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

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| EVELYNE BEAUBRUN, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | NO. 05-06688 |
| | : | |
| v. | : | |
| | : | |
| INTER CULTURAL FAMILY, et al. | : | |
| | : | |
| Defendants. | : | |

**MEMORANDUM AND ORDER**

Stengel, J. July 13, 2006

This employment action involves claims of national origin discrimination brought by an employee against her employer and supervisors. Evelyn Beaubrun ("Plaintiff") contends that defendants Inter Cultural Family ("ICF"), Jacqueline Reed, and Myra Brown (collectively "Defendants") discriminated against her based on her national origin during her employment. Presently before the Court is Defendants' motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, I will grant the motion in part and deny it in part.

## I. BACKGROUND[1]

ICF is a private organization with its place of business in Philadelphia, Pennsylvania.[2] Plaintiff, a woman who is of Haitian national origin, began working for

[1]The facts are taken from the complaint and are accepted as true for the purposes of this motion.

[2]The complaint does not indicate in what type of business ICF is engaged.

ICF on September 18, 2000, as a social worker and interpreter. Plaintiff was qualified for all of her duties during her employment at ICF, and she performed her job functions professionally and efficiently.

Defendant Reed became Plaintiff's supervisor in November 2003. Starting on or around that time, and continuing until the end of Plaintiff's employment with ICF, Reed engaged in a "pattern of discriminatory and disparate treatment of Plaintiff." Reed's discriminatory actions included: (1) "refusing to perform a required performance evaluation of Plaintiff;" (2) "disparaging Plaintiff's professional reputation in the presence of her coworkers and/or subordinates;" (3) "falsely accusing Plaintiff of misconduct to her superiors and recommending that she be terminated from employment;" (4) referring to Plaintiff as that "little Haitian girl;" (5) making false statements about Plaintiff's work performance to another management employee at ICF; and (6) complaining about hiring ICF staff to assist Haitian clients. Defendant Brown, another supervisor at ICF, endorsed Reed's statements and actions.

In January 2004, defendants Reed and Brown met with Evelyn Marcha-Hildago, ICF's chief executive officer. The purpose of this meeting was to plan a method for terminating Plaintiff's employment by falsely accusing her of misconduct at work. Various other incidents of discrimination also occurred during Plaintiff's employment at ICF, including: (1) ICF Director Denise Cutrone's complaints about assisting persons of Haitian descent in Plaintiff's presence; (2) Cutrone's attempt to convince an ICF client to

make a false complaint of professional misconduct and poor job performance about Plaintiff; and (3) ICF's failure to promote Plaintiff to positions for which she was qualified.

On January 9, 2004, Defendants falsely accused Plaintiff of leaving work without permission and without notifying anyone of her whereabouts. In reality, Plaintiff had previously notified ICF personnel (including Reed) that she would be delivering work documents to another location in Philadelphia. Shortly after this incident, Defendants held additional private meetings to continue the plot to terminate Plaintiff's employment. At some point during her employment, Plaintiff became aware of Defendants' discrimination and protested their conduct, but on January 30, 2004, Defendants threatened to terminate her employment immediately. Unlike employees who were not of Haitian descent, Plaintiff did not receive any forewarning that her employment was in jeopardy. On February 2, 2004, Plaintiff was either terminated or she resigned from ICF as a result of Defendants' discrimination and the threat of termination.[3]

Plaintiff's complaint in this case alleges that she filed a timely complaint with both the Pennsylvania Human Relations Commission (the "PHRC") and the Equal Employment Opportunity Commission (the "EEOC"). After receiving a right to sue letter from the PHRC, Plaintiff filed the current action on December 22, 2005. The complaint

[3]There appears to be an inconsistency within the complaint surrounding the conclusion of Plaintiff's employment at ICF. Paragraph 10(g) states that "Defendants terminat[ed] Plaintiff's employment based on a known false reason," while paragraph 25 alleges that Plaintiff "resigned her employment with Defendants under duress." Compl. ¶¶ 10(g), 25.

alleges violations of: (1) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*. ("Title VII"); (2) 42 U.S.C. § 1981 ("section 1981"); and (3) the Pennsylvania Human Relations Act, 43 PA. CONS. STAT. §§ 951–963 (the "PHRA"). Specifically, Plaintiff alleges the following claims of discrimination based on her national origin:

1. Disparate treatment in violation of Title VII;
2. Disparate treatment in violation of section 1981;
3. Disparate treatment in violation of the PHRA;
4. Hostile work environment in violation of Title VII;
5. Hostile work environment in violation of section 1981;
6. Constructive discharge in violation of Title VII; and
7. Constructive discharge in violation of section 1981.

