

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONETTE JARVIS,

Plaintiff,

v.

CHIMES, INC. and
CHIMES INTERNATIONAL, LTD.,

Defendants.

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Civil Action No.: RDB-06-1197

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MEMORANDUM OPINION

This employment discrimination action arises out of an Amended Complaint filed by Plaintiff Ronette Jarvis (“Jarvis” or “Plaintiff”) against Defendants Chimes, Inc. and Chimes International, Ltd. (collectively, “Defendants”). Plaintiff alleges that Defendants (1) discriminated against her on the basis of her race and retaliated against her in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e, *et seq.*, 42 U.S.C. § 1981, and Article 49B of the Maryland Annotated Code, (2) breached her employment contract, (3) discriminated against her on the basis of her disability, in violation of the Americans with Disabilities Act of 1990 (“the ADA”), 42 U.S.C. §§ 12101, *et seq.*, and (4) committed the common law torts of wrongful discharge and intentional infliction of emotional distress against her. Pending before this Court is Defendants’ Motion for Summary Judgment. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. The parties’ submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2008). For reasons stated below, Defendants’ Motion for Summary Judgment is DENIED as to Count Four and GRANTED as to Counts One, Two, Three, Five, Six, Seven, and Eight.

BACKGROUND

The facts are viewed in a light most favorable to Plaintiff as the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Chimes International, Ltd. is the parent corporation of The Chimes, Inc. (Lampner Dep. 6:18-21.) Together, and, along with other affiliated companies, they are referred to simply as “The Chimes.” The Chimes “teaches skills and provides support to disabled individuals with barriers to independent living.” (Defs.’ Mem. Supp. Summ. J. Ex. 1, at 3.)

Ronette Jarvis, an African-American female, began working as a Payroll Clerk in the Administrative Services Department of Chimes International, Ltd. on July 8, 2002.¹ (Defs.’ Mem. Supp. Summ. J. Ex. 3.) Jarvis was an “at-will” employee and both the Employee Handbook and the letter welcoming her to the company emphasized that her employment could be terminated at any time, with or without cause. (*Id.* at Exs. 1, 3.) Her supervisor was Susan Manieri (“Manieri”), the Payroll Manager. Jarvis’s duties generally included recording the work hours of employees at remote Chimes locations, verifying the times with those sites’ supervisors, and ultimately entering the information in a central computer program known as TimeTrak each week. (Manieri Dep. 90:17-91:15.) Jarvis performed well for the first few years of her employment, and in 2002, 2003, and 2004, she received overall positive evaluations. (Pl.’s Mem. Opp’n Summ. J. 7, 31 & Exs. 9-12.) After each annual evaluation, Jarvis received a wage increase. (Jarvis Dep. 218:13-20.)

On September 28, 2004, Jarvis took an approved leave of absence under the Family

¹ As discussed *infra*, it is disputed whether Jarvis was employed by Chimes International, Ltd., The Chimes, Inc., or both. The dispute is not material to the Motion for Summary Judgment.

Medical Leave Act (“FMLA”), as amended, 29 U.S.C. §§ 2601, *et seq.*, for surgery. (Ross Aff. ¶ 14.) As a result of her surgery, Jarvis developed a pulmonary embolism (*i.e.*, a blood clot) while she was on FMLA leave. (Jarvis Dep. 348: 2-8.) However, she was certified by a doctor to be able to return to work on November 2, 2004, with three medical restrictions: not lifting more than 10 pounds, not bending over or carrying objects, and driving only to and from work. (Ross Aff. ¶¶ 4-5, Ex. 1; Defs.’ Mem. Supp. Summ. J. Ex. 16.) These restrictions were made known to Manieri by Nan Ross, the Human Resources Coordinator for The Chimes, Inc. (Ross Aff. ¶ 5, Ex. 1.) On January 31, 2005, the three restrictions were lifted and Jarvis was deemed able to perform the essential functions of her position, after her doctor declared her “totally asymptomatic.” (*Id.* ¶ 6; Defs.’ Mem. Supp. Summ. J. Ex. 24.)

In addition to the restrictions mentioned above, Jarvis’s doctor recommended that she “warm her car so that she was not getting into a cold car.” (Manieri Dep. 24:18-21.) Jarvis shared the doctor’s note with Manieri, who agreed that “she could start the car up and then while it idled outside she could finish her day and then when she would leave the car would be warm.” (*Id.* at 25:1-5.) Manieri considered this to be a reasonable request and appropriate accommodation. (*Id.* at 68:1-9.)

After Jarvis returned to work after her FMLA leave, Manieri began to notice that she “was easily frustrated” and “was not getting along with co-workers within the Payroll Department” or attending department activities as she had previously (Manieri Dep. 66:17-67:21.) Jarvis also failed to include the Payroll Coordinator on all emails, a necessary part of her job. (*Id.* at 39:5-40:4.) Finally, the switchboard operator complained that Jarvis would not pick up the phone because she was on the other line. (*Id.* at 43:17-44:4.) Manieri met with Jarvis on

November 29, 2004 to discuss these three problems and wrote a “Conference Record” documenting the discussion. (Defs.’ Mem. Supp. Summ. J. Ex. 17.) This Conference Record did not become part of Jarvis’s personnel file, but was instead merely Manieri’s record of the meeting.

A day or two after the meeting, Jarvis informed Manieri that she “kept a notebook of everything that [went] on in the office.” (Manieri Dep. 35:11-20.) Since July of 2004, Jarvis took notes every day of her observations of her coworkers’ activities and phone calls. (Defs.’ Mem. Supp. Summ. J. Ex. 19; Jarvis Dep. 119:2-8.) She believed this was an appropriate use of her work day. (Jarvis Dep. 120:10-121:1.) On several occasions around this time, Jarvis’s coworkers approached her to ask a question about payroll matters when she was on the telephone for what appeared to be personal calls, but she would either ignore the coworker or act annoyed to have to end the conversation. (Mitten Dep. 19:3-16; Cordery Dep. 15:7-16:1.)

On December 1, 2004, Manieri held a staff meeting for the Payroll Department. At the meeting, she reminded all employees about the Chimes telephone use policy. (*See id.* at Ex. 19.) Specifically, section 6.10.2 of the Employee Handbook states that company telephones are to be used for work-related purposes only and may only be used for personal matters in emergencies. (Defs.’ Mem. Supp. Summ. J. Ex. 1, § 6.10.2.) Manieri periodically reminded her department at staff meetings that the IT department had the capability of tracking phone calls made from Chimes phone lines, but it is unclear whether this was covered in the December 1, 2004 meeting. (Manieri Dep. 89:6-9.)

