IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BOBBY WILLINGHAM,

Plaintiff,

v.

CITY OF DOUGLASVILLE, GA, MARCIA HAMPTON, in her individual capacity, and TRAVIS LANDRUM, in his individual capacity,

Defendants.

CIVIL ACTION FILE NO.

1:19-CV-03558-CC-WEJ

FINAL REPORT AND RECOMMENDATION

Plaintiff, Bobby Willingham, filed this action against his employer, the City of Douglasville, Georgia (the "City"), its City Manager, Marcia Hampton (African American), and its Director of Parks and Recreation, Travis Landrum (African American). Mr. Willingham, who is white, alleges race discrimination claims against all defendants pursuant to 42 U.S.C. § 1983 for violation of his rights under the equal protection clause of the Fourteenth Amendment (Am. Compl. [15] Count I); race discrimination and retaliation claims against the City under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et

seq. ("Title VII") (Am. Compl. [15] Counts II & IV); and 42 U.S.C. § 1981 race discrimination and retaliation claims against all defendants asserted via Section 1983 (Am. Compl. Counts III & V).[1]

After an extended period of discovery, defendants filed a Motion for Summary Judgment [79], which has been fully briefed. (See Mem. of Law in Supp. of Defs.' Mot. for Summ. J. [79-2]; Pl.'s Resp. in Opp'n to Defs.' Mot. for Summ. J. [96]; Reply Br. in Supp. of Defs.' Mot. for Summ. J. [101].) For the reasons explained below, there are disputed issues of material facts that require a trial in this matter. Therefore, the undersigned **RECOMMENDS** that Defendants' Motion for Summary Judgment [79] be **DENIED**.

I. STATEMENT OF FACTS

To assist with framing the undisputed material facts, Local Civil Rule 56.1 requires certain filings by the parties in conjunction with a summary judgment motion. Defendant as movant filed a Statement of Undisputed Material Facts as

---

[1] "[C]laims against state actors or allegations of § 1981 must be brought pursuant to § 1983." Baker v. Birmingham Bd. of Educ., 531 F.3d 1336, 1337 (11th Cir. 2008). At some point, plaintiff's Section 1981 claims must merge into his Section 1983 claims because the latter is the operative one. See Collier v. Clayton Cty. Cmty. Serv. Bd., 236 F. Supp. 2d 1345, 1369 (N.D. Ga. 2002), aff'd sub nom. Collier v. Clayton Cty., 82 F. App'x 222 (11th Cir. 2003).

to Which There is no Genuine Issue to be Tried [79-1] ("DSUMF"), to which plaintiff responded. (See Pl.'s Resp. & Objs. to DSUMF [96-3] ("PR-DSUMF").) As allowed by the Local Civil Rules, plaintiff also filed a Statement of Disputed Material Facts as to Which There Exist Genuine Issues to be Tried [96-1] ("PSDMF"), to which defendants responded. (See Defs.' Resp. to PSDMF [102] ("DR-PSDMF").)

The Court uses the parties' proposals and responses as the basis for the statement of facts under the following conventions. When a party admits a proposed fact (in whole or in part), the Court accepts that fact (or the part admitted) as undisputed for the purposes of this Report and Recommendation and cites only to the proposed fact. When a party denies a proposed fact (in whole or in part), the Court reviews the record cited and determines whether that denial is supported, and if it is, whether any fact dispute is material. The Court sometimes modifies a proposed fact per evidence cited to support it or because of evidence cited in the opposing party's response. The Court also includes facts drawn from its review of the record, see Fed. R. Civ. P. 56(c)(3). Given the large number of facts proposed here and the numerous objections asserted, ruling on each objection would unnecessarily lengthen this Report and Recommendation. Thus, a party may assume that when the undersigned includes a proposed fact herein to

which an objection was asserted, the objection was considered but overruled.[2] Additionally, given the duplication of facts proposed in DSUMF and PSDMF, the Court sometimes cites to one and references the other with a see also signal. Finally, the Court views all proposed facts in light of the standards for summary judgment set out infra Part II.

A. Plaintiff's Employment with the City

Plaintiff began working for the City on June 4, 1993. (DSUMF ¶ 1.) He progressed through the ranks, and on September 12, 2006, obtained promotion to the position of Parks Maintenance Supervisor in the Parks and Recreation Department. (Id. ¶¶ 2-3; see also PSDMF ¶ 1.)[3] In this new position, plaintiff reported directly to the Parks and Recreation Director. (DSUMF ¶ 4.)

Plaintiff had success in this position. He was a City Employee of the Year in 2012; received the Georgia Recreation and Park Association Sports and

---

[2] The same assumption applies to Defendants' Notice of Objections to Plaintiff's Declaration [100].

[3] As Parks Maintenance Supervisor, Mr. Willingham supervised a Crew Chief, a Park Assistant, an Equipment Operator, several Laborers, and a deputy sheriff inmate crew in maintaining the grounds of all City parks, managing the annual budget, and dealing with contractors and vendors. (PSDMF ¶ 2; see also DSUMF ¶ 131.)

Grounds Maintenance Award in 2013; and received the Georgia Recreation and Park Association Best Parks and Grounds Award in 2017. (PSDMF ¶ 3.)

Parks and Recreation Director Bennett Oliver (white) supervised plaintiff from 2009 through 2016. (DSUMF ¶ 5.) Although Mr. Oliver had some criticisms of plaintiff's work (id. ¶ 6), he awarded Mr. Willingham solid scores on his annual performance appraisals in 2013 (11.26 out of 12), 2014 (11.47 out of 12), and 2015 (11.08 out of 12). (PSDMF ¶¶ 5-7.)

B. Travis Landrum Becomes Plaintiff's Supervisor

On October 4, 2016, the City hired Travis Landrum (African American) to be its Parks and Recreation Director. (DSUMF ¶ 7.)[4] Mr. Landrum's first evaluation of plaintiff after managing him for about three months was similar to those penned by his predecessor. On January 4, 2017, Mr. Landrum evaluated Mr. Willingham as 3.3 (with 3 being "meets expectations" and 4 being "exceeds expectations"), and gave him an objective to "[e]ffectively communicate internally with staff and externally with partners/affiliates to provide adequate

[4] Mr. Landrum inherited six direct reports – four of whom were white and two of whom were African American. (DSUMF ¶ 9.) The Court excludes DSUMF ¶ 8 as immaterial.

and safe environments to programming/athletic needs (Staff/Planning Development)." (PSDMF ¶ 8; see also DSUMF ¶ 11.)[5]

On August 7, 2017, Mr. Landrum emailed his entire staff to inform them that he was "rais[ing] the standards on employee evaluations going forward," and that "[j]ust doing your job equates to a 3[.]" (DSUMF ¶ 14.) At his first opportunity to apply that increased standard, Mr. Landrum awarded Mr. Willingham a score of 3.3 on the annual performance appraisal conducted on December 22, 2017. (PSDMF ¶ 9, modified per record cited.)[6]

The December 22, 2017 performance appraisal ranked plaintiff in 20 areas. (Def.'s Ex. 11 [81-4], at 32-38). Mr. Landrum awarded plaintiff a score of 3 (meets expectations) in sixteen areas and a score of 5 (exceptional) in two areas: "work habits and dependability" and "teamwork." At the same time, Mr. Landrum gave plaintiff a score of 2 (improvement needed) in only two areas: "oral and written communication skills" and "supervision." (Id.)

---

[5] The Court excludes DSUMF ¶ 10 as unsupported by the record cited.

[6] At the 2017 awards banquet, Mr. Landrum stated that Mr. Willingham "was a godsend to the department, went above and beyond on a daily basis, and went above and beyond on a daily basis with his staff." (PSDMF ¶ 4.)

With regard to plaintiff's oral and written communication skills, Mr. Landrum noted that he would "like to see improved communications regarding expectations and policies;" he also "encouraged [plaintiff] to research appropriate resources to obtain accurate and supporting information." (DSUMF ¶ 15.) With regard to plaintiff's supervision skills, Mr. Landrum wrote as follows: "[Plaintiff] fails to delegate and hold staff accountable for responsibilities within the Parks Maintenance division. Expectation going forward is to build trust and address issues as needed and appropriately. An example is when he conducts interviews without the Supervisor participating in the process. Would like to see communication and trust flow throughout the Parks Maintenance Division successfully from the Maintenance Supervisor role to the front line staff." (Id. ¶ 16.)[7]

[7] In Plaintiff's December 22, 2017 performance appraisal, Mr. Landrum provided plaintiff with a Professional Development Plan ("PDP") in which he was advised to "[ta]ke advantage of internal training provided by Human Resources and research external training opportunities," as well as to conduct "[b]iweekly meeting[s] to discuss efforts and expectations to address need for supervision competency," and to "[s]eek feedback with interviews with staff and participation in division staff meetings." (DSUMF ¶ 17.) However, because plaintiff denies ever seeing this PDP (see PR-DSUMF ¶ 17), the Court does not include it in the Statement of Facts.