Plaintiff alleges that she has "suffered economic loss, loss of her professional reputation as a social worker and interpreter, [and] psychological injury/emotional distress" as a result of Defendants' discriminatory conduct. Accordingly, she seeks compensatory damages, punitive damages, back pay, front pay, a declaration that Defendants discriminated against her based on her national origin, and attorneys' fees and costs.

## II. LEGAL STANDARD FOR A MOTION TO DISMISS

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). Courts may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45–46 (1957)). When considering a motion to dismiss, courts must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. See id. See also FED. R. CIV. P. 8(a) ("A pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief"). A plaintiff, however, must plead specific factual allegations. Neither "bald assertions" nor "vague

and conclusory allegations" are accepted as true. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995).

## III. DISCUSSION

### A. The Title VII and PHRA Claims Against Defendants Reed and Brown

Title VII protects employees from employer discrimination with respect to the compensation, terms, conditions, and privileges of employment. Tex. Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 259 (1981). Title VII provides, in pertinent part:

> It shall be an unlawful employment practice for an employer--
>
> > (1) 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 race, color, religion, sex, or national origin . . . .

42 U.S.C. § 2000e-2 (emphasis added). Notably, the statute by its terms applies only to "employers," while also providing a separate definition for "employees." See 42 U.S.C. § 2000e(b), (f). The Third Circuit has specifically held that Title VII does not impose individual liability on the agents or employees of a defendant employer. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1077–78 (3d Cir. 1996) (en banc), cert. denied, 521 U.S. 1129 (1997).

The PHRA is generally applied in conformance with Title VII.[4] Dici v. Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996). Similar to Title VII, section 955(a) of the PHRA provides separate definitions for "employer" and "employee," see 43 PA. CONS. STAT. § 954(b)–(c), and the Third Circuit has held that individuals may not be held liable under this section of the statute. See Dici, 91 F.3d at 552.

Section 955(e) of the PHRA, by contrast, extends its protection beyond the scope of Title VII and may be applied to individual defendants. Section 955(e) forbids "any person, employer, employment agency, labor organization or employe[e], to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice." 43 PA. CONS. STAT. § 955(e). Direct incidents of employment discrimination by non-supervisory employees are not covered by section 955(e). See Dici, 91 F.3d at 552–53 (citation omitted). Supervisory employees, however, may be held liable under section 955(e) because they share the discriminatory purpose and intent necessary to sustain a claim of aiding and abetting. Davis v. Levy, Angstreich, Finney, Baldante, Rubenstein & Core P.C., 20 F. Supp. 2d 885, 887 (E.D. Pa. 1998) (citing Dici, 91 F.3d at 552–53).

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[4]Section 955(a), the employment discrimination provision of the PHRA, provides in relevant part:

> It shall be an unlawful discriminatory practice . . . [f]or any employer because of the . . . national origin . . . of any individual . . . to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual . . . or to otherwise discriminate against such individual. . . .

43 PA. CONS. STAT. § 955(a).

In this case, the complaint alleges that defendants Reed and Brown (the "Individual Defendants") are individual employees of ICF. See Compl. ¶¶ 4–5. Accordingly, I will dismiss Plaintiff's Title VII claims against the Individual Defendants. See Sheridan, 100 F.3d at 1077–78. The complaint further alleges that the Individual Defendants are supervisory employees at ICF. Compl. ¶¶ 4–5. Moreover, it states that they aided and abetted ICF in discriminating against Plaintiff, and that "[o]n/around January 2004, Defendants met with another [ICF] CEO, Evelyn Marcha-Hildago, for the purpose of plotting Plaintiff's termination from employment based on a false allegation of misconduct." Id. at 14. These allegations are sufficient to state a claim of aiding and abetting in violation of PHRA section 955(e). I will therefore deny Defendants' motion with respect to all of the PHRA claims against the Individual Defendants.