On December 7, 2004, volunteers visited Chimes to speak with employees as part of the selection process for the 2004 Maryland Quality Award; Chimes ultimately won the gold medal

award in that competition. (Perl Dep. 53:3-17.) While the volunteers were at Chimes, one of them asked Jarvis about her experience working for the company, and she stated that she “loved” her job but that female African-American employees were discriminated against. (Jarvis Dep. 63:6-19.)

In January and early February of 2005, Manieri noticed that Jarvis was absent from her cubicle more than usual and received calls from “the manager upstairs” informing Manieri that Jarvis had been upstairs during certain times. (Manieri Dep. 48: 15-19.) She also noticed Jarvis leaving work to warm up her car and clocking out early rather than returning to her desk until 4:00 p.m. (*Id.* at 51:10-52:3.) Manieri discussed this pattern of behavior with Martha Perl (“Perl”), the Vice President of Human Resources as well as the company’s Controller. They agreed that formal disciplinary action, in the form of a written document called an Employee Communication, should be taken for the violations of company policy. (Manieri Dep. 52:15-53:21.) Thus, on February 8, 2005, Manieri gave Jarvis an Employee Communication identifying the above problems, plus failing to perform her paper shredding duties, as violations of company policy. (Defs.’ Mem. Opp’n Summ. J. Ex. 14.) When she signed the form, Jarvis indicated that she wanted to meet with Perl to discuss it. (*Id.*)

The next day, February 9, 2005, Perl contacted Jarvis to set up a meeting and they met for approximately fifteen minutes. (Perl Dep. 1:5-15.) At the meeting, Jarvis said she was upset about the contents of the Employee Communication, so Perl explained the grievance procedure which Jarvis said she would pursue. (*Id.* at 7:13-19:2.) Perl also told Jarvis that she would be out of town in a couple of days. (*Id.* at 18:16-20.) At no time in the meeting did Jarvis raise any concerns about discrimination.

The following day, February 10, 2005, Jarvis submitted a three-page letter to Manieri outlining her disputes with the February 8, 2005 Employee Communication and concluding that she felt she had been discriminated against because of her race. (Pl.'s Mem. Opp'n Summ. J. Ex. 15.) Manieri immediately took the letter to Perl. (Manieri Dep. 55:10-17; Perl Dep. 19:17-20.) Because she was leaving on vacation, Perl shared Jarvis's letter with Chief Financial Officer and Affirmative Action Officer, Martin Lampner ("Lampner"). Together, they drafted a response, in consultation with the company's legal counsel. (Lampner Dep. 21:20-16.)

Jarvis received Lampner's letter on February 14, 2005. (Pl's Mem. Opp'n Summ. J. Ex. 17.) In the letter, Lampner said the company "takes all charges of discrimination very seriously" and that Jarvis would have "ample opportunity" to offer "specific information" about her allegations of discrimination which would be "thoroughly investigate[d]." Lampner further noted that "[i]t seems to us that you have acted overly defensively and emotionally to our Employee Communication, which, by the way, has been your general mode of reaction whenever constructive criticism has been directed to your attention" and that Jarvis's "hostile and uncooperative attitude may quickly lead to [her] termination." (*Id.*) Jarvis did not approach Lampner to discuss the matter. (Lampner Dep. 85:13-16.)

On March 1, 2005, Payroll Specialist Geraldine Cordery saw Jarvis using the telephone of another coworker, Mamie Gilliam ("Gilliam"), who was on vacation for what appeared to be a personal call. (Cordery Dep. 14:3-9.) She reported this suspicious behavior to Manieri. (*Id.* at 14:15-19.) Manieri discussed the matter with Richard Gonsman ("Gonsman"), Director of Information Services, who created a log of non-Chimes telephone calls made from both Jarvis's and Gilliam's extensions on March 1, 2005. (*See* Defs.' Mem. Supp. Summ. J. 32.) The log

indicated five calls from Jarvis's phone line and four calls from Gilliam's, together totaling approximately thirty minutes. (*Id.*) Manieri was disturbed by the number of personal calls and the fact that Jarvis had used another employee's phone. (Manieri Dep. 76:18-77:6.)

When Perl returned from her vacation, she composed an email to Jarvis to follow up on her claims of discrimination and was about to send it when Gonsman presented the telephone log to her. (Defs.' Mem. Supp. Summ. J. Ex. 33; Perl Dep. 30:6-31:19.) Perl requested more data, so Gonsman compiled data from the month of February 2005 for Jarvis's extension showing all of her inbound, outbound, and internal phone calls, as well as the length of each call. (*See* Defs.' Mem. Supp. Summ. J. Ex. 34.) Chimes's telephone provider also identified the origin of each of the non-Chimes phone numbers Jarvis dialed, but was only able to release the business numbers, not the residential ones. (*Id.* at Ex. 35.) The data showed Jarvis on the phone up to twenty or more times per day, totaling more than an hour on some days. (*Id.* at Ex. 34.) Upon receiving the data, Lampner and Perl determined that the volume of calls was a clear violation of the phone policy and discussed with Manieri the possibility of firing Jarvis. (Manieri Dep. 81:19-82:7.)

On March 3, 2005, Perl and Director of Human Resources Management, Suzanne Christie met with Jarvis to terminate her employment, bringing with them an Employee Communication. (*See* Defs.' Mem. Supp. Summ. J. Ex. 37.) The March 3, 2005 Employee Communication stated that Jarvis was being fired because she had disregarded company policy and the express directions from her supervisor to refrain from making personal calls on the company phones during work hours. (*Id.*)

Jarvis's position as Payroll Clerk was subsequently filled by Niquana Zimmerman, an African-American woman. (Manieri Dep. 8:18-9:3.)

On June 24, 2005, Jarvis filed a Charge of Discrimination against The Chimes, Inc. with the Equal Employment Opportunity Commission (“EEOC”) asserting that she was discriminated against based on her race and disability, and that she was retaliated against by being terminated. (Pl.’s Mem. Opp’n Summ. J. Ex. 28.) On February 13, 2006, Jarvis received a Dismissal and Notice of Rights letter dated February 8, 2006,² in which the EEOC noted that it was “unable to conclude that the information obtained establishe[d] violations of the statutes.” (*Id.* at Ex. 29; Jarvis Dep. 315:6-13, Nov. 17, 2006.)