C. Relevant Events in 2018

1. May 10, 2018 Written Reprimand

On April 19, 2018, Mr. Willingham instructed his direct report, David Chapman, to take another employee for a drug test and, when the employee tried to manipulate the drug test, he immediately called Human Resources and asked for direction. (PSDMF ¶ 10.) Mr. Willingham then went directly to Mr. Landrum's office and learned that he was out at a meeting. (Id. ¶ 11.) When Mr. Willingham later learned that Mr. Landrum might not return for the day, he texted Mr. Landrum to see if he was returning, to which Mr. Landrum responded, "No." (Id. ¶ 12.) Mr. Willingham then texted Mr. Landrum as follows: "Ok, I need to go over everything that has took place with Adam Weaver. HR ask me to get with you on it. I'll see you tomorrow." Plaintiff heard nothing more from Mr. Landrum. (Id. ¶ 13.)[8]

Mr. Landrum asserts that he had expected plaintiff to inform him that an employee had attempted to manipulate a drug test (which is a serious offense), and what steps plaintiff had taken to rectify the situation. (DSUMF ¶ 20.)

---

[8] Defendants fault Mr. Willingham for not communicating to Mr. Landrum the specific facts or the urgency of the situation. (DR-PSDMF ¶¶ 12-13; DSUMF ¶ 20.) Nevertheless, it appears that Mr. Landrum was not curious at all.

Instead, he first heard the details about Mr. Weaver's attempted manipulation of a drug test from the City's Human Resources Director, Teaa Allston-Bing, on April 19, 2018. (Landrum Aff. [79-16] ¶ 5.) Mr. Willingham provided Mr. Landrum with the details of what had transpired when they met the day after the incident, April 20, 2018. (Id. Ex. D [79-16], at 30.)

On May 10, 2018, Mr. Landrum issued plaintiff a written reprimand for violating Sections 8-3(7) ("inefficiency or incompetence") and 8-3(17) ("violation of City ordinances, administrative regulations or departmental rules") of the City's Personnel Policies and Procedures ("PPP") for failing to properly communicate with his direct reports and to him that an employee had attempted to manipulate a random drug test screen. (DSUMF ¶ 19.)[9]

Although plaintiff admits receipt of the written reprimand, he disputes that he violated the City's PPP. (PR-DSUMF ¶ 19.) He points out that Mr. Landrum disciplined him for delaying the reporting of a drug test manipulation attempt

[9] The reprimand provides in relevant part as follows: "Bobby failed to supervise and communicate efficiently/effectively as it relates to an incident on 4/19/18. These concerns have been discussed previously as part of the 2017 Employee Evaluation and on 4/3/18." (Landrum Aff. Ex. B [79-16], at 25.)

overnight despite the fact that Mr. Landrum was not at work and even though he had immediately reported it to Human Resources. (PSDMF ¶ 14.)

Per the City's PPP, on May 15, 2018, plaintiff requested in writing that Mr. Landrum reconsider the May 10, 2018 written reprimand. (DSUMF ¶ 21, modified per PR-DSUMF ¶ 21; see also PSDMF ¶ 15.)[10] On June 4, 2018, Mr. Landrum upheld the discipline, noting that as plaintiff's supervisor, he should not have to call plaintiff to get information about what is going on in the department in his absence (and instead, first hear about it from the Human Resources Director), and reiterating that plaintiff had been previously advised of the importance of communication with staff and his supervisor. (DSUMF ¶ 22.)

Per the City's PPP, also on May 15, 2018, plaintiff appealed the May 10, 2018 written reprimand to City Manager Marcia Hampton (African American). (DSUMF ¶ 24; see also PSDMF ¶ 16; Hampton Decl. [79-15] ¶ 2.) Before making her decision on the appeal, Ms. Hampton met with Mr. Landrum and

---

[10] Section 8.8 of the City's PPP provides that any non-appointed employee who receives discipline other than a verbal reprimand has the right to appeal directly to that employee's department head (or if the department head issued the discipline, then it would be a request for reconsideration), and a decision will then be made by the department head; if the employee is not satisfied, the employee may request an appeal to the city manager. (DSUMF ¶ 18.)

plaintiff separately regarding the circumstances leading up to the May 10, 2018 written reprimand and plaintiff's appeal. (DSUMF ¶ 25.)

On June 13, 2018, Ms. Hampton upheld the May 10, 2018 written reprimand because she believed that plaintiff had failed to communicate properly with his subordinates related to the attempted manipulated drug test results (for which communication with staff was a continuing issue for plaintiff), and with Mr. Landrum in providing relevant departmental information in a timely manner regarding the attempted manipulated drug test. (DSUMF ¶ 26.)[11]

While Ms. Hampton upheld the discipline for plaintiff, in that same month she acted on two others. First, plaintiff had demoted a white employee (David Chapman), but she reduced that penalty to a one-day suspension. Second, Mr. Landrum had issued a one-day suspension to an African-American employee (Charles Thomas), but she reduced that penalty to a written reprimand. (PSDMF ¶ 18; see also DSUMF ¶ 27; Hampton Dep. Ex. 30 [88-1], at 7.)

---

[11] Plaintiff challenges the quality of Ms. Hampton's investigation, but the record cited (PSDMF ¶ 17; PR-DSUMF ¶ 26) fails to support his claim. The Court excludes PSDMF ¶ 34 as immaterial and notes that plaintiff also does not mention the facts asserted therein in his Response Brief.

2. Landrum Fails to Investigate a Complaint

On June 25, 2018, City employee Jeffrey Drain (African American) accused another City employee, Charles Thomas (African American) of being aggressive toward him. (PSDMF ¶ 19, modified per DR-PSDMF ¶ 19.) Although Mr. Thomas was Mr. Landrum's direct report, he did not investigate the complaint and did not discipline Mr. Thomas in any way. (PSDMF ¶ 20.)

Defendants' deny the above proposed fact to the extent it suggests that Mr. Landrum should have investigated the complaint. They contend that, because Mr. Drain reported to plaintiff, he should have investigated the complaint. (DR-PSDMF ¶ 20.) Given that plaintiff and Mr. Thomas were peers, both of whom reported to Mr. Landrum, this denial is nonsensical. The only person with authority to discipline Mr. Thomas was Mr. Landrum, and he did nothing about Mr. Drain's complaint. (Landrum Dep. [92] 127-28.)

3. Landrum Meets with Plaintiff's Direct Reports

In July 2018, two of plaintiff's direct reports (David Chapman and Scott Albert) approached Mr. Willingham about a meeting Mr. Landrum had conducted with plaintiff's staff outside of his presence. (PSDMF ¶ 21.) They told him that they believed Mr. Landrum was setting him up. (Willingham Dep. [81-2] 368-

74.) Mr. Landrum claims he did not invite plaintiff to this meeting so that his subordinates would feel comfortable talking about him. (DR-PSDMF ¶ 21.)

4. Mason's Discussions with Plaintiff

Throughout 2018 until she retired in August, Sheila Mason, Park Manager, spoke with Mr. Willingham several times a week about the mistreatment and discrimination Mr. Willingham allegedly experienced working with Mr. Landrum. (PSDMF ¶ 22.) Ms. Mason and Mr. Willingham also discussed how Mr. Landrum was treating Mr. Willingham differently than African-American employees, and Ms. Mason told Mr. Willingham that that she was retiring before Mr. Landrum started mistreating her like he did him. (Id. ¶ 23.)[12]

[12] Defendants object to the above proposed facts as hearsay. (See DR-PSDMF ¶¶ 22-23) "The general rule is that inadmissible hearsay cannot be considered on a motion for summary judgment." Macuba v. Deboer, 193 F.3d 1316, 1322 (11th Cir. 1999) (internal quotations marks and citation omitted). Nevertheless, "a district court may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form." Id. at 1323 (internal quotation marks and citation omitted). Because plaintiff could call Ms. Mason to testify at trial, and the Declaration [79-5] defendants submitted from her does not contradict PSDMF ¶¶ 22-23, the Court can consider her statements.

5. Plaintiff's July 16, 2018 Complaint

On July 16, 2018, Mr. Willingham placed a letter in interoffice mail to Ms. Hampton in which he alleged that he had been targeted by Mr. Landrum since he appealed his May 10, 2018 discipline. (PSDMF ¶ 24; see also DSUMF ¶ 107.)[13] In the letter, Mr. Willingham wrote as follows: "I feel that because I am a 46-year-old white male that I am being targeted by the all black administration for some reason." (PSDMF ¶ 25.)

6. One-Day Suspension on August 3, 2018

On Tuesday, July 10, 2018, when employee Chris Brooks was "no call, no show," Mr. Willingham asked Mr. Landrum what to do; Mr. Landrum replied that plaintiff should follow the PPP. Under the PPP, when an employee is absent without notice for three days, he is terminated. (PSDMF ¶ 26.) Therefore, Mr. Mr. Brooks's three days expired at close of business on Thursday, July 12. (PSDMF ¶ 27, modified per record cited (Willingham Dep. [81-1] 104).)[14] Late on that third and last day, Mr. Willingham began working on a termination letter

---

[13] Ms. Hampton admitted that she received the complaint letter but did not recall exactly when. (DR-PSDMF ¶ 24; see also DSUMF ¶ 108.)