**B. The Section 1981 Claims**

The Supreme Court has clearly held that section 1981 protects individuals against private employment discrimination on the basis of race. Georgia v. Rachel, 384 U.S. 780, 791 (1966). Whether the statute provides a federal remedy for discrimination based on national origin is less clear. Section 1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white

> citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a).

In St. Francis Coll. v. Al-Khazraji, 481 U.S. 604, 613 (1987), the Supreme Court examined the history of section 1981 and concluded that "Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." The Court noted that "section 1981, at a minimum, reaches discrimination against an individual because he or she is genetically part of an ethnically and physiognomically distinctive grouping of homo sapiens." Id. (citations and quotations omitted). Justice Brennan's concurrence in Al-Khazraji provides that he "read the Court's opinion to state only that discrimination based on *birthplace alone* is insufficient to state a claim under [section] 1981." Id. at 615 (Brennan, J., concurring) (emphasis in original). Based on these passages, I find that the Supreme Court has implicitly stated that section 1981 affords no protection to an individual alleging discrimination based on national origin alone.

There appears to be a split of authority within the Third Circuit on the issue of whether section 1981 provides a cause of action for discrimination based solely on a person's national origin. The Third Circuit itself has not directly addressed this issue. See Bennun v. Rutgers State Univ., 941 F.2d 154, 172 (3d Cir. 1991), cert. denied, 502 U.S. 1066 (1992) ("Section 1981 does not mention national origin"). The majority of

district court decisions in this Circuit, however, have rejected the proposition that national origin discrimination claims fall within the statute's ambit. See Fekade v. Lincoln Univ., 167 F. Supp. 2d 731, 739 (E.D. Pa. 2001) (agreeing with plaintiff's concession that section 1981 "was not drafted in terms of national origin, and thus [plaintiff's] claim of national origin discrimination cannot be founded on a violation of this statute"); Schouten v. CSX Transp., Inc., 58 F. Supp. 2d 614, 617–18 (E.D. Pa. 1998) ("Section 1981 . . . does not bar discrimination purely on the basis of national origin") (citations omitted); King v. Township of East Lampeter, 17 F. Supp. 2d 394, 417 (E.D. Pa. 1998) ("The scope of [section] 1981 is not so broad as to include disparity in treatment on the basis of religion, sex, or national origin") (citation omitted); Zezulewicz v. Port Auth. of Allegheny County, 290 F. Supp. 2d 583, 598 (W.D. Pa. 2003) (noting that section 1981's "scope is limited to instances of racial discrimination"); Wallace v. Graphic Mgmt. Assocs., Inc., Civ. A. No. 04-0819, 2005 WL 527112, at *3 (E.D. Pa. March 3, 2005) (citing Al-Khazraji, 481 U.S. at 613–14) (holding that while "[section] 1981 does not prohibit discrimination based on national origin," *pro se* plaintiff's complaint could be read to allege a section 1981 claim based on race, ethnicity, and ancestry).

I recognize that at least one case in this district has allowed a claim under section 1981 based on national origin. In Abdulhay v. Bethlehem Med. Arts, L.P., Civ. A. No. 03-0447, 2004 WL 620127, at *5 n.35 (E.D. Pa. March 29, 2004), Judge Gardner held that "[d]iscrimination on the basis of national origin, ethnicity and ancestry clearly fall

within the realm of [s]ection 1981." Abdulhay, 2004 WL 620127, at *5. Despite this language, I will follow the majority of cases in the Third Circuit and hold that section 1981 does not apply to claims of employment discrimination based on national origin alone.

In this case, the section 1981 claims alleged by the complaint are based on national origin alone and will therefore be dismissed. The complaint specifically states that Plaintiff was discriminated against based on her national origin. See, e.g., Compl. ¶ 10(c) (Defendants made "negative and belittling references to Plaintiff's *nationality*") (emphasis added); Compl. ¶ 10(f) (Defendants recommended Plaintiff "for discipline for which similarly situated personnel who were not of *Haitian origin* were not recommended"); Compl. ¶ 11(d) (Defendants made "negative remarks about Plaintiff and her *national origin*") (emphasis added); Compl. ¶ 29 ("Plaintiff was subjected to intentional discriminatory and disparate treatment based on her *national origin - Haitian*") (emphasis added); Compl. ¶¶ 36–38 (Defendants "subject[ed] Plaintiff to discriminatory and disparate treatment based on her *national origin - Haitian*) (emphasis added); Compl. ¶ 41 ("Plaintiff was subjected to a hostile work environment based on her *national origin - Haitian*") (emphasis added); Compl. ¶ 45 (Defendants "negatively altered [the] terms and conditions of [Plaintiff's] employment based on her *national origin - Haitian*") (emphasis added).