Jarvis filed suit in this Court on May 12, 2006 against Chimes, Inc. She filed an Amended Complaint on October 12, 2006 (Paper No. 20) adding as a defendant Chimes International, Ltd. Count One alleges that Jarvis was discriminated against on the basis of her race in violation of Article 49B of the Maryland Annotated Code. Count Two alleges race discrimination in violation of Title VII and 42 U.S.C. § 1981. In Count Three, Plaintiff claims that she was retaliated against for challenging perceived racial discrimination at her job, in violation of Article 49B of the Maryland Annotated Code. Count Four also alleges retaliation in violation of Title VII and 42 U.S.C. § 1981. Count Five alleges that Defendants breached their employment contract with Jarvis by failing to follow their own policies, in violation of Title VII and 42 U.S.C. § 1981. In Count Six, Plaintiff alleges that she was discriminated against because of her disability, in violation of the ADA. Counts Seven and Eight assert common law claims for wrongful discharge and intentional infliction of emotional distress, respectively, under Maryland law. Defendants filed the instant Motion for Summary Judgment on March 8, 2007

² The letter is actually dated February 8, 2007, but the parties do not dispute that the year was a typo and it should have read February 8, 2006. (*See* Pl.’s Mem. Opp’n Summ. J. 22 n.14.)

(Paper No. 29).

STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56(c) of the Federal Rules of Civil Procedure when there is no genuine issue as to any material fact, and the moving party is plainly entitled to judgment in its favor as a matter of law. In *Anderson v. Liberty Lobby, Inc.*, the Supreme Court explained that, in considering a motion for summary judgment, “the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” 477 U.S. 242, 249 (1986). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. Thus, “the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.” *Id.* at 252.

In undertaking this inquiry, a court must view the facts and the reasonable inferences drawn therefrom “in the light most favorable to the party opposing the motion,” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)); *see also E.E.O.C. v. Navy Federal Credit Union*, 424 F.3d 397, 405 (4th Cir. 2005). However, the opponent must bring forth evidence upon which a reasonable fact finder could rely. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). “Once the movant has established the absence of any genuine issue of material fact, the opposing party has an obligation to present some type of evidence to the court demonstrating the existence of an issue of fact.” *Pension Benefit Guar. Corp. v. Beverley*, 404 F.3d 243, 246-47 (4th Cir. 2005) (citing *Pine Ridge Coal Co. v. Local 8377, UMW*, 187 F.3d 415, 422 (4th Cir. 1999)). Rule

56(e) also requires that “affidavits submitted by the party defending against a summary-judgment motion contain specific facts, admissible in evidence, from an affiant competent to testify, ‘showing that there is a genuine issue for trial.’” *Id.* (quoting 10B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2740, 399 (3d ed. 1998)). The mere existence of a “scintilla” of evidence in support of the nonmoving party’s case is not sufficient to preclude an order granting summary judgment. *Anderson*, 477 U.S. at 252.

This Court has previously held that a “party cannot create a genuine dispute of material fact through mere speculation or compilation of inferences.” *Shin v. Shalala*, 166 F. Supp. 2d 373, 375 (D. Md. 2001) (citations omitted). Indeed, this Court has an affirmative obligation to prevent factually unsupported claims and defenses from going to trial. *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993) (quoting *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987)).

ANALYSIS

Defendants Chimes International, Ltd. and Chimes, Inc. have moved for summary judgment on all counts of the Amended Complaint. As an initial matter, Defendants contend that Chimes, Inc. cannot be liable because it was never Jarvis’s “employer.” (Defs.’ Mem. Supp. Summ. J. 36.) As proof of their contention, Defendants introduce Jarvis’s W-2 forms from tax years 2002 to 2005 identifying “Chimes International Ltd” as her employer. (*Id.* at Ex. 4.) In response, Plaintiff argues that the two corporate entities are really an “integrated employer.” (Pl.’s Mem. Opp’n Summ. J. 24-27.)

The integrated employer doctrine provides that multiple companies that are interrelated can constitute a single employer for liability purposes. *See Hukill v. Auto Care, Inc.* 192 F.3d

437, 442 (4th Cir. 1999); *Takacs v. Fiore*, 473 F. Supp. 2d 647 (D. Md. 2007). The United States Court of Appeals for the Fourth Circuit has recognized four factors which are relevant to determining whether two distinct entities may be deemed to be an “integrated employer” under Title VII: (1) common management; (2) interrelation between operations; (3) centralized control of labor relations; and (4) degree of common ownership/financial control. *Hukill*, 192 F.3d at 442. In applying the four-part test in a variety of contexts, the third factor—centralized control of labor relations—has been cited as the most important. *See Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 1240 (2d Cir. 1995) (citation and internal quotation marks omitted); *see also Hukill*, 192 F.3d at 444; *Watson v. CSA, Ltd.*, 376 F. Supp. 2d 588, 594 (D. Md. 2005).

Applying the first element to this case, at least one officer for Chimes International, Ltd. is also an officer for Chimes, Inc. Specifically, Martin Lampner (“Lampner”) serves as Chief Financial Officer for Chimes International, Assistant Treasurer and Executive Vice-President for Chimes, Inc., and Affirmative Action Officer for both entities. (Lampner Dep. 8:19-21, 9:16-21, 12:2-16.) In addition, at least three individuals serve as directors on the boards of both Chimes International and Chimes, Inc. (*Id.* at 9:12-15.) Thus, the first element weighs in favor of finding the two corporations to be an integrated employer.

As to the second element, there is a dispute as to whether the two corporations’ operations are interrelated. Chimes International “serves as a central service provider to the various subsidiaries” in areas such as insurance and benefits. (Lampner Dep. 11:12-20.) Chimes, Inc., on the other hand, “teaches skills and provides support to disabled individuals with barriers to independent living.” (Defs.’ Mem. Supp. Summ. J. Ex. 1, at 3.)

As to the third, and perhaps most important, element, there is a genuine issue of fact as to

which corporation controls labor relations. Chimes International is in charge of purchasing insurance and benefits packages for all of the Chimes corporations. (Lampner Dep. 11:12-20; Defs.’ Mem. Supp. Summ. J. Ex. 4.) However, there is a dispute as to which entity is in charge of employee compensation. While Lampner stated in his deposition that Chimes International “is the payroll provider for all corporations in the family” including Chimes, Inc., he later noted that both companies “maintain separate payrolls.” (*Id.* at 11:18-19, 84:12-13.) The fact that Jarvis’s W-2 forms name Chimes International as her employer does not prove, therefore, that she was solely the employee of that entity, despite Defendants’ contention. Additionally, most other documents relating to her employment were sent by “The Chimes/Corporate Offices” or have the logo “The Chimes” at the top of the page. For example, the letter confirming an offer of employment to Jarvis has both. (*See* Defs.’ Mem. Supp. Summ. J. Ex. 3.) The 2002 employee handbook is entitled “Chimes International Personnel Policies Handbook” but also recites The Chimes, Inc.’s philosophy and states that the Board of Directors of The Chimes, Inc. makes “all personnel policies.”³ (*Id.* at Ex. 2, p. 2.)

