discrimination. Therefore, the Court grants Defendants' summary judgment on Counts One and Two.

2. Plaintiff's Pregnancy Discrimination Claim

To satisfy her *prima facie* burden for a pregnancy discrimination claim, Plaintiff "must show that (1) she was pregnant, and, that the employer knew it; (2) that the plaintiff was qualified for her job, meaning she was performing her job well enough to meet her employer's legitimate expectations; (3) that she suffered an adverse employment decision; and (4) that there is a nexus between her pregnancy and the adverse employment action." *Eames,* 2009 WL 4133563, at *6.

As discussed above, the non-renewal of Plaintiff's contract constitutes an adverse employment action. The Court also accepts that Plaintiff was qualified to perform her job. Therefore, the Court turns to whether Plaintiff was pregnant, and the employer knew, at the time she suffered the

adverse employment action. Plaintiff contends that she "became pregnant in 2019 before she submitted her dossier for promotion and reappointment." (Opp'n at 13.) However, Plaintiff does not claim that TCNJ knew of her pregnancy. Instead, Plaintiff argues that she "can establish the 'knowledge' part ... because she was questioned on multiple occasions if she wanted to have more children and she openly discussed her desire to get pregnant again." *(Id.* at 13-14.) In addition, Plaintiff claims that Defendant "was aware that Plaintiff was in her 40s ... and knew well that her pregnancy would be within the next few years." *(Id.* at 14.)

The Court is guided by the Third Circuit's analysis in *Geraci v. Moody-Tottrup, Int'l, Inc.,* 82 F.3d 578 (3d Cir. 1996). There, the Third Circuit discussed a plaintiff's burden to demonstrate an employer's knowledge of her pregnancy. *Id.* at 581. The ThiTd CiJ.-cuit explained that "pregnancy" claims differ from other categories of discrimination, as "its obviousness varies, both temporally and as between different affected individuals." *(Id.)* "If the pregnancy is not apparent and the employee has not disclosed it to her employer, she must allege knowledge and present, as part of her *prima facie* case, evidence from which a rational jury could infer that the employer knew that she was pregnant." *Id.* The plaintiff in *Geraci* "was not visibly pregnant," nor had she told management about her pregnancy. *Id.* at 582. She only had told "six out of twenty co- workers," but claimed that "pregnancy became a 'common topic of discussion in the office'" and thus "management must have known." *Id.* The Third Circuit held that the "sheer speculation" concerning the employer's knowledge of the plaintiff's pregnancy failed "to create a genuine issue of material fact." *Id.; c.f Amato v. Verint Sys., Inc.,* No. 04-3489, 2007 WL 604804, at *3 (D.N.J. Feb. 16, 2007) (concluding a factfinder could believe the employer knew of the plaintiff's pregnancy where plaintiff had gained approximately ten pounds and her supervisor asked

whether she planned to have more children at a "social event" where her "abstention [from alcohol] was obvious").

In the case at bar, Plaintiff, like the plaintiff in *Geraci,* fails to demonstrate TCNJ knew she was pregnant in the Spring of 2019. Plaintiff does not claim that she told any of her colleagues, nor does she allege that was visibly pregnant or had gained weight as a result of the pregnancy.

Moreover, Plaintiff's argument that TCNJ must have known she was pregnant based on her age, comments she had made about wanting more children, and discussions among faculty regarding children is the type of "sheer speculation" that the Third Circuit rejected in *Giraci.* As such, the Court finds Plaintiff fails to establish a *prima facie* claim for pregnancy discrimination, and therefore, the Court grants Defendant summary judgment on Count Three.[23]

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[23] Even if Plaintiff's removal from the MBA program constituted such an action, she still fails to satisfy her *prima facie* burden. Plaintiff speculates that her removal from the MBA program was based on "fabricated and discriminatory reasons based on her pregnancy" in 2018. The Court of course expresses its sympathy for Plaintiff's miscarriage that occurred on November 5, 2018; nonetheless, it is not clear that Defendant knew of Plaintiff's pregnancy at the time. Plaintiff does not contend that she told anyone at TCNJ that she was pregnant. Plaintiff also testified that she was two (2) months pregnant at the time of her miscarriage. (Pl. Dep. Tr. at 152:1-2.) Plaintiff does not assert that she was visibly pregnant such that TCNJ would have known about the pregnancy. Moreover, Plaintiff fails to point to any facts demonstrating that her removal was related to her pregnancy (assuming Defendant had knowledge of same), aside from a conclusory allegation that "Dr. Kim and Dr. Choi ... were not removed from [the] MBA program." (Opp'n at 26.) Plaintiff, however, fails to demonstrate that Kim and Choi are similarly situated. This does not suffice to demonstrate an inference of discrimination. *See Skoorka,* 2018 WL 3122331, at *12 ("[I]t is not enough simply to recite workplace grievances and state the ethnic backgrounds of the participants."). Finally, as discussed above, Defendant points to legitimate, non-discriminatory reasons to remove Plaintiff from the MBA program, which Plaintiff fails to rebut as pretextual.(citing *Moore v. City of*

3. Plaintiff's Retaliation Claim

Plaintiff asserts a Title VII retaliation claim in Count Three. (Compl. 11160-65.) Plaintiff claims that "Defendant took adverse employment action against" her following her reporting of discrimination to TCNJ and her filing of an EEOC charge. *(Id.)* Plaintiff asserts that her contract was not renewed following her internal complaint of discrimination and EEOC charge. (Opp'n at 27.) To succeed on a retaliation claim, a plaintiff must first establish a *prima facie* retaliation claim by "prov[ing]: (1) they engaged in protected activity; (2) the employer took an adverse employment action against him; and (3) a causal connection between the protected activity and the adverse employment action. *Larochelle v. Wilmac Corp.,* 210 F. Supp. 3d 658, 698 (E.D. Pa. 2016) Assuming *arguendo* that Plaintiff satisfies her *prima facie* burden, Plaintiff fails to rebut Defendant's non-retaliatory rationale for not renewing Plaintiff's employment: poor performance. Plaintiff's pretext arguments are identical for both discrimination and retaliation. *(See* Opp'n at 31-39.) As such, and discussed above, Plaintiff has failed to demonstrate the "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in Defendant's justification. *Fuentes,* 32 F.3d at 765. The Court grants Defendant summary judgment on Count Four.

Phila., 461 F.3d 331, 340-41 (3d Cir. 2006)). "If the employee establishes his *prima facie* claim, the *McDonnell Douglas* approach applies." *James v. Tri-Way Metalworkers, Inc.,* 189 F. Supp. 3d 422,441 (M.D. Pa. 2016).

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED**, and judgment for Defendant on all Counts of Plaintiff's Complaint will be entered. An appropriate Order will accompany this Opinion.

/s/ Robert Kirsch

ROBERT KIRSCH
UNITED STATES DISTRICT JUDGE

Dated: January 26, 2024