

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MARION LETTERIE,

Plaintiff,

v.

BLANK ROME LLP and
LAURENCE LISS,

Defendants.

Civil Action No. 18-4720-CMR

JURY TRIAL DEMANDED

Oral Argument Requested

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PARTIAL MOTION TO
DISMISS OR, IN THE ALTERNATIVE, TO STRIKE CERTAIN ALLEGATIONS**

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Defendants Blank Rome LLP (“Blank Rome” or the “Firm”) and Laurence Liss (“Liss”) (collectively, “Defendants”), by and through their undersigned counsel, file this Partial Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff Marion Letterie’s (“Plaintiff” or “Letterie”) claims to the extent those claims rely upon allegations that are time-barred. In the alternative, Defendants move to strike the time-barred allegations pursuant to Rule 12(f) because they substantially confuse the issues, and result in unfair prejudice to Defendants.

I. PRELIMINARY STATEMENT

Over the course of her 35-year career at Blank Rome, Letterie rose through the ranks, starting as an assistant to a secretary in 1983 and, following many promotions, becoming the Firm’s Director of Telecommunications in 2005. Letterie received numerous salary increases, commensurate with the market, and significant bonuses during her tenure. In June 2017, the Firm hired a new Chief Information Officer, Andrea Markstrom, and thereafter underwent a ground-up review of the Technology Department to improve service, reduce redundancies, lower administrative staff-to-lawyer ratios, and lower costs. Consistent with Markstrom’s industry experience and in view of the developments in telephone technology, which over the years has merged into other data systems, Letterie’s position and skillset were no longer required at the Director level, and her position was one of seven identified to be eliminated in the reorganization. At the Director level she was one of two impacted employees, the other was male.

Despite her successful career, Letterie filed an administrative charge in April 2017, asserting gender discrimination, disparate treatment, and retaliation claims against Defendants about certain events that took place in June 2016 through April 2017. Specifically, she alleged that her 2016 salary was lower than similarly-situated male employees, she lacked resources and support regarding a new telephone system rollout, and was not promoted as part of an October 2016 reorganization. She filed a second charge after her termination, adding allegations about

specific events taking place since the filing of her first charge, namely her termination, and an age discrimination claim. At no time did she allege a hostile work environment or harassment claim.

Plaintiff's claims here are necessarily bound by the four corners of her administrative charges. As such, the only facts that can be litigated and form the basis of her claims are the mid-2016/2017 discriminatory and retaliatory acts complained of in the underlying charges because these discrete acts fall within the applicable limitations period. The Complaint, however, is grounded in a series of never-before alleged acts dating back nearly 20 years. What is worse, many of these acts occurred during times when Plaintiff received a promotion to a director-level position, accolades, and monetary rewards for her work for the Firm, and are subject to 2 to 3-year gaps of time. It is evident from a review of the 158-paragraph Complaint that Plaintiff is asserting everything but the kitchen sink to support her claims. These allegations are improper as they go well beyond the contours of her prior charges and are outside the limitations periods. Because Plaintiff's claims are based in part on these untimely allegations, they must be dismissed.

Alternatively, the Court should strike the paragraphs containing the time-barred allegations because they confuse the issues in this case and will result in substantial prejudice to Defendants.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Overview Of Letterie's Employment At Blank Rome.

Letterie began her employment with Blank Rome in December 1983 as an assistant to a secretary in Blank Rome's Financial Services Department. (Compl. at ¶ 20) As acknowledged by Letterie, over the course of her career at Blank Rome, she received various promotions:

- in 1984, she was promoted to a position supporting two associates in the Financial Services Department;
- in 1985, she was promoted to a secretarial position to a partner and an associate;
- in 1987, she was selected to join Blank Rome's Human Resources Department;
- in 1994, she was transitioned from the Human Resources Department to Blank Rome's Technology Department in the role as Manager of Telecommunications;

- finally, in 2007, Blank Rome promoted Letterie to a director-level position, as Director of Telecommunications.¹ (Compl. at ¶¶ 20-23, 61)

B. Letterie’s April 2017 Charge and the Specific Acts Supporting Her Claims.

On April 21, 2017, while she was still employed as Director of Telecommunications, Letterie filed a charge with the Philadelphia Commission on Human Relations (“PCHR”)² against Defendants for gender discrimination in compensation, gender-based disparate treatment, and retaliation.³ (Compl. at Intro & ¶ 7) Specifically, Letterie claimed that the following actions allegedly taken by Blank Rome and Liss were motivated by gender bias:

- Allegations that her salary increase and bonus for fiscal year ending April 30, 2016 were lower than similarly-situated male employees in the Technology Department;
- Allegations regarding Liss’s alleged refusal to accommodate her requests for additional staff support and resources during Blank Rome’s rollout of a new telephone system in early November 2016 and, subsequently, the refusal of Liss and other members of the Technology Department to provide support to Letterie in connection with the workload generated by the new phone system; and
- Allegations that Blank Rome failed to promote Letterie in connection with an October 2016 reorganization of the Technology Department and changed her reporting structure in this reorganization.⁴ (See Ex. A at ¶¶ 15-20, 24-28, 34-42)

These specific actions – all of which took place within the 300-day statutory period – were the sole basis for Letterie’s claims. (See *id.* at Count I, ¶ 50 (“Respondents have compensated me at a lower base salary and/or bonus compensation than similarly situated male employee because of my gender in violation of the Philadelphia Human Relations Ordinance.”); Count II, ¶ 52-53 (alleging gender-based disparate treatment claim based on Defendants’ failure to promote her and

¹ Letterie was really promoted in 2005, not 2007 as she alleges but Defendants will assume, for purpose of this Motion only that Letterie’s allegations are true, as they must at this juncture.

² Letterie’s charge was cross-filed with the Equal Employment Opportunity Commission (“EEOC”).

³ A copy of Letterie’s April 21, 2017 Charge with the PCHR is attached hereto as Exhibit “A.”

⁴ Letterie also referenced an event that took place in June 2016 where Blank Rome allegedly did not make an exception to its vacation policy that would allow her to use her unused vacation time in the next fiscal year. (Ex. A at ¶ 43) She also alleged that Blank Rome intentionally failed to investigate her complaints after she brought them up in July 2016 and March 2017. (*Id.* at ¶¶ 21-23, 29-33, 45-48) She did not allege that these specific actions were motivated by gender bias and thus they do not appear to be the basis of her claims. Further, as to the alleged failure to investigate, this allegation was asserted to support her claim that Blank Rome acted with malice and/or reckless indifference.

instead promoting two male directors in her department and failing to provide her with access to resources and support like other male employees); Count III, ¶ 55 (alleging claim for retaliation because of her complaints of gender discrimination as identified in charge).

C. Letterie’s Termination and Subsequent Administrative Charge.

On August 22, 2017, the Firm notified Letterie that her employment would be terminated as part of a reduction in force within the Technology Department. (Compl. at ¶ 123) Following her termination, Letterie filed a second charge with the PCHR on September 12, 2017 which included additional allegations of misconduct by Defendants for the time-period following her initial charge, as well as an age discrimination claim as a result of her termination.⁵ Specifically, Letterie alleged the following discrete actions – all of which occurred within the 300-day statutory period:

- Allegations that a Blank Rome Partner retaliated against here in April 2017 by criticizing her work in connection with the Firm’s new phone system;
- Alleged retaliatory statements in Letterie’s 2017 evaluation;
- Allegations that a male Technology Director rolled his eyes at her in a June 19, 2017 meeting and made faces while she was speaking at a meeting and the Firm’s alleged failure to address the incident;
- Allegations that her salary increase and bonus for fiscal year ending April 30, 2017 were lower than similarly-situated male employees in the Technology Department;
- The alleged refusal of other male directors in the Technology Department to provide support requested by Letterie in late July 2017 in connection with the installation of a communication tool used by the Firm; and
- The termination of her employment. (Ex. B at ¶¶ 15-19, 21-29)

Again, in accordance with the applicable statute of limitations, Letterie only relied upon these specific actions to support her claims. (*See id.* at Count I, ¶ 33 (“Respondents have compensated me at a lower base salary and/or bonus compensation than similarly situated male employee because of my gender in violation of the Philadelphia Human Relations Ordinance.”)); Count II, ¶ 35 (alleging claim for gender-based disparate treatment based on Defendants subjecting

⁵ A copy of Letterie’s September 12, 2017 Charge with the PCHR is attached hereto as Exhibit “B.”

her to different terms and conditions of employment than similarly situated male employees as described in the charge and by selecting her for termination); Count III, ¶ 37 (alleging claim for retaliation because of her complaints of gender discrimination as identified in charge); Count IV, ¶ 39 (alleging claim for age discrimination based on her selection for termination at age 63).