Finally, as to the fourth element, Plaintiff notes that Chimes International, Ltd. is the parent corporation of The Chimes, Inc. (Pl.’s Mem. Opp’n Summ. J. 26; Lampner Dep. 6:18-21.) The parties do not point to any other evidence of ownership or financial control. There is simply insufficient information on the record for this Court to determine whether the parties share ownership.

In sum, there are genuine issues of fact as to whether Chimes International and The

³ In the revised 2004 version of the employee handbook, however, all references to The Chimes, Inc. were removed. However, as the Plaintiff began working for Chimes in 2002, both versions of the employee handbook are relevant.

Chimes, Inc. are “integrated” for the purposes of determining liability for the alleged acts of employment discrimination in this case. Thus, this Court will address the merits of the Motion for Summary Judgment as to both Defendants as Jarvis’s employer.

I. Counts One and Three: Article 49B of the Maryland Code

Counts One and Three purport to state claims under Article 49B of the Maryland Annotated Code, which prohibits employment discrimination based on one’s “race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability.” Article 49B was amended in 2007 to permit a private cause of action against an employer for violations of Maryland’s discrimination laws if “(1) The complainant initially filed an administrative charge or a complaint under federal, State, or local law alleging a discriminatory act by the respondent; and (2) At least 180 days have elapsed since the filing of the administrative charge or complaint.” Md. Ann. Code art. 49B, § 11B (2007). Prior to the amendment’s effective date of October 1, 2007, however, Article 49B did not offer a private cause of action, and the amendment was expressly limited to acts of discrimination occurring after that date. S. 678 & H.R. 314, 422d Gen. Assem., Reg. Sess. (Md. 2007) (stating that the amendments to Article 49B “shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act”).

Because all of the events leading to this lawsuit occurred before October 1, 2007, the amended version of the statute does not apply and Jarvis cannot maintain a private cause of action against Defendants under Article 49B. Accordingly, Defendants’ Motion for Summary Judgment is GRANTED as to Counts One and Three.

II. Count Two: Race Discrimination under Title VII and § 1981

Count Two purports to state a claim under Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, *et. seq.* and 42 U.S.C. § 1981. Specifically, Plaintiff alleges that Defendants discriminated against her on the basis of her race “by failing to allow her a full and fair opportunity to raise her concerns regarding racial discrimination in the workplace” and by subsequently retaliating against her by firing her. (Compl. ¶¶ 48.) The retaliation claim will be addressed *infra*, in Part III. Jarvis also claims that she received different treatment than “white and non-African American employees.” (*Id.* ¶ 49.)

As an initial matter, Defendants contend that Plaintiff did not comply with the procedural filing requirements in order to bring a suit under Title VII. Specifically, they argue that her May 12, 2006 filing of this lawsuit was more than 90 days after she received her right to sue letter from the EEOC. (Defs.’ Mem. Supp. Summ. J. 36-37.) The right to sue letter is dated February 8, 2006,⁴ but the 90-day statute of limitations begins running on the date the notice is received. (*Id.* at Ex. 41.) Plaintiff testified in her deposition that she received her right to sue letter on February 13. (Jarvis Dep. 315:6-13.) Absent any evidence to the contrary, this Court must accept Plaintiff’s sworn testimony that she received the notice on February 13, 2006. Accordingly, this case was timely filed within the 90-day period.

The analysis under both Title VII and § 1981 is the same.⁵ Plaintiff has not produced any

⁴ See *supra* note 2 for an explanation of the typographical error as to the year on the right to sue letter.

⁵ Section 1981 provides that “[a]ll 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. . . .” 42 U.S.C. § 1981. Where

direct evidence of racial discrimination. Thus, in order to establish a claim for employment discrimination based on race, she must satisfy the three-step burden-shifting test first articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). First, a plaintiff must present enough evidence to prove a *prima facie* case of discrimination. *Reeves v. Sanderson Plumbing Products*, 530 U.S. 133, 142-43 (2000). Second, once the plaintiff establishes a *prima facie* case, the burden shifts to the defendant to produce evidence that the adverse employment action was taken against the plaintiff “for a legitimate, nondiscriminatory reason.” *Id.* at 142 (citing *Tex. Dept. Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981)). Third, the plaintiff is “afforded the ‘opportunity to prove by a preponderance of evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.’” *Id.* (quoting *Burdine*, 450 U.S. at 253).

A. *Prima Facie* Case

Plaintiff alleges two forms of discrimination: discriminatory discharge and disparate discipline. Each will be addressed separately.

1. Discriminatory Discharge

A *prima facie* case of discriminatory discharge requires a showing that: “(1) she is a member of a protected class; (2) she suffered adverse employment action; (3) she was performing her job duties at a level that met her employer’s legitimate expectations at the time of the adverse employment action; and (4) the position remained open or was filled by similarly

a plaintiff alleges that she was retaliated against for protesting racial discrimination in the workplace, “the burden-shifting scheme of *McDonnell Douglas Corp. v. Green* and its progeny” applies. *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 278 (4th Cir. 2000) (citations omitted); *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) (“[T]he elements required to establish a *prima facie* case are the same under Title VII and Section 1981.”).

qualified applicants outside the protected class.” *Hill v. Lockheed Martin Logistics Mgmt.*, 354 F.3d 277, 285 (4th Cir. 2004). It is undisputed that Jarvis is African-American, thus the first element is satisfied. It is also undisputed that she was fired, in satisfaction of the second element.

As to the third element, Plaintiff contends that she was qualified for her position and performed her duties according to her employer’s expectations. (Pl.’s Mem. Opp’n Summ. J. 30-31.) In support, she cites *Bass v. E. I. DuPont de Nemours & Co.*, 324 F.3d 761, 766 n.1 (4th Cir. 2003), in which the United States Court of Appeals for the Fourth Circuit held that the plaintiff had demonstrated that she was qualified when she “had been promoted, received pay increases, and been told that her performance was satisfactory.” It is undisputed in this case that Jarvis received overall positive performance evaluations in 2002, 2003, and 2004. (Pl.’s Mem. Opp’n Summ. J. 7, 31 & Exs. 9-12.) Jarvis also points out that she received pay raises whenever she was eligible. (*Id.* at 31.) Defendants contend, however, that Jarvis was not performing at expected levels because she made personal telephone calls on company telephones, acted hostile towards co-workers, and failed to comply with certain other policies in the employee handbook. (Defs.’ Mem. Supp. Summ. J. 42.) Her supervisor, Manieri, had to remind her to complete her shredding duties, include the appropriate people on emails, and not spend too much time away from her desk or on personal telephone calls. (Manieri Dep. 39:5-40:4, 43:17-44:4, 66:17-67:21; Defs.’ Mem. Supp. Summ. J. Exs. 14, 17.) Defendants contend that these violations detracted from her performance. They were not mentioned in any of Jarvis’s evaluations (*see* Pl.’s Mem. Opp’n Summ. J. 7, 31 & Exs. 9-12), but the most recent evaluation was performed in July of 2004, before the events leading to this lawsuit. Nonetheless, this Court finds that, even with the

violations, Plaintiff was performing at an acceptable level. Thus, she has satisfied the third element of the *prima facie* test.