Several sentences in the complaint state that Defendants discriminated against Plaintiff based on the fact that she is of Haitian *descent*. See Compl. ¶ 16 (director of ICF "complained about assisting people of Haitian descent"); Compl. ¶ 24 ("unlike personnel not of Haitian descent, Plaintiff was not given any forewarning that her employment was in serious jeopardy"). Plaintiff appears to urge the Court to read these sentences broadly (and in isolation), so as to allege a claim of discrimination based on her "ancestry and ethnic characteristics." See Al-Khazraji, 481 U.S. at 613. A reading of these sentences in conjunction with the vast majority of the complaint belies Plaintiff's argument and confirms she has based her claim of discrimination on national origin alone. For example, the complaint does not allege that Defendants discriminated against her because of her race or her skin color. The fact that Plaintiff uses the phrase "of Haitian descent" appears to be merely another method of describing her national origin. Accordingly, I will grant Defendants' motion with respect to all of Plaintiff's section 1981 claims.

### C. The Disparate Treatment Claims Under Title VII and the PHRA[5]

Courts in the Third Circuit apply the burden-shifting framework first established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973), to claims of disparate treatment in violation of Title VII. Jones, 198 F.3d at 410. Under the McDonnell Douglas framework, a plaintiff asserting a claim of employment

[5]PHRA claims are analyzed coextensively and under the same legal framework as Title VII claims. See Fogleman v. Mercy Hosp., Inc., 283 F.3d 561, 567 (3d Cir. 2002) (citations omitted); Jones v. Sch. Dist. of Phila., 198 F.3d 403, 409 (3d Cir. 1999). Therefore, my analysis under Title VII applies with equal force to Plaintiff's PHRA disparate treatment claim.

discrimination bears the initial burden of establishing a *prima facie* case of discrimination by a preponderance of the evidence. Sarullo v. United States Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003). A plaintiff's properly pleaded *prima facie* case "eliminates the most common nondiscriminatory reasons" for an employer's actions. Burdine, 450 U.S. at 253. While the *prima facie* case only "raises an inference of discrimination," the Supreme Court has stated that, once the *prima facie* case is established, it will presume that the employer's action is "more likely than not based on the consideration of impermissible factors." Id. at 254. Should the plaintiff establish its *prima facie* case, the burden of production (but not the burden of persuasion) shifts to the defendant to articulate some legitimate and nondiscriminatory reason for the employer's action. Sarullo, 352 F.3d at 797. If the defendant meets this burden, the presumption of a discriminatory action raised by the *prima facie* case is rebutted. Id. The plaintiff must then demonstrate by a preponderance of the evidence that the employer's articulated reason was merely a pretext for discrimination, and not the actual motivation behind its decision. Id.

The *prima facie* case requirement established by McDonnell Douglas is a flexible analysis and is adjusted to the various discrimination contexts in which it is applied. Sarullo, 352 F.3d at 798. To establish a *prima facie* case of national origin discrimination, a plaintiff must demonstrate that: (1) she is a member of a protected

class; (2) she was qualified to perform her job; (3) she suffered an adverse employment action; and (4) the adverse employment action was taken under circumstances that give rise to an inference of unlawful discrimination. See Sarullo, 352 F.3d at 797.

Plaintiff has pleaded the first two elements of her *prima facie* case of national origin discrimination in this case. As to the first element, the complaint alleges that Plaintiff is of Haitian origin. Compl. ¶ 7. It is uncontested that national origin is a protected class under Title VII. As to the second, the complaint alleges that Plaintiff "was qualified for all of the duties that [ICF] assigned to her" and that "she performed her duties in a professional and efficient manner." Compl. ¶ 9. Plaintiff has alleged that she was qualified to perform her job, and she has therefore met the first two elements of her *prima facie* case.

With regard to the third element, the Supreme Court has defined an "adverse employment action" as a "significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits." Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 749 (1998). See also Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997) (stating that an adverse employment action must be "serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment").