[14] Defendants deny PSDMF ¶¶ 27-29 (see DR-PSDMF ¶¶ 27-29), but the record they cite fails to refute plaintiff's proposed facts, which are based primarily on his deposition testimony and must be credited at this stage.

and finished it the next morning, Friday, July 13, along with information to turn into Human Resources. (Id.) Mr. Willingham forwarded the termination correspondence he prepared for Mr. Brooks to TaLisha Champagne in Human Resources and to Mr. Landrum; Ms. Champagne did not respond to Mr. Willingham or Mr. Landrum. At the end of the day, after both men were unsuccessful in contacting Ms. Champagne, Mr. Landrum told plaintiff, "[I]t looks like we're going to have to wait until Monday," which was July 16. (PSDMF ¶ 28, modified per record cited (Willingham Dep. [81-1] 104-05).)

On July 16, Mr. Willingham again emailed Ms. Champagne first thing, and Ms. Champagne replied that she had not had a chance to review the letter yet; Ms. Champagne called Mr. Willingham later on July 16 and told him that she would rewrite the letter and get it to him and Mr. Landrum on July 17 so they could move forward with the termination. (PSDMF ¶ 29, modified per record cited (Willingham Dep. [81-1] 105).) The termination letter went out to Mr. Brooks on July 17.

On August 3, 2018, Mr. Landrum issued plaintiff a one-day unpaid suspension for violating Sections 8-3(7) and 8-3(12) of the City's PPP by failing to properly communicate with him regarding the whereabouts of a subordinate who had been absent for more than three days in violation of the City's PPP, and

thereafter timely and properly administer a termination notice to that subordinate. (DSUMF ¶ 28.)[15]

On August 10, 2018, Mr. Willingham asked Mr. Landrum to reconsider the suspension. (PSDMF ¶ 32, modified per DR-PSDMF ¶ 32.) Plaintiff argued, among other things, that it was not his responsibility to put together the termination notice because only the department director has the authority to terminate employees per the City's PPP. (DSUMF ¶ 29.)

Mr. Landrum denied that request for reconsideration by letter dated August 13, 2018. (Willingham Dep. Ex. 20 [81-4], at 53-54; see also PSDMF ¶ 33.) Mr. Landrum wrote that, as the employee's direct supervisor, plaintiff would have had the necessary knowledge and facts to put together the termination notice, and reiterated that plaintiff failed to properly and efficiently prepare the notice, and that even after he and Ms. Champagne provided recommendations and revisions to the draft notice, plaintiff still had incorrect information in the draft so that Ms.

---

[15] Plaintiff points out the irony of this discipline. On August 3, 2018, 17 days after the incident, Mr. Landrum suspended Mr. Willingham without pay for not disciplining Mr. Brooks fast enough and for grammatical errors in the letter he had drafted. (PSDMF ¶ 30.) The Court excludes PSDMF ¶ 31 as immaterial and argumentative.

Champagne ultimately had to prepare the termination notice herself. (DSUMF ¶ 30.)

On August 14, 2018, plaintiff appealed the one-day suspension to Ms. Hampton per the City's PPP. (DSUMF ¶ 31; see also PSDMF ¶ 32.) Before making her decision on the appeal, Ms. Hampton met with Mr. Landrum and plaintiff separately regarding the circumstances leading up to the August 3, 2018 unpaid suspension and plaintiff's appeal. (DSUMF ¶ 32.) On September 5, 2018, City Manager Hampton upheld the August 3, 2018 discipline, testifying that it was her belief that plaintiff failed to properly communicate his subordinate's whereabouts and properly and efficiently prepare a notice of termination regarding same. (Id. ¶ 33; see also PSDMF ¶ 33.)[16]

7. Plaintiff's August 10, 2018 Grievance

On August 10, 2018, Mr. Willingham filed a grievance with the City based on "discrimination age, racial and retaliation" by emailing it to Ms. Allston-Bing of Human Resources, alleging that "as of May 2018, I have been discriminated against based on my age, Race of being White by City administration," and that

[16] Plaintiff contends that Ms. Hampton held him to a different standard then she held her direct report, Mr. Landrum, who delayed 17 days in disciplining Mr. Willingham but was not disciplined for his own delay. (PR-DSUMF ¶ 33.)

Mr. Landrum was "quick to discipline, discredit, and to belittle me in front of staff as he did on July 17, 2018," and setting forth the underlying basis for his claims. (PSDMF ¶ 35; see also DSUMF ¶ 109.)

Pursuant to Section 8-9 of the City's PPP, "any employee may file with the Human Resources Director a written grievance alleging . . . any charge of unlawful discrimination or unlawful harassment in his employment based on sex, age, race, color, national origin, religion, disability or other group affiliations protected by federal law." (DSUMF ¶ 110.) Pursuant to Section 8-9 of the City's PPP, "the Chief Assistant City Attorney shall make a written determination, as to whether the filed materials allege unlawful discrimination or unlawful harassment." (Id. ¶ 111.)

Pursuant to Section 8-9 of the City's PPP, Chief Assistant City Attorney Suzan Littlefield reviewed the August 10, 2018 grievance, and determined that it did not allege unlawful discrimination or retaliation because plaintiff failed to allege any facts of inappropriate racial comments, identify any specific individuals whom he believed were treated more favorably than him, or that he engaged in any protected activity. (DSUMF ¶ 112.) Plaintiff notes that Ms. Littlefield rejected his grievance on August 13, 2018 without speaking to him or any witnesses or investigating his allegations of discrimination and retaliation.

(PSDMF ¶¶ 36, 38; see also DSUMF ¶ 113, stating that HR Director Teaa Allston-Bing informed plaintiff of Ms. Littlefield's determination that the August 10, 2018 grievance could not be processed further because it failed to allege unlawful discrimination or retaliation under the PPP.) Defendants respond that Section 8-9 of the City's PPP does not require Ms. Littlefield to conduct an investigation; she was limited to the materials filed by the grievant. (DR-PSDMF ¶¶ 36, 38.)[17]

At or around the time that Ms. Littlefield denied the grievance, City Manager Hampton learned of its existence and denial. (PSDMF ¶ 39.) Ms. Hampton testified that she discussed Mr. Willingham's concerns about discrimination with Mr. Landrum after Ms. Littlefield rejected his grievance (on August 13, 2018) but before his demotion (on December 20, 2018, discussed infra). (Id. ¶ 40, modified per record cited.)[18]

---

[17] Ms. Littlefield testified that she would forward a grievance to Human Resources to investigate if she determined that it alleged unlawful discrimination or retaliation. (PSDMF ¶ 37, modified per record cited.) She added that she has never informed Human Resources that a grievance stated a claim, but noted that very few have ever been filed. (Id.)

[18] Defendants assert that Mr. Landrum did not know of plaintiff's allegations of discrimination until he filed this lawsuit in late-2019. (DSUMF ¶ 124.) However, given the conflict between Ms. Hampton's testimony and that of

8. Plaintiff's September 20, 2018 PIP

City Manager Hampton, after upholding the August 3, 2018 discipline, believed that plaintiff needed additional assistance in improving his supervisory skills and, as such, recommended that he be placed on a ninety-day performance improvement plan ("PIP"). (DSUMF ¶ 34; see also PSDMF ¶ 41.)[19] Ms. Hampton was also aware of concerns that the Human Resources Department had about plaintiff's interpretation of City policies and his communication of those policies to his subordinates. (DSUMF ¶ 36.)

Ms. Champagne conveyed City Manager Hampton's recommendation to Mr. Landrum, and she worked with him to prepare the PIP that provided the employee responsibilities, key performance indicators, and manager/supervisor responsibilities. (DSUMF ¶ 37.) Mr. Landrum agreed with Ms. Hampton's recommendation to place plaintiff on a PIP, because he believed that certain areas of plaintiff's performance had fallen short, including conflict resolution, effective communication with staff, being out in the field more visibly, and implementing

---

Mr. Landrum, the Court must credit on summary judgment the version most favorable to plaintiff. In other words, the Court must assume that Mr. Landrum knew plaintiff had accused him of discrimination by the time he demoted plaintiff.

[19] The Court excludes DSUMF ¶ 35 as immaterial.

City and departmental policies accurately. Mr. Landrum also believed that employee morale and productivity in the field had decreased, which had negatively impacted the department. (Id. ¶ 38.)[20]

On September 20, 2018, Mr. Landrum and Ms. Champagne met with plaintiff to administer the PIP and go over the employee responsibilities, key performance indicators, and manager/supervisor responsibilities. (DSUMF ¶ 39.) During the course of that PIP, plaintiff and Mr. Landrum met one-on-one to discuss it at least five times. (Id. ¶ 40, modified per PR-DSUMF ¶ 40.)[21]

During his employment as Parks and Recreation Director, Mr. Landrum placed two other employees on PIPs: (1) David Chapman (white) and (2) Charles Thomas (African American). Both men successfully completed their PIPs. (DSUMF ¶ 45; see also PSDMF ¶ 42.) However, after completing his PIP in

---

[20] Plaintiff's denial of the above proposed fact (see PR-DSUMF ¶ 38) is not supported by the record cited. Mr. Landrum's Declaration [79-16] supports it.