However, Jarvis cannot establish the fourth element, namely that she was replaced by someone of a different race or that the position stayed open. Jarvis's position was filled with someone in her protected class—another African-American woman named Niquana Zimmerman. (Defs.' Mem. Supp. Summ. J. 43.) The Fourth Circuit Court of Appeals held in *Miles v. Dell, Inc.* that being replaced by someone outside the protected class is not always required, particularly "where the plaintiff can show that the firing and replacement hiring decisions were made by different decisionmakers" or "the defendant hires someone from within the plaintiff's protected class in order 'to disguise its act of discrimination toward the plaintiff.'" 429 F.3d 480, 488 (4th Cir. 2005). However, in this case, there is no evidence to support either exception to the general rule. As to the first exception, Manieri, Perl, and Lampner decided to fire Jarvis, (Manieri Dep. 81:19-82:7) and there is no evidence that different decisionmakers made the determination to hire an African-American woman to replace Jarvis (Manieri Dep. 8:18-9:3). As to the second exception, there is simply no evidence that Niquana Zimmerman was hired as a replacement for Jarvis to disguise any sort of discrimination against Plaintiff. Thus, Plaintiff has not satisfied the fourth element.

Accordingly, Plaintiff has failed to demonstrate a *prima facie* case of discriminatory discharge.

2. Disparate Discipline

"In the context of a discipline case, the familiar elements of a *prima facie* showing are that (1) plaintiff belongs to a protected class; (2) plaintiff 'engaged in prohibited conduct similar

to that of a person of another race;’ and (3) ‘that disciplinary measures enforced against the plaintiff were more severe than those enforced against the other person.’” *Shields v. Fed. Express Corp.*, 120 Fed. Appx. 956, 964 (4th Cir. 2005) (quoting *Moore v. City of Charlotte*, 754 F.2d 1100, 1105-06 (4th Cir. 1985)). As noted above, Jarvis has satisfied the first element.

As to the second element, the parties focus on violations of the company telephone policy. Section 6.10.2 of the 2002 and 2004 Chimes Employee Handbooks states that Chimes telephones are to be used only for business purposes or personal calls in emergency situations only. (Defs.’ Mem. Supp. Summ. J. Ex. 1.) In addition, Susan Manieri had a policy in her department that permitted employees under her supervision to “make a personal phone call now and then” so long as the calls were “short . . . on the phone, off the phone” and were made no more than “one, two a day.” (Manieri Dep. 60:4-10.) Manieri also permitted certain long-distance calls if she was informed in advance of the reason. (*Id.* at 64:9-16.)

Both Jarvis and Caucasian employees admitted to making personal telephone calls during work hours. (*See* Pl.’s Mem. Opp’n Summ. J. 33; Cordery Dep. 7:1-11:11; Mitten Dep. 7:19-15:21.) However, Defendants contend that the various telephone uses were distinguishable. For example, Geraldine Cordery testified that if she made personal calls during work, they were on her cell phone and “out of the office.” (Cordery Dep. 7:1-11:11.) In addition, she had informed Manieri beforehand that her son-in-law had developed cancer while serving in the military abroad and that she would need to take occasional calls from overseas. (Manieri Dep. 61:6-13.) Another employee, Jennifer Mitten, was preparing to buy a house after getting married and her husband called her “once a day.” (*Id.* at 62:6-13.) In contrast to both of these employees, a telephone log shows Jarvis on the company phone anywhere from six to twenty-three times a day

during the month of February 2005, without seeking approval beforehand. (Defs.' Mem. Supp. Summ. J. Ex. 34.) In addition, employees complained to Manieri that if Jarvis was on a personal call when they approached her desk, she would ignore them and continue chatting. (*Id.* at 71:4-11.) Thus, although Caucasian coworkers admit to making personal calls during the course of the work day, there is sufficient difference between the nature and frequency of these calls and those made by Jarvis that this Court cannot find that they engaged in comparable prohibited activity as Plaintiff. Thus, the second element is not met.

As to the third element, it is unclear to this Court exactly what disciplinary measures were taken against Jarvis aside from her termination, discussed *supra*. For example, there is a "Conference Record" supposedly from a discussion Jarvis's supervisor, Susan Manieri, had with her on November 29, 2004, to discuss her excessive personal phone calls, among other issues. (Pl.'s Mem. Opp'n Summ. J. Ex. 13.) However, Jarvis disputes that this conversation ever existed. (*Id.* at 9; Jarvis Dep. 54:9-13.) Thus, it is unclear how this document can be deemed "discipline" especially in light of the fact that it was for Manieri's personal use and was not part of Jarvis's personnel file. (*See* Manieri Dep. 29:17-30:2.) The next act of discipline Jarvis notes is the February 8, 2005 "Employee Communication" in which Manieri formally noted that Plaintiff visited with people during work hours, failed to complete shredding despite several reminders, did not work cooperatively with coworkers, and left early every day, all of which allegedly violated company policy. (Pl.'s Mem. Opp'n Summ. J. Ex. 14.) However, Jarvis denied in her deposition that prior to her termination anyone indicated to her that her telephone usage was "particularly high, excessive or unreasonable." (Jarvis Dep. 366 17:21.) Thus, she does not even recall being disciplined for her phone usage. Finally, by Jarvis's own admission,

she received positive performance evaluations and a raise even *after* she claims to have noticed disparate treatment of the African-American and Caucasian employees. (Pl.’s Mem. Opp’n Summ. J. 7, Ex. 12.) Accordingly, this Court finds that Plaintiff has not satisfied her burden of showing a *prima facie* case of disparate discipline.

B. Legitimate, Nondiscriminatory Reason

Even if Plaintiff had established a *prima facie* case of race discrimination, Defendants have articulated more than one legitimate, nondiscriminatory reason for firing Jarvis. In particular, Defendants cite “several troublesome job-related behaviors” that gave rise to her discharge:

(i) Plaintiff acted overtly hostile to co-workers both before and after her FMLA leave by ignoring them when they approached for help and keeping a log of their activities; (ii) Ms. Manieri counseled Plaintiff on November 29, 2004, for three separate workplace violations, including use of Agency phones for non-Chimes related business; (iii) Plaintiff was involved in a verbal confrontation with co-workers in the cafeteria; (iv) Plaintiff received formal written discipline on February 8, 2005, for socializing upstairs with co-workers, taking another employer with her on the drive to the Perl Center, repeatedly leaving the office early, not completing her shredding responsibilities, and being uncooperative with staff; and finally (v) Plaintiff’s excessive use of Chimes’ telephones for personal use during work time.