Importantly, at no time in either her original charge or her subsequent charge, did Letterie assert claims of harassment or hostile work environment by Blank Rome or Liss.

D. Letterie Files the Instant Complaint, Alleging Facts Well Outside the Statutory Limitations Periods Applicable to Her Claims.

The PCHR issued its Dismissal and Notice of Rights in September 2018. (Compl. at ¶ 8) Letterie thereafter filed her Complaint, alleging claims against Blank Rome for gender discrimination and retaliation in violation of Title VII, the Pennsylvania Human Relations Act (“PHRA”), and the Philadelphia Fair Practices Ordinance (“PFPO”) (Counts I-III, VI-VIII), claims against Liss for gender discrimination and retaliation in violation of the PHRA and the PFPO (Counts IV-V, IX-X), and claims against Blank Rome for age discrimination in violation of the Age Discrimination in Employment Act, the PHRA, and the PFPO (Counts XI-XIII). (Dkt. No. 1)

Like her prior charges, Letterie’s claims here are based on the following discrete discriminatory and retaliatory acts during the mid-July 2016 to September 2017 timeframe:

- Allegations that the Firm failed to adequately compensate her in July 2016/2017;
- Allegations that she lacked resources and support in the late 2016-2017 time-period regarding the rollout of a new telephone system and the installation of a communication tool used by the Firm;
- Allegations that the Firm failed to promote Letterie during the October 2016 reorganization and changed her reporting structure;
- The Firm’s alleged failure to investigate her complaints in July 2016 and March 2017;
- The alleged retaliatory criticism from a Firm Partner in April 2017 about her work on the Firm’s phone system;
- Alleged retaliatory statements in her 2017 performance evaluation;

- Allegations about a June 19, 2017 incident where Letterie claimed a male Technology Director rolled his eyes and made faces while she spoke and Blank Rome’s alleged failure to address the incident; and
- Letterie’s ultimate termination. (*See id.* at ¶¶ 51-55, 65-66, 86-87, 89-94, 102-126)

However, *unlike* her prior administrative charges, Letterie alleges *for the first time* a series of acts taking place well outside the 300-day limitations period (some as far back as nearly two decades ago). Specifically, Letterie alleges the following facts in her Complaint:

Year	Allegation(s)
2000	Alleges that she potentially received lower compensation than a lower-level non-exempt employee (<i>id.</i> at ¶ 60).
2002	Alleged discriminatory comments in her 2002 performance evaluation (<i>id.</i> at ¶ 31). Liss’s alleged exclusion of Letterie in the Firm’s engagement of a consultant for telephone issues in 2002 (<i>id.</i> at ¶ 39).
2003	Liss’s alleged refusal to provide approval in 2003 for certain networking courses Letterie wanted to take (<i>id.</i> at ¶¶ 40-41).
2004	Allegations that she continued to be assigned clerical duties (<i>id.</i> at ¶¶ 42-43). Allegations that Blank Rome failed to investigate her complaints (<i>id.</i> at ¶¶ 67-72).
2005	The refusal to include Letterie in network meetings (<i>id.</i> at ¶¶ 44, 73).
2006	Allegations that Liss rejected her as a choice to manage Network Group as part of a restructuring that was being considered at the time (<i>id.</i> at ¶¶ 45-47, 74-75).
2007	Allegations that Liss ignored a request by Letterie – <i>following her alleged promotion to Director of Telecommunications</i> – that her compensation be based on appropriate internal and external comparators (<i>id.</i> at ¶ 61).
2008	The alleged refusal to involve Letterie in network meetings and the Firm’s alleged failure to investigate this complaint (<i>id.</i> at ¶¶ 48-49, 78-81). Allegations about salary complaints, specifically (1) Liss decreasing Letterie’s salary in 2008 due to market conditions but failure to similarly reduce male directors’ compensation, and (2) Liss inappropriately relying upon an inaccurate job description to set her compensation (<i>id.</i> at ¶¶ 62-64, 76-77).
2009	Allegations about Letterie’s continued complaints about being unfairly excluded from opportunities and the Firm’s failure to investigate and take action (<i>id.</i> at ¶¶ 82-83).
2012	Allegations that Liss told her she needs to “soften [her] approach with [a subordinate male employee] a bit” (<i>id.</i> at ¶ 32). Allegations that Liss and another male director refused to allow Letterie to learn about and be involved in the installation of certain phones, and instead assigned it to a male employee lacking phone experience (<i>id.</i> at ¶¶ 50, 84-85).