[21] The May 10 written reprimand and the PIP did not cause plaintiff any tangible harm, such as loss of pay or benefits. (DSUMF ¶¶ 23, 44.) However, as plaintiff points out, given the City's progressive discipline policy, the step following the reprimand was a one-day suspension without pay. (PR-DSUMF ¶ 23.) And, plaintiff's failure in defendants' eyes to complete the PIP successfully led to a demotion and pay cut. (Id. ¶ 44.)

mid-2019, Mr. Chapman was terminated in late-2019 for violation of City policy. (Landrum Dep. [92] 52, 119.)

9. Plaintiff's November 26, 2018 Appraisal

On November 26, 2018, Mr. Landrum performed an employee performance appraisal on plaintiff for 2018. Just as with the 2017 appraisal, this appraisal form ranked an employee in 20 categories. (Defs.' Ex. 27 [81-4], at 65-70.) Mr. Landrum rated Mr. Willingham as a 2 (needs improvement) in six categories, but scored him as a 3 (meets expectations) in 14 categories. (Id.) Despite the large number of "meets expectations" ratings, the overall rating was 2.7 (Id. at 65.)

Plaintiff received two of those "needs improvement" ratings for the following "key job specific responsibilities": (1) plans, prioritizes, supervises, and reviews the work of Park Maintenance employees; and (2) maintains a visible profile in the community and with employees through field visits and inspections. (DSUMF ¶ 41, modified per PR-DSUMF ¶ 41.)

Mr. Landrum also gave plaintiff a score of 2 (needs improvement) for his "leadership/integrity," and his "oral and written communication skills," noting for the latter that plaintiff was "still encouraged to research appropriate resources to

obtain accurate and supporting information," and to "[r]eview grammatical/spelling of documents prior to administering." (DSUMF ¶ 42.)

Finally, Mr. Landrum also gave plaintiff a score of 2 (needs improvement) for "[i]ncreasing and improv[ing] visibility in the field and amongst affiliates/citizens of the community," as well as "supervision," noting with regard to the latter that his improvement is "[s]till a work in progress," that plaintiff "fails to delegate and hold staff accountable for responsibilities within the Parks Maintenance division," that the "[e]xpectation going forward is to build trust and address issues as needed and appropriated," and that while he has "improved efforts to communicate through the Parks Maintenance Division successfully from the Maintenance Supervisor role in the front line staff," plaintiff "needs to establish standard." (DSUMF ¶ 43.)[22]

10. Mr. Landrum's Alleged Racist Remark

On December 10, 2018, Mr. Willingham overheard Mr. Landrum on his cellular telephone stating, "I am going to get rid of that white boy, hopefully soon." (PSDMF ¶ 44; see also DSUMF ¶ 125.) Plaintiff has no evidence that Mr.

[22] Defendants do not argue in either their Brief or Reply Brief that they relied on a complaint that Kiam Jones made about plaintiff as grounds to demote him. Accordingly, the Court excludes DSUMF ¶¶ 46-48 as immaterial.

Landrum made this statement about him or anyone else employed by the City. (DR-PSDMF ¶ 44; see also DSUMF ¶ 126.)[23] However, Mr. Willingham believed that Mr. Landrum made the comment about him because he was the only white male in the office building who worked full time for Mr. Landrum. (PR-DSUMF ¶ 126.)

Plaintiff testified that he believed Mr. Landrum did not watch every move of other white employees within the Parks and Recreation Department, and that Mr. Landrum treated some white employees better than him (including Sheila Mason). (DSUMF ¶ 106.) Plaintiff also testified that he believed everyone was treated more favorably than him – even white employees. (Id. ¶ 136.)

11. Plaintiff's Complaint of December 11, 2018

On December 11, 2018, plaintiff sent an email to Ms. Hampton, requesting a meeting to discuss his professional relationship with Mr. Landrum, and alleging that he believed that Mr. Landrum was discriminating against him because of his race, age, and retaliation "because [he] challenged [Landrum's decision on the past reprimands that he issued against [plaintiff]." (DSUMF ¶ 114; see also

---

[23] Mr. Landrum denies making this statement. (DSUMF ¶ 128.) However, the Court must assume that he did so for purposes of this recommendation.

PSDMF ¶ 45.) Ms. Hampton responded to plaintiff's December 11 email the same day, and said that she would "be happy to meet with [him]," and encouraged him to file an official complaint if he felt "as though [he] [was] being discriminated against." (DSUMF ¶ 115.)

On either December 12 or 13, 2018, Ms. Hampton met with plaintiff.[24] Mr. Willingham informed the City Manager that he had overheard Mr. Landrum say, "I am going to get rid of that white boy, hopefully soon."[25] (PSDMF ¶ 46.) Ms. Hampton commented that maybe Mr. Willingham needed to work in a predominately white department. (Id.; see also DSUMF ¶ 118.)[26] Plaintiff testified that he neither asked Ms. Hampton what she may have meant by what

---

[24] Defendants claim that Mr. Willingham was unable to articulate any allegations of discrimination against Mr. Landrum in this meeting. (DSUMF ¶ 116.) However, given the statement contained in the text following this note, this is a disputed fact.

[25] Ms. Hampton testified that plaintiff never relayed to her that Mr. Landrum had made this comment. (DSUMF ¶ 127.) However, plaintiff testified that he did. (PR-DSUMF ¶ 127.) The Court must accept plaintiff's version when making a recommendation on this Motion.

[26] Ms. Hampton denies making this comment. She claims instead that she recommended plaintiff consider working with another director with a management style more suitable for him. (DSUMF ¶ 120.) However, the Court must credit plaintiff's story.

she allegedly said nor ever told anyone at the City what she allegedly said. (DSUMF ¶ 119.)

On December 13, 2018, Ms. Hampton sent plaintiff a list of open positions with the City in case he wanted to explore other options. (PSDMF ¶ 47; see also DSUMF ¶ 117.) In the email transmitting that list, Ms. Hampton wrote that Mr. Willingham's "other option is to work through [his] Performance Improve[ment] Plan (PIP) given to [him] by Travis [Landrum]," and that she had "reviewed the information in [his] PIP and they are items [she] believe[s] [plaintiff] can accomplish." She also suggested that plaintiff consider "how well [he] will be able to adjust [his] management style to meet [his] Director's expectations." (DSUMF ¶ 121.)

12. The December 19, 2018 Employee Survey

One day before the end of plaintiff's 90-day performance improvement period, and as provided in the PIP as part of the Manager/Supervisor's responsibilities (Defs.' Ex. 23 [81-4], at 59), Mr. Landrum created a ten-question survey regarding plaintiff's performance as Park Maintenance Supervisor to obtain anonymous feedback from his direct reports. (DSUMF ¶ 49, modified per record cited.) The survey was sent via email on December 19, 2018 to all seven Parks Maintenance Division employees: David Chapman, Desiree Price,

Destinee Collins, Jeff (Scott) Albert, Gerald Reid, Jeff Drain, and Chris Beasley. (Id. ¶ 50.) Although Mr. Willingham makes the hearsay assertion that Mr. Albert told him that he did not receive or complete the survey (PSDMF ¶ 51), defendants submit documentary evidence from Survey Monkey showing that all seven employees completed it. (Landrum Decl. Ex. M [79-16], at 53.)[27]

Although plaintiff disputes the validity of the survey's results (for reasons discussed infra), many of the responses to the anonymous survey's ten questions could fairly be described as negative. (DSUMF ¶ 51.) The following summarizes the employees' responses to the survey's first nine questions.

(1) When asked how effective the training was they received from Mr. Willingham, 57.15% said either "Very effective" or "Somewhat effective."

(2) 85.71% of the respondents stated that they "Rarely" or "Never" received feedback from their supervisor.

(3) The morale in the Parks Maintenance division was rated as "Negative" by 85.71% of the employees.

---

[27] Plaintiff shows that the existence of the Survey Monkey questionnaire was not disclosed to him at the demotion meeting on December 20, 2018, and that the survey's results were not provided to him until six days later. (Defs.' Ex. 32 [81-4], at 82; Defs.' Ex. 33 [81-4], at 83; PSDMF ¶ 48, modified per record cited.)

(4) When asked how visible Mr. Willingham was in the field, 85.71% of the responses were either "A little" or "None at all."

(5) 57.15% of the workforce described Mr. Willingham as "Somewhat" or "Very" professional.

(6) When asked how often plaintiff listened to their opinions when making decisions, 71.43% replied "Rarely" or "Never."

(7) Six of the seven employees, or 85.72%, ranked plaintiff as "Rarely" or "Never" trustworthy.

(8) 71.43% rated plaintiff's communication with them as either "Not so effective" or "Not at all effective."

(9) When asked about their overall satisfaction with plaintiff, 57.14% replied "Dissatisfied" or "Very Dissatisfied." (Landrum Decl. Ex. N [79-16], at 56-60.)

The survey asked plaintiff's direct reports to provide a narrative response to question 10, which asked what he needed to do to improve. His subordinates wrote the following:

> (1) Step away from the responsibilities of the position entirely, because he has proven to me (personally) that he's not morally nor professionally fit to lead in such a[n] important role. Nor is he's willing to change his personal views toward personnel.