Here, in addition to stating that Defendants "negatively altered [the] terms and conditions of [Plaintiff's] employment based on her national origin," Compl. ¶ 45, the complaint alleges that Defendants failed to promote Plaintiff to positions for which she was qualified. Compl. ¶ 10(e). The complaint also alleges that Defendants terminated Plaintiff's employment for a false reason and that Plaintiff resigned from her position at ICF because Defendants "threatened her with termination."[6] Compl. ¶ 10(g). Each allegation presents a significant change in employment, and Plaintiff has met the third element of her *prima facie* case of national origin discrimination.

A plaintiff may demonstrate the fourth element of her *prima facie* case by showing that the employer treated a similarly-situated employee who is not within the protected class differently than the plaintiff. See Jones, 198 F.3d at 410–11. In this case, the complaint alleges that Defendants recommended Plaintiff be disciplined for certain actions, but did not recommend discipline for those same actions when committed by "similarly situated personnel who were not of Haitian origin." See Compl. ¶ 10(f). The complaint also states that, unlike "personnel not of Haitian descent," Defendants did not provide Plaintiff with "any forewarning that her employment was in serious jeopardy."

[6]The apparent inconsistency regarding the exact circumstances to the end of Plaintiff's employment with ICF does not affect my analysis. Either an actual termination or a constructive discharge would constitute an adverse employment action as defined by relevant case law.

Compl. ¶ 24. Thus, Plaintiff has adequately pleaded the fourth element of her *prima facie* case, and I will deny Defendants' motion with respect to Plaintiff's disparate treatment claims.

**D. The Hostile Work Environment Claim Under Title VII**

Similar to disparate treatment, a hostile work environment may give rise to a Title VII discrimination claim against an employer. See Cardenas v. Massey, 269 F.3d 251, 260 (3d Cir. 2001) (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65–68 (1986)). Courts analyzing a hostile work environment claim examine "all the circumstances . . . [including] [1] the frequency of the discriminatory conduct; [2] its severity; [3] whether it is physically threatening or humiliating, or a mere offensive utterance; and [4] whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993). The Third Circuit has cautioned that a court's hostile work environment analysis "must concentrate not on individual incidents, but on the overall scenario" because it is often difficult to determine the motivation behind allegedly discriminatory actions. Durham Life Ins. Co. v. Evans, 166 F.3d 139, 149 (3d Cir. 1999).

A plaintiff bringing a Title VII hostile work environment claim based upon national origin must allege that: "(1) [s]he suffered intentional discrimination because of [her] national origin; (2) the discrimination was pervasive and regular; (3) it detrimentally

affected [her]; (4) it would have detrimentally affected a reasonable person of the same protected class in [her] position; and (5) there is a basis for vicarious liability." Cardenas, 269 F.3d at 260.

Plaintiff has sufficiently pleaded a hostile work environment claim in light of the liberal pleading requirements of Rule 8(a). First, paragraph 41 of the complaint alleges that Plaintiff suffered intentional discrimination because of her national origin. That paragraph states that "Plaintiff was subjected to a hostile work environment *based on her national origin*," including "[1] a pattern of false allegations of misconduct and poor performance; [2] demeaning remarks to and about Plaintiff in front of her peers and subordinates; [3] denying [Plaintiff] promotions for which she [was] qualified; [4] making demeaning and belittling remarks about Haitians; [5] unwarranted discipline; [and] [5] forcing Plaintiff's hand to resign by threatening her with termination." Compl. ¶ 10 (emphasis added). Plaintiff has therefore alleged the first element of a hostile work environment claim.

Second, the complaint alleges that Defendants discriminated against Plaintiff throughout her employment at ICF. See Compl. ¶ 12. Specifically, the complaint states that defendant Reed discriminated against Plaintiff, as described supra, from November 2003 until February 2, 2004. Compl. ¶¶ 12, 25. At this stage of the litigation, where all inferences are taken in Plaintiff's favor, these allegations are sufficient to demonstrate that

Defendants' discrimination was pervasive and regular. See Zarazed v. Spar Mgmt. Servs., Inc., Civ. A. No. 05-02621, 2006 WL 224050, at *5 (E.D. Pa. Jan. 27, 2006) (allegations of discriminatory actions made over three years sufficient to demonstrate pervasive discrimination).