2015- Feb. 2016	Allegations about another male director rolling his eyes and making faces at Letterie while she was speaking at a Technology Committee meeting and a Partner’s statement that she was being “overly sensitive” when she mentioned it to him, which resulted in other male directors feeling free to ignore Letterie (<i>id.</i> at ¶¶ 33-35).
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Even though these allegations clearly occurred more than three hundred (300) days from the discrete acts complained of in her underlying charges, Letterie contends that the actions in her Complaint “occurred within the jurisdictional limit of this Court” (*see* Compl. at ¶ 9). This is incorrect. As explained below, Letterie’s attempt to use these untimely facts to support her claims against Defendants is improper because they fall outside the applicable limitations period.

III. ARGUMENT

A. Plaintiff’s Claims Must be Dismissed to the Extent They Rely on Untimely Allegations.

1. Legal Standard for Motion to Dismiss.

Federal district courts are required to dismiss a complaint when the allegations fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). While Federal Rule of Civil Procedure 8 requires only a “short and plain statement of the claim showing that the pleader is entitled to relief,” the United States Supreme Court has made clear that a court must determine whether the complaint “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). The Supreme Court emphasized that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

“To evaluate a motion to dismiss, the Court may consider the allegations contained in the complaint, exhibits attached to the complaint, matters of public record and records of which the Court may take judicial notice, including government agency records.” *DeLa Cruz v. Piccari Press*, 521 F. Supp. 2d 424, 428 (E.D. Pa. 2007) (citing *Tellabs, Inc. v. Makor Issues & Rts.*, 551 U.S. 308 (2007); *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993)). As such, this Court may consider Letterie’s underlying charges (*see* Exs. A-B).

2. **Only Alleged Discriminatory and Retaliatory Acts That Occurred Within the Applicable Limitations Periods Are Actionable.**

In deferral states, such as Pennsylvania, a party must file a charge with the EEOC within 300 days after the alleged unlawful employment practice occurred. 42 U.S.C. § 2000e-5(e)(1); *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002). This filing with the EEOC is a prerequisite to a civil suit under Title VII and the Age Discrimination in Employment Act (ADEA). *Id.* Similarly, under the PFPO, a party must file a complaint with the PCHR “within three hundred (300) days after the occurrence of the alleged unlawful practice.” Phila. Code. § 9-1112(3). For a PHRA complaint to be timely, a party must file their complaint within 180 days of the date of the alleged discrimination. 43 Pa.C.S. § 959(h).

The Supreme Court of the United States has made clear that “discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges” and that, because “[e]ach discriminatory act starts a new clock for filing charges alleging that act,” the charge must therefore be filed within the 300-day period after the discrete discriminatory act occurred in order for a party to exhaust their administrative remedies. *Morgan*, 536 U.S. at 113. To the extent a party fails to file their complaint within the statutory period, they have failed to exhaust their administrative remedies and their claims are time-barred. *See, e.g., Id.* at 113-114; *Verdin v. Weeks Marine, Inc.*, 124 F. App’x 92, 95 (3d Cir. 2005) (Title VII claims based on acts

occurring more than 300 days prior to filing of administrative charge were time-barred); *White v. Gallagher Bassett Servs.*, No. CIV.A. 02-2364, 2003 WL 302407, at *2-4 (E.D. Pa. Feb. 4, 2003) (Rufe, J.) (granting partial motion to dismiss discrimination claims based on acts occurring outside limitations period); *see also O'Connor v. City of Newark*, 440 F.3d 125, 127 (3d Cir. 2006) (events outside Section 1983 limitations period were untimely and insufficient to support liability).