> (2) Stop playing employees against each other. He seems to be creating a hostile and unhealthy work environment.
>
> (3) Really really [sic] need to work on his personal and performance all his perfection very badly he spend most of his time on being positive situations instead of being on GPS all day should be doing something constructive.
>
> (4) He needs to be more of a leader to his team instead of trying to put everything on his crew chiefs.
>
> (5) Coming out in field more and just don't worry about what people say about him or towards him just keep making the department better and grow.
>
> (6) Delivery of Truthfully Information. Coming up with his own rules. Show more appreciate toward staff. Learn how to not share staff personal information with other staff. Stop nitpicking. Plan ahead/accordingly & sharing information with team. Making sure staff are knowledgeable of a task before asking to do so. Stop mentioning about the gps every single day.
>
> (7) Work as a team player.

(DSUMF ¶¶ 52-58.)[28]

Plaintiff responds that it is not surprising that the responses could fairly be described as negative since Mr. Landrum spent months turning his employees

---

[28] Mr. Landrum has neither conducted a survey of his own performance nor of his other reports, such as Mr. Thomas, even though he received an employee complaint about him from Jeffrey Drain. (PSDMF ¶ 50, modified per record cited.)

against him, creating a divisive environment, and undermining him repeatedly and routinely with his direct reports. On the day of plaintiff's demotion, Desiree Price (African American) told him that Mr. Landrum was playing his employees against him by calling meetings and leaving him out; that Mr. Landrum was explicitly undermining plaintiff with problem employee Jeffrey Drain; that Mr. Chapman told plaintiff's reports that they better get on board with Mr. Landrum's plan or they would be looking for jobs themselves; and that she was under the impression that Mr. Landrum was trying to get rid of plaintiff because of his race. (PR-DSUMF ¶¶ 51-56; see also PSDMF ¶¶ 49, 55.)

At the end of the 90-day improvement period, Mr. Landrum concluded that plaintiff did not successfully complete his PIP because he did not show improvement in his communication skills, supervision, conflict resolution, or implementation and accurate interpretation of City and departmental policies. (DSUMF ¶ 59.) Plaintiff admits that Mr. Landrum so stated, but notes that by this time he had already been heard saying that he was "going to get rid of the white boy, and hopefully soon," and Mr. Landrum had already received notice from City Manager Hampton that plaintiff had accused him of race discrimination. (PR-DSUMF ¶ 59, modified per record cited.)

13. Plaintiff's December 20, 2018 Demotion

On December 20, 2018, Mr. Landrum and Ms. Champagne met with plaintiff; Mr. Landrum informed him that he did not successfully complete his PIP. (DSUMF ¶ 60.) However, plaintiff believed that he had successfully completed the PIP. (PSDMF ¶ 43.) He contends that Mr. Landrum and Ms. Champagne refused to look at the documentation he brought to the meeting which showed its successful completion. (Id. ¶ 52.)[29]

Plaintiff contends that he was informed in this meeting that he was being demoted to Laborer I effective January 3, 2019. (PSDMF ¶ 52.) Defendants counter that they only informed plaintiff of his demotion on December 20, and that the decision to place him as a Groundskeeper (not in Laborer I position) at the West Pines Golf Course was made later. (DR-PSDMF ¶ 52; DSUMF ¶ 61.) This dispute is not material.[30] What is material is that, given Mr. Landrum's belief that plaintiff had not successfully completed the PIP, he was demoted and his pay reduced. (PSDMF ¶ 53.)

---

[29] Defendants deny that the managers refused to examine plaintiff's documentation. (DR-PSDMF ¶ 52.) However, this is a disputed fact.

[30] The Court also finds immaterial plaintiff's contention that Mr. Landrum had initially planned to demote him to Laborer III, not Laborer I. (PSDMF ¶ 54.)

On December 21, 2018, plaintiff requested in writing that Mr. Landrum reconsider the demotion per the City's PPP, arguing that he disagreed with Mr. Landrum's conclusion that he had not improved and stating that he never saw the results of the anonymous survey. (DSUMF ¶ 62.) Mr. Landrum refused to reconsider. (PSDMF ¶ 56.) He upheld the demotion in writing on January 2, 2019, because he believed that plaintiff did not have the abilities and capabilities to fully perform as a supervisor in the department and pointed out specific occurrences where plaintiff had failed to perform as a supervisor. He also provided plaintiff with another copy of the survey results (discussed supra), which showed dissatisfaction among his direct reports. (DSUMF ¶ 63.)

14. Plaintiff's December 21, 2018 Grievance

On December 21, 2018, Mr. Willingham claims that he submitted a second grievance to the City by hand-delivering it in an envelope to receptionist Amanda Pope, whom he believed worked in Human Resources. (PSDMF ¶ 57, modified per record cited; see also DSUMF ¶ 122.) However, Ms. Pope worked in the Finance Department, not Human Resources, and that while she knew plaintiff, she asserts that she never received an envelope from him to deliver to anyone. (DSUMF ¶ 123, citing Pope Decl. [79-3] ¶¶ 2-3.) Plaintiff never received a

response to this grievance because the City contends that it was never received. (Littlefield Dep. [89] 20.) Nevertheless, the Court includes its allegations below.

In this grievance, plaintiff alleged that Mr. Landrum was "discriminating against me because of my Color, Age and Retaliation," and that Mr. Landrum had said, "I am going to get rid of that white boy hopefully soon." (PSDMF ¶ 57.) Mr. Willingham also noted that, since the filing of his first grievance, Mr. Landrum had been making him work *outside* of his job description and gave the following examples: (1) Mr. Landrum insisted that plaintiff pressure wash a building in his dress shoes and suit (id. ¶ 58); (2) Mr. Landrum directed plaintiff to manually work with his staff during football turf renovation; (3) Mr. Landrum directed plaintiff to mow grass at Ike Owings Center on July 25, 2018; (4) Mr. Landrum forced plaintiff to clean up feces from the floor, walls, and stalls in the Hunter Webb restroom;[31] (5) Mr. Landrum directed plaintiff in October 2018 to clean up feces from the floor, walls, and stalls at the JD Football Stadium's men's restroom; and (6) Mr. Landrum directed plaintiff to clean the women's restroom

[31] When plaintiff told Mr. Landrum that he would have the staff that was already there clean up the feces, Mr. Landrum relied, "You don't understand what I am telling you. I am telling you to do it." (PSDMF ¶ 59.) Mr. Landrum has never directed Chuck Combs (white), who replaced plaintiff as Parks Maintenance Manager, to clean feces in restrooms. (Id. ¶ 64.)

at the tennis courts on November 11, 2018. (Id. ¶ 59.) Mr. Willingham also stated that he had observed Mr. Landrum treating his African-American co-workers better than he treated Mr. Willingham, including socializing with them but not with him. (Id. ¶ 60.)[32]

D. Relevant Events in 2019

1. Plaintiff Appeals his Demotion

On January 3, 2019, plaintiff appealed his demotion to City Manager Hampton per the City's PPP. (DSUMF ¶ 64; see also PSDMF ¶ 61.) There is an immaterial fact dispute over whether Ms. Hampton met with plaintiff and Mr. Landrum separately regarding his demotion and appeal. (DSUMF ¶¶ 65, 68; PR-DSUMF ¶ 65; PSDMF ¶ 61.) On January 9 and 11, 2019, before making her decision on the appeal of plaintiff's demotion, Ms. Hampton met separately with plaintiff's direct reports (Chris Beasley, Gerald Reid, Jeff (Scott) Albert, Jeff Drain, Desiree Price, David Chapman, and Destinee Collins) to determine how plaintiff was as a supervisor. (DSUMF ¶ 66.) According to the City Manager, the consensus from those subordinates was that plaintiff was a nice person, but

[32] Although Chief Assistant City Attorney Littlefield never saw this second grievance, she opined that if she had seen it, she most likely would have said that it stated a claim. (PSDMF ¶ 57.)

they did not think he was a good supervisor, his directives were inconsistent, he would pit employees against each other, and he created a divisive environment; in contrast, none of the employees had any complaints about Mr. Landrum. (Id. ¶ 67.)[33] Ms. Hampton upheld the demotion on January 22, 2019. (Id. ¶ 69, modified per PR-DSUMF ¶ 69.)

2. Plaintiff's February 20, 2019 EEOC Charge

On February 20, 2019, plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), Charge No. 410-2018-07892, asserting claims of race and age discrimination, as well as retaliation, and alleging that the earliest date that discrimination took place was May 1, 2018, and the latest date that discrimination took place was January 3, 2019. (DSUMF ¶ 129; see also PSDMF ¶ 63.)

---

[33] Plaintiff responds that it was unlikely for any of his subordinates to complain about Mr. Landrum after seeing what happened to him after he complained. (PR-DSUMF ¶ 67.) Plaintiff also repeats the assertions he made in PR-DSUMF ¶¶ 51-56 to the effect that Mr. Landrum created the divisive environment, undermined him, and turned his reports against him, some of whom believed Mr. Landrum was "setting him up" or acting on the basis of race. (PR-DSUMF ¶ 67.)