(Defs.’ Mem. Supp. Summ. J. 42-43.) Of most significance, though, was Plaintiff’s telephone usage, as noted in the letter essentially terminating her employment on March 3, 2005, which totaled over an hour of personal calls on some days in February of 2005.

Vice President of Human Resources Martha Perl reviewed the February telephone log on March 1, 2005, with Chief Financial Officer Martin Lampner. (Perl Dep. 37:2-18.) Perl had met with Jarvis approximately three weeks earlier on February 9, 2005, to discuss her excessive

phone usage, and although the personal calls had diminished somewhat since their discussion, Jarvis continued to make several personal calls per day on the company's phone. (Defs.' Mem. Supp. Summ. J. Ex. 34.) Perl and Lampner found that Jarvis "abused and misused the agency's resources" and that she persisted in violating the Employee Handbook's telephone usage policy despite numerous warnings. Thus, they decided to terminate her employment predominantly based on this pattern of conduct. (See Perl Dep. 38:1-6; Defs.' Mem. Supp. Summ. J. Ex. 37.)

This Court finds that Defendants have articulated a legitimate, nondiscriminatory reason for firing Jarvis.

C. Evidence of Pretext

Even assuming Plaintiff had met her burden of showing a *prima facie* case of racial discrimination, she has not presented sufficient evidence to prove that Defendants' articulated reason for firing her—her phone usage—was a pretext for racial discrimination. As discussed *supra*, there is insufficient evidence that the Caucasian coworkers mentioned by Jarvis and her supervisor violated the telephone use policy with the same frequency or extent as Jarvis. Finally, Plaintiff argues that the telephone log was "flawed and inaccurate" because the individual who put it together could only guess at whether all of the calls were personal or work-related. (Pl.'s Mem. Opp'n Summ. J. 20.) However, when Lampner and Perl reviewed the document, they genuinely believed that it represented the pattern of Jarvis's phone usage. Even if the information before the decision makers was incomplete, "[i]t is not the province of the courts 'to decide whether the reason was wise, fair, or even correct, ultimately, so long as it truly was the reason.'" *Kess v. Mun. Employees Credit Union of Baltimore, Inc.*, 319 F. Supp. 2d 637, 645-46 (D. Md. 2004) (quoting *Dugan v. Albemarle County Sch. Bd.*, 293 F.3d 716, 722 (4th Cir.

2002)).

Thus, Plaintiff has not met her burden of showing that the Defendants' articulated reason for firing her was a pretext for racial discrimination. Accordingly, Defendants' Motion for Summary Judgment is GRANTED as to Count Two.

III. Count Four: Retaliation under Title VII and § 1981

In Count Four, Jarvis claims that she was fired in retaliation for opposing discriminatory practices at work, in violation of Title VII and 42 U.S.C. § 1981. As noted *supra*, the same analysis applies to the claims under both Title VII and § 1981. Title VII provides that it is unlawful for "an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" involving Title VII violations. 42 U.S.C. § 2000e-3.

A. *Prima Facie* Case

Applying the first phase of the *McDonnell Douglas* test, Plaintiff must make a *prima facie* showing of retaliation, namely (1) that she engaged in a protected activity, (2) that her employer took an employment action against her that a reasonable employee would have found materially adverse, and (3) that there was a causal connection between the protected activity and the adverse employment action. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 126 S. Ct. 2405 (2006); *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 298 (4th Cir. 2004) (en banc). In response to the February 8, 2005 "Employee Communication" outlining several incidents that her supervisor found to be inappropriate, Jarvis submitted a written appeal on February 10, 2005, describing her version of the events. (Pl.'s Mem. Opp'n Summ. J. 15.) In

the document, Jarvis alleged that she was being targeted based on her race. (*Id.*) This document sufficiently placed Defendants on notice that Jarvis was opposing what she believed was an unlawful employment practice. Thus, she has satisfied the first element of the *prima facie* case.

As to the second element, according to the test articulated by the Supreme Court in *Burlington Northern*, an employment action must be “materially adverse” to a reasonable employee in order to satisfy the second prong of the *prima facie* case for retaliation. 548 U.S. at ___, 126 S. Ct. at 2415. The policy behind this requirement is to prevent employment actions that could “dissuade[] a reasonable worker from making or supporting a charge of discrimination.” *Id.* (citation omitted). In this case, Plaintiff alleges that she was fired in response to engaging in protected activity. Being discharged can certainly be characterized as “materially adverse” to a reasonable employee. Thus, Plaintiff has satisfied the second element.

As to the third element, drawing all inferences in favor of the Plaintiff, there is sufficient evidence from which a jury could find a causal link between Jarvis’s complaint about discrimination and her termination. Specifically, Jarvis submitted her written appeal of the February 8, 2005 Employee Communication on February 10, 2005. Three weeks later, on March 3, 2005, she was fired. Both this Court and the United States Court of Appeals for the Fourth Circuit have held that proximity in time between the protected activity and the adverse employment action may be sufficient to establish the causation requirement. *See Causey v. Balog*, 162 F.3d 795, 803 (4th Cir. 1998) (finding the thirteen-month interval between the plaintiff’s charge of discrimination and termination was “too long to establish causation absent other evidence of retaliation”); *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 657 (4th Cir. 1997) (“A lengthy time lapse between the employer becoming aware of

the protected activity and the alleged adverse employment action . . . negates any inference that a causal connection exists between the two.”); *Elries v. Denny’s, Inc.*, 179 F. Supp. 2d 590, 599 (D. Md. 2002). Thus, the close proximity in time of Jarvis’s complaint of discrimination and her discharge satisfies the third prong of the *prima facie* test for retaliation.

B. Legitimate, Nondiscriminatory Reason

As discussed *supra* in Part II.B., Defendants have articulated a legitimate, nondiscriminatory reason for firing Plaintiff—her repeated violations of the telephone usage policy. Thus, the burden shifts back to the Plaintiff to present evidence that this reason was pretextual.