Plaintiff has pleaded the third and fourth elements of her hostile work environment claim as well. The complaint states that Plaintiff "suffered psychological injury/emotional distress, including extreme humiliation, embarrassment and depression" as a result of Defendants' conduct. Compl. ¶ 43 The complaint therefore alleges that Defendants' discrimination adversely affected Plaintiff. Moreover, the allegations of discrimination based on Plaintiff's national origin described supra, such as Reed's allegedly false accusation of Plaintiff's misconduct to her superiors and recommendation that Plaintiff's employment be terminated, would have detrimentally affected a reasonable person. See Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1082 (3d Cir. 1996) (denying defendant's motion for summary judgment in part because the record demonstrated that plaintiffs were subjected to false accusations of misconduct).

Finally, the complaint has sufficiently alleged that there is a basis for vicarious liability. It alleges that Reed supervised Plaintiff at ICF. Compl. ¶ 11. It also alleges that Reed discriminated against Plaintiff while acting as her supervisor. See Compl. ¶¶ 12, 25. Taking all inferences in Plaintiff's favor, Reed's actions as an ICF supervisor could

form a basis for vicarious liability. See Faragher v. City of Boca Raton, 524 U.S. 755, 777 (1998) ("An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee").

For these reasons, I find that Plaintiff has sufficiently alleged all of the elements necessary to state a hostile work environment claim under Title VII. I will therefore deny Defendants' motion with respect to the hostile work environment claim.

**E. The Constructive Discharge Claim Under Title VII**

A plaintiff properly alleges a claim for constructive discharge in the Third Circuit by pleading facts demonstrating that "the conduct complained of would have the foreseeable result that working conditions would be so unpleasant or difficult that a reasonable person in the employee's shoes would resign." Gross v. Exxon Office Sys. Co., 747 F.2d 885, 888 (3d Cir. 1984). A hostile work environment claim is a necessary predicate to a constructive discharge claim. Konstantopoulos v. Westvaco Corp., 112 F.3d 710, 718 (3d Cir. 1997).

In this case, the allegations described supra would have the foreseeable result of causing a reasonable person in Plaintiff's shoes to resign. A reasonable person would resign when: (1) her co-workers and supervisors belittled her national origin in front of others; (2) her supervisors made false reports of her misconduct and poor performance;

(3) her supervisors undermined her supervisory authority in front of co-workers; and (4) her employer threatened to terminate her employment. See Clowes v. Allegheny Valley Hosp., 991 F.2d 1159, 1161–62 (3d Cir. 1993) (holding that courts considering a constructive discharge claim must consider evidence of subtle coercion, such as threats of discharge, unfavorable performance evaluations, and false accusations of misconduct). I have already determined that Plaintiff has sufficiently alleged a hostile work environment claim. Accordingly, I will deny Defendants' motion as to the constructive discharge claim.

**F. Capping Plaintiff's Damages Pursuant to 42 U.S.C. § 1981a(b)(3)(B)**

Defendants argue that any damages recoverable under Plaintiff's Title VII claims should be capped pursuant to 42 U.S.C. § 1981(b)(3)(B). That statute limits the amount of damages a plaintiff may recover under Title VII based upon how many employees work for the defendant employer. See 42 U.S.C. § 1981(b)(3)(B).

This argument is premature. The complaint does not allege the number of persons employed at ICF. As a result, such a determination would require an examination of facts outside of the pleadings—something I may not do while considering a motion to dismiss. Accordingly, Defendants' argument is improper at the current stage of the proceedings, and I will deny this portion of their motion without prejudice.

## III. CONCLUSION

For the reasons described above, I will grant Defendants' motion with respect to: (1) the Title VII claims against the Individual Defendants; and (2) all of the section 1981 claims. I will deny Defendants' motion with respect to the remaining claims. An appropriate Order follows.

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

| | | |
|---|---|---|
| EVELYNE BEAUBRUN, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | NO. 05-06688 |
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| INTER CULTURAL FAMILY, et al. | : | |
| | : | |
| Defendants. | : | |

**ORDER**

**AND NOW**, this 13th day of July, 2006, upon consideration of Defendants' Motion to Dismiss (Docket No. 2) and Plaintiff's response thereto, it is hereby **ORDERED** that the motion is **GRANTED** with respect to: (1) the Title VII claims against the Individual Defendants; and (2) all of the section 1981 claims. The motion is otherwise **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.