3. A White Man Replaces Plaintiff

After plaintiff's demotion, the City sought internal candidates for his former position of Park Maintenance Supervisor. (DSUMF ¶ 72.) The following internal candidates applied and were interviewed for the position in early-February 2019: (1) David Chapman, a white male who at the time was employed as the crew chief in the Parks and Recreation Department; (2) Matthew Alexander, a white male who at the time was employed as a facilities maintenance technician in the Public Services Department; (3) Chris Beasley, an African-American male who employed at the time as a temporary crew chief in the Parks and Recreation Department; (4) Chuck Combs, a white male who was employed at the time as the golf course superintendent in the Parks and Recreation Department; and (5) Gerald Zimmerman, an African-American male who was employed at the time as a sanitation supervisor in the Sanitation Department. (Id. ¶ 73.)

Mr. Landrum and Ms. Champagne interviewed all candidates; Mr. Landrum made the hiring decision to promote Mr. Combs to the position of park maintenance supervisor. (DSUMF ¶ 74.) As a result of a reorganization of the Parks and Recreation Department, the Park Maintenance Supervisor position was renamed Park Maintenance Manager, and Mr. Combs started in that job effective March 5, 2019. (Id. ¶ 75.)

4. Other Employment Decisions by Landrum

During Mr. Landrum's employment as Parks and Recreation Director, he has disciplined and/or terminated African-American employees, including Charles Thomas (discipline), Jeff Drain (discipline and termination), Desiree Price (discipline and termination), and Kendrick Davis (resigned in lieu of termination). (DSUMF ¶ 70.) He has also had white employees report to him, including Shelia Mason, Chris Cartwright, and Charles Combs, but he did not discipline them. (Id. ¶ 71.)

In addition to Mr. Combs (discussed above), Mr. Landrum hired another white manager. In the summer of 2017, there was an opening for a park manager in the Parks and Recreation Department. Internal candidates Sheila Mason (white), Kendrick Davis (African American), and Ashley Brewer Byrd (white) submitted letters of interest for the position. (DSUMF ¶ 12.) After interviews were completed, Mr. Landrum selected Ms. Mason for the position because he believed she was the most qualified. (Id. ¶ 13.)

5. Plaintiff Applies for the Crew Chief Position[34]

In June 2019, the City opened the position of Crew Chief in the Parks and Recreation Department for internal candidates. (DSUMF ¶ 88.) Plaintiff submitted his letter of interest in late-June 2019, and was interviewed in early-July. (Id. ¶ 89.) The following individuals also submitted letters of interest for that open Crew Chief position and were also interviewed: (1) Lindsey Landers, a white male who was employed at the time as a groundskeeper in the Parks and Recreation Department; (2) Matt Alexander, a white male who was employed at the time as a facilities maintenance technician in the Public Services Department; (3) Chris Beasley, an African-American male who was employed as a temporary crew chief in the Parks and Recreation Department; (4) Paul Brittain, a white male who was employed as a groundskeeper in the Parks and Recreation Department; (5) Doug Parrish, an African-American male who was employed as a sanitation driver in the Sanitation Department; and (6) Gerald Reid, a white

---

[34] Plaintiff waived his retaliation claims with respect to the City's failure to promote him to Golf Course Superintendent in March 2018 and to Assistant Parks and Recreation Director in January 2020. (Pl.'s Resp. Br. [96] 24 n.2.) This waiver renders DSUMF ¶¶ 76-87, 101-05 and PSDMF ¶ 70 immaterial and thus excluded. Plaintiff limits his retaliation claim to denial of the Crew Chief position.

male who was employed at the time as an equipment operator in the Parks and Recreation Department. (Id. ¶ 90.)

Chuck Combs (white) and Human Resources Generalist Bryan Westfield (African American) were on the interview panel for the Crew Chief position and asked the same questions of each candidate. (DSUMF ¶ 91.) Mr. Combs was the hiring manager for the Crew Chief position, and after interviews, made the recommendation to hire Mr. Landers, which was approved by Mr. Landrum. (Id. ¶ 92.) At the time Mr. Combs recommended the promotion of Mr. Landers to the position of Crew Chief, neither Messrs. Combs nor Westfield had any knowledge that plaintiff had ever complained to anyone about discrimination or retaliation. (Id. ¶ 100.)

Mr. Combs did not speak with Mr. Landrum or Ms. Hampton about any of the candidates for the Crew Chief position, and neither Mr. Landrum nor Ms. Hampton participated in the interviews or had any input in Mr. Combs's decision to recommend Mr. Landers for the position. (DSUMF ¶ 99.) Although plaintiff disputes the preceding proposed fact (see PR-DSUMF ¶ 99), nothing he cites contravenes it. Even if Mr. Landrum had the authority to reject a hiring recommendation (see PSDMF ¶ 69), it is undisputed that he had no input into who was recommended for the Crew Chief position, and the hiring manager

(Combs) knew nothing about plaintiff's past claims of retaliation or discrimination.[35]

6. Plaintiff's August 28, 2019 EEOC Charge

On August 28, 2019, plaintiff filed a second Charge of Discrimination with the EEOC, Charge No. 410-2019-09159, asserting claims of race discrimination and retaliation, alleging that he was denied the positions of Golf Course Superintendent and Crew Chief in retaliation for engaging in protected activity (but no other positions were identified). (DSUMF ¶ 130; see also PSDMF ¶ 63.)

E. City's Equal Employment Policies

The City has an Equal Opportunity and Non-Discrimination Policy which provides that all employees of the City "shall be ensured of fair and equitable treatment in all aspects of personnel administration, including hiring, training,

---

[35] Given the above undisputed facts, defendants could have acted with a retaliatory motive in the selection of Mr. Landers over plaintiff for promotion to Crew Chief. Accordingly, any factual disputes over whether the Crew Chief position required a Class B CDL, whether Mr. Landers was unqualified because he lacked a Class B CDL (which plaintiff had), or whether Mr. Landers was unqualified because he lacked prior managerial experience (which plaintiff had), are all immaterial. Moreover, because the City interviewed plaintiff for the Crew Chief vacancy, any factual dispute over whether the vacancy was properly posted pursuant to City policy is also immaterial. Thus, the Court excludes those proposed facts relating to these issues (i.e., DSUMF ¶¶ 93-98 and PSDMF ¶¶ 65-68, 71-79).

promotion, and discriminatory action without regard to . . . race." (DSUMF ¶ 134.) The City uses third-party vendors to conduct equal employment opportunity/diversity training for all City employees each year. (Id. ¶ 135.) Plaintiff does not dispute the existence of the City's policy, just its enforcement. (PR-DSUMF ¶ 134.)

Plaintiff testified that no one ever told him, nor did he ever see anything in writing indicating, that he was disciplined, received a PIP, was demoted, or did not receive the position of Crew Chief because of his race or because he had complained of discrimination. (DSUMF ¶ 133.)[36]

II. SUMMARY JUDGMENT STANDARD

A "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a). The party moving for summary judgment bears the initial burden of "informing the court of the basis for its motion and of identifying those materials that demonstrate the absence of a genuine issue of material fact." Rice-Lamar v. City of Fort Lauderdale, 232 F.3d

[36] Whether Mr. Landrum instructed certain City employees not to talk to plaintiff after his demotion is immaterial. Thus, the Court excludes DSUMF ¶ 132 and PSDMF ¶ 62.

836, 840 (11th Cir. 2000) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Those materials may include "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991).

The non-moving party is then required "to go beyond the pleadings" and present competent evidence "showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324. Generally, "[t]he mere existence of a scintilla of evidence" supporting the non-movant's case is insufficient to defeat a motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). If in response the non-moving party does not sufficiently support an essential element of his case as to which he bears the burden of proof, summary judgment is appropriate. Rice-Lamar, 232 F.3d at 840. "In determining whether genuine issues of material fact exist, [the Court] resolve[s] all ambiguities and draw[s] all justifiable inferences in favor of the non-moving party." Id. (citing Anderson, 477 U.S. at 255).

In deciding a summary judgment motion, the court's function is not to resolve issues of material fact but rather to determine whether there are any such issues to be tried. Anderson, 477 U.S. at 251. The applicable substantive law will identify those facts that are material. Id. at 248. Facts that are disputed, but which do not affect the outcome of the case, are not material and thus will not preclude the entry of summary judgment. Id. Genuine disputes are those in which "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. For factual issues to be "genuine," they must have a real basis in the record. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). When the record as a whole could not lead a rational trier of fact to find for the non-movant, there is no "genuine issue for trial." Id. at 587.

III. ANALYSIS

Plaintiff brings race discrimination and retaliation claims against the City under Title VII; a race discrimination claim against all defendants under the Fourteenth Amendment's equal protection clause (asserted via Section 1983); and Section 1981 race discrimination and retaliation claim against all defendants (asserted via Section 1983). The Court analyzes the discrimination claims together in Part III.A. See Bryant v. Jones, 575 F.3d 1281, 1296 n.20 (11th Cir. 2009) ("[D]iscrimination claims . . . brought under the Equal Protection Clause,

42 U.S.C. § 1981, or Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, are subject to the same standards of proof and employ the same analytical framework."). The Court also analyzes the retaliation claims together in Part III.B. See Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998) (a claim brought under Section 1981 is analyzed under the same framework as a Title VII claim because both statutes have the same requirements of proof). Finally, the Court addresses in Part III.C defendants' arguments against the Section 1983 claims.