C. Evidence of Pretext

Some factors this Court may consider in deciding whether there is sufficient evidence of a pretext include: “the strength of the plaintiff’s *prima facie* case, the probative value of the proof that the employer’s explanation is false, and any other evidence that supports the employer’s case. . . .” *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 148-149 (2000). Plaintiff points to several reasons why the Defendants’ reason for terminating her employment was merely a pretext for retaliation. First, as noted above, the decision to fire her came a short three weeks after her letter alleging discrimination. Second, Plaintiff contends that no efforts were ever taken to investigate Jarvis’s allegation of racial discrimination. Jarvis submitted her written allegation of discrimination on February 10, 2005. (Pl.’s Mem. Opp’n Summ. J. Ex. 15.) Perl shared it with Lampner, who offered to meet with Jarvis. (Defs.’ Mem. Supp. Summ. J. Ex. 29.) However, no formal investigation was ever started. Although Perl had composed a follow-up email when she returned from her vacation in order to ask if Jarvis wanted to meet and

“address [her] concerns,” she never sent the email. (*Id.* at Ex. 33.)

A third piece of evidence noted by Plaintiff is the February 14, 2005 letter from Lampner—written in consultation with Perl—to Jarvis in response to her complaint of discrimination. (*Id.* at Ex. 29.) In the letter, Lampner said “[i]t seems to us that you have acted overly defensively and emotionally to our Employee Communication, which, by the way, has been your general mode of reaction whenever constructive criticism has been directed to your attention.” (*Id.*) The letter further stated that Jarvis’s “hostile and uncooperative attitude may quickly lead to [her] termination.” (*Id.*) This language is harsh, especially when Jarvis had simply exercised a statutory right to complain about perceived racial discrimination.

Finally, it was only after Jarvis complained about discrimination that logs of her telephone calls were generated. There is ample evidence that other employees were making telephone calls during work hours on their time, albeit less frequently than Jarvis. However, management never made logs of their calls and it was not until Jarvis raised the issue of racial discrimination that her calls were monitored.

Viewing the facts in a light most favorable to Plaintiff and especially considering *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 126 S. Ct. 2405 (2006), in which the Supreme Court emphasized the purpose behind retaliation claims to prevent employment actions that dissuade employees from challenging discrimination, a reasonable jury could find that Defendants’ proffered reason for firing Jarvis was a pretext for retaliation. Thus, this Court finds that Plaintiff has created a genuine issue of fact as to whether Defendants’ articulated reason for firing her was pretextual for retaliation. Accordingly, Defendants’ Motion for Summary Judgment is DENIED as to Count Four.

IV. Count Five: Breach of Contract

Although Count Five cites to Title VII and § 1981, it is in fact a common law breach of contract claim. This Court chooses to exercise supplemental jurisdiction over Plaintiff's common law claims pursuant to 28 U.S.C. § 1367. Thus, the law of the State of Maryland applies.

Defendants contend that Count Five must fail because Jarvis was an "at-will" employee. They cite section 2.5 of the 2002 Employee Handbook, which expressly provides that Chimes "is free to end its relationship with any employee or to change an employee's status with or without cause. Nothing in the Agency's Personnel Policies is intended to modify this aspect of the Agency's relationship with its employees." (*See* Defs.' Mem. Supp. Summ. J. Ex. 1, § 2.5.) Section 11.3.1 reiterates this sentiment in bold. (*Id.*) The welcome letter to Jarvis reiterated the non-contractual nature of her employment as well, and Jarvis signed documents on July 12, 2002, and July 7, 2004, indicating that she read and understood the 2002 and 2004 Employee Handbooks, respectively. (*Id.* at Exs. 1, 3.) Nonetheless, Plaintiff counters that an implied contract can form "where the employment policies create the reasonable impression of contractual rights in the mind of the employee." (Pl.'s Mem. Opp'n Summ. J. 47-48.)

"[E]mployment is at-will in Maryland unless the employee can show that the contract has 'been so modified by the personnel policy statement as to remove it from the full strictures of the common-law rule.'" *Zahodnick v. IBM*, 135 F.3d 911, 914 (4th Cir. 1997) (quoting *Staggs v. Blue Cross of Md., Inc.*, 486 A.2d 798, 801 (Md. App. 1985)). Even if the contract has been modified by a personnel policy, the "employer may include a clear disclaimer, however, to avoid contractual liability for a personnel policy." *Id.* Thus, in *Zahodnick*, the Fourth Circuit Court of

Appeals held that statements in the employee handbook that employment was at-will and that the terms and conditions of employment could be changed at any time constituted an “unambiguous disclaimer” and, therefore, there could be no breach of contract.

Plaintiff argues that section 2.5 of the Employee Handbook she received did not contain an “unambiguous disclaimer.” (Pl.’s Mem. Opp’n Summ. J. 49.) She cites to *Haselrig v. Public Storage, Inc.*, 585 A.2d 294 (Md. Ct. Spec. App. 1991), in which the Maryland Court of Special Appeals held that language in the policy manual that “the relationship between [employee] and [employer] is predicated on an at will basis” did not, as a matter of law, disclaim any implied contract created by the personnel policies. Indicating that it “must consider the nature of the provision, its apparent purpose and any facts and circumstances that bear on its meaning,” the court specifically noted that the handbook used the phrase “predicated on” rather than a more unequivocal verb “is” in reaching its conclusion. *Id.* at 300-01. In contrast, in this case, the Employee Handbook states that employment with Chimes “is at-will” in multiple locations, and further states that the policies in the handbook are not meant to and do not change that at-will status. (Defs.’ Mem. Supp. Summ. J. Ex. 1, §§ 2.5, 11.3.1.)

In *Fournier v. U.S. Fid. & Guar. Co.*, 569 A.2d 1299, 1302 (Md. Ct. Spec. App. 1990), a case distinguished in the *Haselrig* opinion, the Maryland Court of Special Appeals held that a provision stating that the employer “intend[ed] to make every effort to avoid terminating an employee’s service” was not sufficient to create an implied contract where employees were also informed that the employer could terminate them at any time. The personnel policies in this case contain even more frequent statements of at-will employment. In addition, Jarvis signed two documents indicating that she understood the policies, and both stated, once more, that her

employment was capable of being terminated at any time with or without cause. Thus, this Court finds that both the 2002 and 2004 Employee Handbooks unequivocally disclaimed any implied contract they created.

Accordingly, Plaintiff has failed to present a genuine issue of material fact and Defendants' Motion for Summary Judgment is GRANTED as to Count Five.