Morgan is dispositive. In *Morgan*, an employee, brought an action against his former employer for racial discrimination and retaliation under Title VII. He alleged that he had been subjected to discrete discriminatory and retaliatory acts and had experienced a racially hostile work environment throughout his employment. 536 U.S. at 104. Such discrimination, began when the company hired him in August 1990 as an electrician helper, rather than as an electrician. Subsequent alleged racially motivated discriminatory acts included a termination for refusing to follow orders, Amtrak's refusal to allow him to participate in an apprenticeship program, numerous "written counselings" for absenteeism, as well as the use of racial epithets against him by his managers. *Id.* at 105, n.1. While some of the allegedly discriminatory acts occurred within 300 days of the time that Morgan filed his EEOC charge,⁶ many took place prior to that time period. *Id.* The district court granted the employer's summary judgment motion, in part, holding that the employer could not be liable for conduct occurring outside of the 300-day filing period. The Ninth Circuit reversed, holding that a plaintiff may sue on claims that would ordinarily be time barred so long as they either are "sufficiently related" to incidents that fall within the statutory period or are part of a systematic policy or practice of discrimination that took place, at least in part, within the period. *Id.* The Supreme Court reversed the Ninth Circuit, holding that a Title VII plaintiff

⁶ The acts falling within the period were Morgan's allegations that he was wrongfully suspended and charged with a violation of Amtrak's 'Rule L' for insubordination while failing to complete work assigned to him, denied training, and falsely accused of threatening a manager. *Morgan*, 536 U.S. at 114.

raising claims of discrete discriminatory or retaliatory acts must file his charge within the appropriate limitations period. As a result, the Supreme Court held that only those acts that occurred within the 300-day period were actionable. *Id.* at 114.⁷

Here, Plaintiff filed her first charge of gender discrimination and retaliation on April 21, 2017. (Compl. at ¶ 7; *see also* Ex. A). Accordingly, with respect to her Title VII, ADEA, and PFPO claims, only alleged discriminatory acts that occurred within the 300-day limitations period (here, after June 25, 2016) are actionable. Any alleged discriminatory acts or unlawful practices that occurred prior to June 25, 2016 are time-barred and cannot serve as the basis of Plaintiff's claims under these statutes. *See Morgan*, 536 U.S. at 113-115; *Verdin*, 124 F. App'x at 95. Plaintiff had even less time to assert her claims under the PHRA. As a result, with respect to Plaintiff's PHRA claims, any alleged discriminatory acts that predate October 23, 2016—180 days before Plaintiff's April 21 filing—are time-barred and cannot form the basis of these claims. *Id.*

3. Plaintiff's Claims Must Be Dismissed, In Part, Because They Are Based on Untimely Allegations of Discriminatory and Retaliatory Acts.

Plaintiff's April 21 and September 12 Charges were based on a series of alleged discrete discriminatory and retaliatory acts that took place in the 300-day period prior to her filing the charge. (*See* Compl. at ¶¶ 51-55, 65-66, 86-87, 89-94, 102-126) Consistent with *Morgan* and the authority cited above, these discrete acts are actionable and can form the basis of Plaintiff's claims.

Given that Plaintiff only alleged actionable acts in her underlying charges, Plaintiff is well-aware that she cannot rely on acts occurring outside of the limitations period to support her claim. Nevertheless, Plaintiff's Complaint here contains a series of never-before asserted acts of alleged discriminatory and retaliatory conduct spanning the course of 17 years, in some cases, with 2 and

⁷ The Supreme Court also held that an employee could recover on a hostile work environment theory for acts occurring outside the 300-day period if the acts were part of the same hostile work environment and at least one occurred within 300-day period. *Morgan*, 536 U.S. at 118. As discussed in the next section, this argument does not apply to Plaintiff.

3-year gaps between these sporadic, single discrete actions. For example, Plaintiff includes allegations dating back as far as 2000 and includes allegations about comments made by Liss in her 2002 performance review, the Firm's refusal to permit Plaintiff to attend network meetings and obtain networking certification in 2003 and 2005, the continued assignment of clerical duties in 2004, failure to promote in 2006, and a reduction in salary in 2008. (*See* Chart on pp. 6-7, *supra*).