A. Plaintiff's Discrimination Claims

Title VII makes it unlawful for an employer to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race. 42 U.S.C. § 2000e-2(a)(1). Similarly, "[T]he purpose of the Equal Protection Clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (internal quotation marks and citation omitted; see also Campbell v. Rainbow City, Ala., 434 F.3d 1306, 1313

(11th Cir. 2006) ("[T]he Equal Protection Clause requires government entities to treat similarly situated people alike."). Finally, Section 1981 provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a).[37]

"Faced with a defendant's motion for summary judgment, a plaintiff asserting an intentional-discrimination claim under Title VII . . . the Equal Protection Clause, or [Section] 1981 must make a sufficient factual showing to permit a reasonable jury to rule in h[is] favor." Lewis v. City of Union City, Ga., 918 F.3d 1213, 1217 (11th Cir. 2019). He may do so in a variety of ways, such as by (1) presenting direct evidence of discrimination, (2) satisfying the burden-shifting framework set out in McDonnell Douglas v. Green, 411 U.S. 792, 800

---

[37] In McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976), the Court held that a white plaintiff who had been dismissed from his job had a cause of action under Section 1981 for race discrimination, notwithstanding the statute's reference to white persons. The Court looked to the language and legislative history of Section 1981, and concluded that Congress had intended to protect whites as well as non-whites when passing the legislation. Id.

(1973), or (3) demonstrating a "convincing mosaic" of circumstantial evidence that warrants an inference of intentional discrimination under Smith v. Lockheed-Martin Corp., 644 F.3d 1321, 1328 (11th Cir. 2011). Lewis, 918 F.3d at 1220 & n.6. Mr. Willingham proceeds down all three lanes here.

1. Direct Evidence

Plaintiff contends that the comments he attributes to Mr. Landrum ("I am going to get rid of that white boy, hopefully soon") and Ms. Hampton (suggesting that plaintiff transfer to a mostly white department) constitute direct evidence of discrimination. (Pl.'s Resp. [96] 14-16.) Defendants disagree. (Defs.' Reply [101] 3-5.)

Direct evidence is composed of "only the most blatant remarks, whose intent could be nothing other than to discriminate" on the basis of some impermissible factor. Carter v. City of Miami, 870 F.2d 578, 582 (11th Cir. 1989); see also Wright v. Southland Corp., 187 F.3d 1287, 1293 (11th Cir. 1999) ("'[D]irect evidence,' in the context of employment discrimination law, means evidence from which a reasonable trier of fact could find, more probably than not, a causal link between an adverse employment action and a protected personal characteristic."). A stray remark in the workplace does not constitute direct

evidence. See Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1086 (11th Cir. 2004).

Direct evidence must indicate that the complained-of employment decision was actually motivated by the employer's animus. Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999). One Eleventh Circuit panel provided this example of direct evidence: "a management memorandum saying, 'Fire Earley—he is too old.'" Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990). If an alleged statement at best merely suggests a discriminatory motive, then it is by definition only circumstantial evidence. Burrell v. Bd. of Trs. of Ga. Mil. Coll., 125 F.3d 1390, 1393-94 (11th Cir. 1997) (evidence that the decision-maker told the plaintiff that "he wanted to hire a man for the position because too many women filled First Federal's officer positions" was not direct evidence that she was terminated later because of her sex).

Given this stringent standard, the comments that plaintiff attributes to Mr. Landrum ("I am going to get rid of that white boy, hopefully soon") and Ms. Hampton (suggesting that he transfer to a mostly white department) are not direct evidence, but constitute only circumstantial evidence of race discrimination. Although these remarks are troubling and racially tinged, they are not so blatant

that the speaker's intent to discriminate on the basis of race is obvious. Carter, 870 F.2d at 582. Given this report, the undersigned continues the analysis by applying the McDonnell Douglas framework.[38]

2. McDonnell Douglas Framework

McDonnell Douglas established a three-part framework to analyze discrimination claims. Quigg v. Thomas Cty. Sch. Dist., 814 F.3d 1227, 1237 (11th Cir. 2016). If the plaintiff establishes a prima facie case, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for its employment decision. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the employer meets this burden, the inference of discrimination drops out of the case, and the plaintiff has the opportunity to show by a preponderance of the evidence that the proffered reason was pretextual. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511 (1993).

a) The Prima Facie Case

Under the McDonnell-Douglas framework, Mr. Willingham can establish a prima facie case of race discrimination by showing that: (1) he belongs to a

---

[38] Had plaintiff shown direct evidence, it would be inappropriate to apply the McDonnell Douglas framework. See EEOC v. Alton Packaging Corp., 901 F.2d 920, 923 (11th Cir. 1990).

protected class; (2) he suffered an adverse employment action; (3) he was qualified for the position; and (4) he was treated less favorably than a similarly-situated individual outside his protected class. Lewis, 918 F.3d at 1220-21. Defendants concede elements (1) and (3), but contest the other two. However, there really is no dispute over element (2), because plaintiff suffered two adverse employment actions—the unpaid suspension and the demotion.[39]

Where the parties actually differ is on whether plaintiff has established element (4) of his prima facie case. This element requires a plaintiff to show that he and his comparator were "similarly situated in all material respects." Lewis, 918 F.3d at 1226. The Eleventh Circuit recently summarized Lewis's "similarly situated" requirement as follows:

> A plaintiff does not necessarily need to prove purely formal similarities, such as identical job titles. [Lewis, 918 F.3d] at 1227.

---

[39] The difference between the parties on element (2) is one of nomenclature it seems. Defendants argue that the written reprimand and the PIP, neither of which caused plaintiff any tangible harm such as loss of pay or benefits, were not adverse. (Defs.' Br. [79-2] 18.) They concede the suspension and demotion were adverse. (Id.) Plaintiff responds that he does not contend that the written reprimand and PIP standing alone were adverse; he contends instead that they were part of a course of progressive discipline that led to his demotion. (Pl.'s Resp. [96] 17.) However, defendants are incorrect when they assert that the only adverse employment action at issue here is the demotion. (Defs.' Reply [101] 5.) The one-day unpaid suspension obviously was adverse as well.

> We have explained the sorts of similarities that will underlie a valid comparison. Id. For instance, we noted, a similarly situated comparator will have engaged in the same basic conduct or misconduct as the plaintiff, will have been subject to the same employment policy, guideline, or rule as the plaintiff, will ordinarily have been under the jurisdiction of the same supervisor as the plaintiff, and will share the plaintiff's employment or disciplinary history. Id. at 1227-28. A valid comparison turns "not on formal labels, but rather on substantive likenesses." Id. at 1228. "An employer is well within its rights to accord different treatment to employees who are differently situated in 'material respects'—*e.g.*, who engaged in different conduct, who were subject to different policies, or who have different work histories." Id.

Menefee v. Sanders Lead Co., 786 F. App'x 963, 967 (11th Cir. 2019) (per curiam).

Plaintiff contends that he was treated less favorably than a similarly situated individual outside his protected class: Charles Thomas (African American). Like plaintiff, Mr. Thomas reported to Mr. Landrum. Although Mr. Landrum disciplined both of them in June 2018, Ms. Hampton reduced Mr. Thomas's discipline but not that imposed on plaintiff. Moreover, in June 2018, after one of plaintiff's direct reports, Jeffrey Drain, accused Mr. Thomas of being aggressive towards him, Mr. Landrum did not investigate and, of course, did not issue any discipline. (Plaintiff contends that Mr. Landrum would have investigated if Mr. Drain had complained about him.) Additionally, although Mr. Landrum has received an employee complaint about Mr. Thomas, he did not

conduct an anonymous survey of his direct reports like he did to plaintiff. Finally, although Mr. Landrum placed both Messrs. Thomas and Chapman on PIPs, and both successfully completed them, Mr. Chapman was fired soon thereafter. (Pl.'s Resp. [96] 17-18.)

Defendants counter that plaintiff has not complied with Lewis's requirement that he produce evidence that Mr. Thomas shared plaintiff's employment or disciplinary history or that he engaged in the same misconduct as plaintiff. Defendants also state that while Ms. Hampton did reduce Mr. Thomas's discipline and not plaintiff's, at the same time she reduced the discipline imposed on another white employee. Finally, defendants repeat the nonsensical argument that Mr. Landrum cannot be faulted for failing to investigate Mr. Drain's complaint against Mr. Thomas because it was plaintiff's duty to investigate the complaint against one of his peers. (Defs.' Reply [101] 6-7.)

As discussed above, a similarly situated comparator (1) will have engaged in the same basic conduct or misconduct as the plaintiff, (2) will have been subject to the same employment policy, guideline, or rule as the plaintiff, (3) will ordinarily have been under the jurisdiction of the same supervisor as the plaintiff, and (4) will share the plaintiff's employment or disciplinary history. Menefee, 786 F. App'x at 967.

With regard to these four elements, plaintiff easily shows that the claimed comparator, Mr. Thomas, satisfies elements (2) and (4). As for element (1), the record, viewed in a light most favorable to plaintiff, shows that Mr. Thomas may have engaged in the same basic conduct or misconduct charged against Mr. Willingham—poor communication.[40] As for element (4), Mr. Thomas and Mr. Willingham share a similar employment history. Both of them had complaints made about them by employees and both of them had been placed on PIPs.