V. Count Six: Americans with Disabilities Act

In Count Six, Jarvis claims that Defendants violated the Americans with Disabilities Act (“ADA”) by disciplining her when she left work early to warm up her car, a practice recommended by her doctor. The ADA prohibits employers from “discriminat[ing] against a qualified individual with a disability because of the disability of such individual. . . .” 42 U.S.C. § 12112(a). Discrimination includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability. . . .” *Id.* § 12112(b)(5)(A). To establish her claim under the ADA, Jarvis must show “(1) she was an individual with a disability within the meaning of the ADA; (2) the employer had notice of her disability; (3) with reasonable accommodation, she could perform the essential functions of the position; and (4) the employer refused to make such accommodations.” *Haneke v. Mid-Atlantic Capital Mgmt.*, 131 Fed. Appx. 399, 400 (4th Cir. 2005) (citing *Rhoads v. FDIC*, 257 F.3d 373, 387 n.11 (4th Cir. 2001)).

It is undisputed that Jarvis underwent surgery and developed a pulmonary embolism.⁶ As a result, her doctor recommended that she “warm her car so that she was not getting into a cold

⁶ Defendants argue that Jarvis did not have a “disability” within the meaning of the ADA because her condition was temporary. However, this argument need not be reached, because Plaintiff has failed to satisfy other elements of the *prima facie* test for discrimination.

car.” (Manieri Dep. 24:18-21.) Jarvis shared the doctor’s note with her supervisor, Susan Manieri, who agreed that “she could start the car up and then while it idled outside she could finish her day and then when she would leave the car would be warm.” (*Id.* at 25:1-5.) According to the February 8, 2005 Employee Communication, Jarvis left early every day to warm up her car and clocked out before 4:00 p.m., the end of her shift, rather than returning to work until 4:00 p.m. (Pl.’s Mem. Opp’n Summ. J. Ex. 14.) She contends that this comment amounts to a failure to accommodate. However, Defendants argue that Manieri *did* offer a reasonable accommodation to Jarvis even if it was not necessary: she could go outside to warm her car so long as she returned to work for that short time period before leaving at 4:00 p.m., like everyone else in the 7:30 a.m. to 4:00 p.m. shift. (Defs.’ Mem. Supp. Summ. J. 52-53.) Jarvis simply did not comply with this accommodation and left early every day. The fact that her leaving early was mentioned on her Employee Communication does not satisfy the fourth element of the test—that her employer refused to make a reasonable accommodation.

Accordingly, there are no genuine issues of material fact and Defendants’ Motion for Summary Judgment is GRANTED as to Count Six.

VI. Count Seven: Wrongful Discharge

In Maryland, “[a]n at-will employee . . . has an employment contract of infinite duration which is terminable for any reason by either party. The tort of wrongful discharge is one exception to the well-established principle that an at-will employee may be discharged by his employer for any reason, or no reason at all.” *Wholey v. Sears, Roebuck & Co.*, 803 A.2d 482, 488 (Md. 2002) (citations omitted). In order to establish the tort of wrongful discharge, “the employee must be discharged, the basis for the employee’s discharge must violate some clear

mandate of public policy, and there must be a nexus between the employee's conduct and the employer's decision to fire the employee." *Id.* at 489.

As Defendants aptly note, the tort of wrongful discharge is not available where statutory remedies exist. *See Chappell v. Southern Md. Hosp., Inc.*, 578 A.2d 766, 773 (Md. 1990) (rejecting a wrongful discharge claim where the individual was able to "pursue a remedy under both the state and federal anti-discrimination statutes for his discharge from employment for apprising his employer of allegedly discriminatory employment practices"). Elsewhere in the Complaint, Plaintiff alleges that she was discriminated against because of her race and disability and that she was retaliated against for opposing a discriminatory practice. Both Title VII and the ADA provide sufficient remedies for such claims, even if she was ultimately unsuccessful on her claims. Count Seven of the Complaint contains no statements of public policy that are not addressed by the federal statutes and Maryland counterparts.

Thus, there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. Accordingly, Defendants' Motion for Summary Judgment is GRANTED as to Count Seven.

VII. Count Eight: Intentional Infliction of Emotional Distress

In Count Eight, Plaintiff alleges that Defendants committed the tort of intentional infliction of emotional distress against her when Lampner sent her the February 14, 2005 letter saying that "her complaints of discrimination were 'hostile and uncooperative' and 'may quickly lead to her termination.'" (Compl. ¶ 100; Pl.'s Mem. Opp'n Summ. J. Ex. 17.) In order to succeed on a claim of intentional infliction of emotional distress, Plaintiff must demonstrate four elements: "(1) The conduct must be intentional or reckless; (2) The conduct must be extreme and

outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; (4) The emotional distress must be severe.” *Mitchell v. Baltimore Sun Co.*, 883 A.2d 1008, 1024 (Md. Ct. Spec. App. 2005) (citations omitted). Maryland courts have cautioned that the tort of intentional infliction of emotional distress is to be used “sparingly” and only for “opprobrious behavior that includes truly outrageous conduct.” *Kentucky Fried Chicken Nat’l Mgmt. Co. v. Weathersby*, 607 A.2d 8, 11 (Md. 1992).

The conduct which Plaintiff contends is outrageous is a letter from Lampner indicating that her attitude could lead to her termination. While portions of the letter are strongly worded and, Jarvis believes, undeserved, no reasonable jury could find that the letter is “extreme and outrageous.” Accordingly, Plaintiff has failed to create a genuine issue of material fact on her intentional infliction of emotional distress claim, and Defendants’ Motion for Summary Judgment is GRANTED as to Count Eight.

CONCLUSION

For the reasons stated above, Defendant’s Motion for Summary Judgment is DENIED as to Count Four and GRANTED as to Counts One, Two, Three, Five, Six, Seven, and Eight. Thus, this case will proceed to trial as to Count Four, Retaliation under Title VII and 42 U.S.C. § 1981. A separate Order follows.

Date: March 4, 2008

/s/ _____
Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONETTE JARVIS,

Plaintiff,

v.

CHIMES, INC. and
CHIMES INTERNATIONAL, LTD.,

Defendants.

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Civil Action No.: RDB-06-1197

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ORDER AND JUDGMENT

For the reasons stated in the foregoing Memorandum Opinion, it is this 4th day of March, 2008, hereby ORDERED AND ADJUDGED, that:

- a. The Motion for Summary Judgment filed by Defendants Chimes, Inc. and Chimes International, Ltd. (Paper No. 29) is GRANTED in part and DENIED in part;
 - i. The Motion is GRANTED as to Counts One, Two, Three, Five, Six, Seven, and Eight;
 - ii. The Motion is DENIED as to Count Four;
- b. Judgment is entered in favor of the Defendants Chimes, Inc. and Chimes International, Ltd. and against Plaintiff Ronette Jarvis as to Counts One, Two, Three, Five, Six, Seven, and Eight;
- c. The case will proceed to trial on Count Four; and

- d. The Clerk of the Court transmit copies of this Order and Memorandum Opinion to counsel for the parties.

/s/ _____
Richard D. Bennett
United States District Judge