These are precisely the types of discrete acts that must be alleged within the 180 and 300-day period attendant to Plaintiff's claims, or else they are time-barred. *See, e.g., Morgan*, 536 U.S. at 114 (“Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify.”); *Mikula v. Allegheny County*, 583 F.3d 181, 186 (3d Cir. 2009) (holding that failure to answer a request for salary increase constitutes a discrete act); *O'Connor*, 440 F.3d at 126, n.1, and 127 (finding allegations that police department, among other things, denied him promotion, provided him with inadequate staff and resources, assigned him excessive work, changes his work schedule, filed unwarranted disciplinary complaints against him, failed to credit him with overtime, and failed to give sufficient commendations to his unit fell within the category of discrete acts identified by *Morgan*); *see also Markel v. Bd. of Regents of Univ. of Wisconsin System*, 276 F.3d 906, 911 (7th Cir. 2002) (determining a decrease in pay as a discrete act).

To allow Plaintiff to proceed with claims based on these time-barred allegations would defeat the purpose of the statute of limitations. “Statutes of limitations . . . represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.” *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (citation omitted); *see also Wood v. Vista Manor Nursing Ctr.*, No. 06-01682, 2006 WL 2850045, at *3 (N. D. Cal. Oct. 5, 2006) (“The primary purpose of a statute of limitation is to prevent the assertion of stale

claims by plaintiffs who have failed to file their action until evidence is no longer fresh and witnesses are no longer available.”) (emphasis added). Allowing Plaintiff to proceed with such stale allegations would prejudice Defendants in that they will be forced to go back and conduct investigations of every grievance Plaintiff has ever made over two decades, many of which involve individuals no longer employed by Blank Rome and which are subject to fading memories. This is precisely what the statute of limitations is designed to avoid.

Consistent with *Morgan* and the authority cited herein, Plaintiff is barred from using untimely allegations to support her claims for discrimination and retaliation against Defendants, as such allegations are no longer actionable. Accordingly, to the extent Plaintiff’s claims rely on the time-barred allegations, those claims should be dismissed as follows:

- To the extent her Title VII, ADEA, and PFPO claims are based on acts taking place **prior to June 25, 2016**, Counts I, III, V, VI, VIII, X, XI, and XIII must be dismissed;
- To the extent her PHRA claims are based on acts taking place **prior to October 23, 2016**, Counts II, IV, VII, IX, and XII must be dismissed.

4. **The Continuing Violation Doctrine Does Not Apply.**

To the extent Plaintiff is attempting to rely on the continuing violation doctrine to bring her untimely allegations within the scope of her claims, this is improper. The continuing violation doctrine does not apply because Plaintiff has not alleged a hostile work environment. Under the continuing violation doctrine, “the plaintiff may pursue a Title VII claim for discriminatory conduct that began prior to the filing period if he can demonstrate that the act is part of an ongoing practice or pattern of discrimination.” *West v. Philadelphia Elec. Co.*, 45 F.3d 744, 754 (3d Cir. 1995). However, the continuing violation theory is only applicable to acts that are not individually actionable but can be combined to support a hostile work environment claim. *See O’Connor*, 440 F.3d at 127; *see also Brown v. Lowe’s Home Ctrs.*, 627 Fed. Appx. 720, 725 (10th Cir. 2015)

“[T]his doctrine does not apply to claims involving disparate treatment or retaliation.”)

(emphasis added).

In finding that an employee could potentially recover on a hostile work environment theory for acts occurring outside of the limitations period, the Supreme Court in *Morgan* distinguished hostile work environment claims from other forms of discrimination:

Hostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. The “unlawful employment practice” therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. Such claims are based on the cumulative effect of individual acts.

Id. at 115 (internal citations omitted). Unlike hostile work environment claims, claims based on discrete acts **must** be filed within the statutory period. *Id.* at 113. Further, the continuing violation doctrine is a doctrine of limited exception and must be “applied sparingly.” *Id.* at 113-14 (“Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants”) (citation omitted)).

Here, the continuing violation doctrine does not apply to Plaintiff’s claims because she has not asserted a claim of hostile work environment. She has only asserted claims for discrimination based on her sex and age, and for retaliation. Each of these claims require Letterie to allege an adverse action as part of her *prima facie* case, *e.g.*, a discrete discriminatory action. Because the continuing violation doctrine does not apply to discrete actions, Letterie cannot rely on it. *See Christie v. Loomis Armored US, Inc.*, No. 10-02011, 2013 WL 3381268, at *4 (D. Colo. July 8, 2013) (citing *Morgan* for the proposition that “continuing violation doctrine does not apply to disparate treatment claims as opposed to hostile work environment claims”).

Plaintiff is not permitted to amend her Complaint to assert a claim for hostile work environment because the only claims she may assert are those claims that she filed with the EEOC

and PCHR. *See Mandel v. M&Q Packaging Corp.*, 706 F.3d 157, 163 (3d Cir. 2013) (“The parameters of the civil action in the district court are defined by the scope of the EEOC investigation.... A plaintiff’s claim must thus fall fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom.”) (citations omitted). Because Plaintiff did not allege a claim for hostile work environment at the administrative level, she cannot do so here.

Putting to one side that she did not allege and was not able to allege a hostile work environment claim, she would not be able to rely on the time-barred allegations because, as discussed above, they are based on discrete acts. Further, many of the alleged acts are so sporadic, isolated and not continuous in time (for example, the 2 to 3-year gaps in certain alleged discriminatory conduct), that they cannot be said to be consistent or part of an ongoing pattern. In such situations, the doctrine will not apply. *See Quinn v. Green Tree Credit Corp.*, 159 F.3d 759, 766 (2d Cir. 1998); *see Selan v. Kiley*, 969 F.2d 560, 566-67 (7th Cir. 1992) (two-year gap between discriminatory events “negates the contention that the acts were continuous or connected”); *Weeks v. New York State*, 273 F.3d 76, 84 (2d Cir.2001) (“Absent unusual circumstances, a two-year gap is a discontinuity that defeats use of the continuing violation exception.”).

B. Alternatively, The Court Should Strike The Time-Barred Allegations.

If the Court determines that partial dismissal is not proper, the time-barred allegations should be stricken. Under Federal Rule of Civil Procedure 12(f), “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid unnecessary forays into immaterial matters.” *Natale v. Winthrop Resources Corp.*, 2008 WL 2758238, at *14 (E.D. Pa. July 9, 2008) (citation omitted). While not favored, courts possess considerable discretion in resolving such motions, and may grant them “where the allegations have no possible relation to the controversy and may cause prejudice to one of the

parties, or if the allegations confuse the issues in the case.” *Thornton v. UL Enterprises, LLC*, 2010 WL 1005021, at *2 (W.D. Pa. Mar. 16, 2010) (internal quotations and citation omitted).

In determining whether prejudice exist, the Third Circuit has explained that:

The issue of prejudice requires that we focus on the hardship to the defendants if the amendment were permitted. Specifically, we have considered whether allowing an amendment would result in additional discovery, cost, and preparation to defend against new facts or new theories.

Cureton v. Nat’l Collegiate Athletic Ass’n, 252 F.3d 267, 272 (3d Cir. 2001); *see also Prewitt v. Walgreens Co.*, No. 11-02393, 2012 WL 4364660, *4 n.6 (E.D. Pa Sept. 25, 2012) (suggesting prejudice may be found where new facts will require “extensive additional discovery”).

Here, the time-barred allegations should be stricken because Defendants would be prejudiced and would be unduly burdened if required to answer these allegations. Plaintiff’s Complaint essentially constitutes an improper amendment of her underlying administrative charges because it includes many allegations that were never raised in her prior charge and allegations about events as far back as 18 years ago. Further, the Complaint references individuals who are no longer employed by Blank Rome, and involves evidence that is not likely to be available to Defendants. Simply to answer the Complaint, Defendants would bear the burden of attempting to track down each of the individuals referenced and conducting numerous interviews concerning events that are no longer fresh in the witnesses’ minds. Allowing Plaintiff to proceed on her time-barred allegations will significantly prejudice Defendants because it will result in extensive additional discovery. *See Cureton*, 252 F.3d at 272. Statute of limitations exist to prevent this very scenario. *See Kubrick*, 444 U.S. at 117; *Wood*, 2006 WL 2850045, at *3. Plaintiff should not be rewarded for her dilatory action in prosecuting her claims. Plaintiff’s respectfully request that the Court strike Paragraphs 31-35, 39-50, 60-64, and 67-85 of the Complaint.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court dismiss Plaintiff's claims to the extent they rely on the time-barred allegations pursuant to Rule 12(b)(6) and order Plaintiff to refile her Complaint without the time-barred allegations, or, in the alternative, strike Paragraphs 31-35, 39-50, 60-64, and 67-85 of the Complaint pursuant to Rule 12(f).

Respectfully submitted,

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