The Court is acutely aware that "[f]ederal courts do not sit as a super-personnel department that reexamines an entity's business decisions." Chapman v. A.I. Transp., 229 F.3d 1012, 1030 (11th Cir. 2000) (internal quotation marks and citation omitted). Moreover, comparisons of the severity of different types of workplace misconduct and how best to deal with them are the sort of judgments about which courts generally defer to employers. Flowers v. Troup Cty., Ga., Sch. Dist., 803 F.3d 1327, 1341 (11th Cir. 2015). However, the record here suggests that Mr. Landrum treated plaintiff worse than he did another similarly situated

[40] The Court employs the word "may" because Mr. Landrum never investigated Mr. Drain's complaint that Mr. Thomas was aggressive towards him. The Court must construe the complaint as reflecting that Mr. Thomas could have engaged in poor communication. As noted in the write-ups and PIP, Mr. Landrum criticized Mr. Willingham for poor communication.

supervisor (Mr. Thomas). Accordingly, the undersigned reports that plaintiff has established a prima facie case.

b) Legitimate, Non-Discriminatory Reasons

Given plaintiff's establishment of a prima facie case, as discussed above the burden shifts to defendants to articulate a legitimate, non-discriminatory reason for the adverse actions taken against Mr. Willingham. Defendants have done so, asserting that plaintiff was suspended without pay and then demoted from his supervisory position because they did not feel that he was capable of doing the job.

c) Plaintiff's Pretext Burden

Given defendants' articulation of a legitimate, non-discriminatory reason for the adverse actions, plaintiff must raise a triable issue over whether that reason was pretext for unlawful discrimination in order to survive summary judgment. See Greer v. Birmingham Beverage Co., 291 F. App'x 943, 945 (11th Cir. 2008) (per curiam). To demonstrate pretext, plaintiff must do more than quarrel with defendant's business decisions or substitute his business judgment for that of defendant's. Chapman, 229 F.3d at 1030. "If the proffered reason is one that might motivate a reasonable employer, a plaintiff cannot recast the

reason but must meet it head on and rebut it." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1088 (11th Cir. 2004).

Plaintiff may demonstrate that defendants' reason was pretextual by revealing "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in [its] proffered legitimate reason[] for its action that a reasonable factfinder could find [it] unworthy of credence." Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997) (internal quotation marks and citation omitted). However, "[a] reason is not pretext for discrimination 'unless it is shown *both* that the reason was false, *and* that discrimination was the real reason.'" Brooks v. Cty. Comm'n of Jefferson Cty., 446 F.3d 1160, 1163 (11th Cir. 2006) (quoting St. Mary's Honor Ctr., 509 U.S. at 515).

Plaintiff submits that defendants' articulated reason is pretextual and that he was suspended and demoted because of his race (white). Mr. Willingham points to the following: (1) the racially tinged comments he attributes to Mr. Landrum and Ms. Hampton; (2) Mr. Landrum's meeting with his staff outside his presence in July 2018; (3) comments from two of his direct reports that Mr. Landrum was setting him up; (4) Ms. Mason's comments to him that Mr. Landrum was treating African-American employees better than the white employees; and (5) Desiree Price's statement on the day of his demotion that Mr.

Landrum had played his employees against him, undermined him with problem employees, and warned plaintiff's reports to get on board his plan or they would be looking for jobs. (Pl.'s Resp. [96] 19-21.)

Defendants counter that Mr. Landrum and Ms. Hampton made only "stray remarks" which should be ignored; that the information plaintiff says he received from the two direct reports (Ms. Mason and Ms. Price) about Mr. Landrum are hearsay and should be ignored; that the record shows that Mr. Landrum and Ms. Hampton had no discriminatory animus because they also disciplined African Americans or hired and promoted white employees; and that plaintiff testified that Mr. Landrum treated other white employees better than him. (Defs.' Reply [101] 8-9.)

Viewing the evidence in a light most favorable to plaintiff, the undersigned reports that plaintiff has raised a triable issue over whether the reason for his suspension and demotion was false and that race discrimination was the real reason.

First, there is substantial circumstantial evidence showing that Mr. Landrum acted with discriminatory motive. He was overheard saying, "I am going to get rid of that white boy, hopefully soon." Granted, plaintiff did not know about whom Mr. Landrum was speaking, but Mr. Willingham believed that

Mr. Landrum made the comment about him because he was the only white male in the office building who worked full time for Mr. Landrum.[41] Moreover, Ms. Hampton showed that race was a factor in her thinking when she suggested that perhaps Mr. Willingham needed to work in a predominately white department. While the comments attributed to these two managers are not direct evidence, they are still significant evidence supporting plaintiff's contention that the story these managers have told here about their motivation is pretext. See Vessels v. Atlanta Indep. Sch. Sys., 408 F.3d 763, 772 (11th Cir. 2005) (per curiam) ("[E]vidence of racially tinged statements by AISS decision-makers, the relative superiority of Vessels' qualifications, AISS's disregard of its own employment regulations, and Vessels' rebuttal of many of AISS's proffered justifications raise a genuine issue of material fact as to whether AISS's articulated reasons for rejecting Vessels for the *interim* position were pretextual."); Jones v. Bessemer Carraway Med. Ctr., 151 F.3d 1321, 1323 n.11 (11th Cir. 1998) (per curiam) (holding that "language not amounting to direct evidence, but showing some

[41] Even if Mr. Landrum was not speaking directly about plaintiff, but was speaking negatively of someone else. The Court recognizes that Mr. Landrum denies making the statement, but that disputed fact is for the jury to resolve.

racial animus, may be significant evidence of pretext once a plaintiff has set out a prima facie case").

Second, the comments plaintiff alleges were made to him by two of his direct reports (Ms. Mason and Ms. Price) support his contention that Mr. Landrum undermined him in the workplace, set him up, and sowed the seeds for the unflattering comments made about him in the Survey Monkey responses. As discussed supra note 12, plaintiff's statements about what those employees said to him can be considered on summary judgment. Moreover, plaintiff's allegations in the December 21, 2108 grievance (which defendants deny receiving) show that Mr. Landrum was disregarding plaintiff's status as a supervisor in an apparent effort to demean him. Mr. Landrum insisted that plaintiff pressure wash a building in his dress shoes and suit, directed plaintiff to perform manual work with his staff during football turf renovation, directed plaintiff to mow grass at Ike Owings Center, forced plaintiff to clean up feces in the Hunter Webb restroom and the JD Football Stadium's restroom, and ordered plaintiff to clean the women's restroom at the tennis courts.

Third, although the Court is generally loath to question discipline issued to an employee, the reasons Mr. Landrum provided for issuing the written reprimand,

issuing the one-day suspension, and finding that plaintiff had not successfully completed the PIP are suspect.

With regard to the written reprimand, on April 19, 2018, Mr. Willingham instructed his direct report, David Chapman, to take another employee for a drug test and, when the employee tried to manipulate the drug test, he immediately called Human Resources for direction. Mr. Willingham then went directly to Mr. Landrum's office and learned that he was out at a meeting. When Mr. Willingham later learned that Mr. Landrum might not return for the day, he texted Mr. Landrum to see if he was returning, to which Mr. Landrum responded, "No." Mr. Willingham then texted Mr. Landrum as follows: "Ok, I need to go over everything that has took place with Adam Weaver. HR ask me to get with you on it. I'll see you tomorrow." Plaintiff heard nothing more from Mr. Landrum. Later that day, Mr. Landrum heard the details about Mr. Weaver's attempted manipulation of a drug test from Ms. Allston-Bing. Despite the fact that Mr. Landrum was not at work the day of the incident and did not respond to plaintiff's text about it, that Mr. Willingham reported what happened the next day to Mr. Landrum, and that plaintiff had reported the incident to Human Resources, Mr. Landrum nevertheless issued a written reprimand to plaintiff for failing to properly communicate with his direct reports and to him that an employee had

attempted to manipulate a random drug test screen. Given the great lengths to which plaintiff went to reach Mr. Landrum, the fact that Mr. Landrum ignored his text, and the fact that plaintiff briefed his supervisor the morning after the incident, Mr. Landrum's assertion that he should not have to find out information from Human Resources or respond to his subordinate's text message rings hollow and suggests pretext.

The basis for the one-day suspension about the "no call, no show" employee is similarly questionable. On Tuesday, July 10, 2018, when Mr. Brooks did not show up for work and did not call in, Mr. Willingham asked Mr. Landrum what to do; he replied that plaintiff should follow the PPP. Under the PPP, when an employee is absent without notice for three days, he is terminated. Mr. Brooks's three days expired at close of business on Thursday, July 12. Late on that third day, Mr. Willingham began working on a termination letter and finished it the next morning, Friday, July 13, along with information to turn into Human Resources. Mr. Willingham forwarded the termination correspondence he prepared to Ms. Champagne in Human Resources and to Mr. Landrum; Ms. Champagne did not respond to either Mr. Willingham or Mr. Landrum. At the end of the day on Friday, July 13, after both men were unsuccessful in contacting Ms. Champagne, Mr. Landrum told plaintiff, "[I]t looks like we're going to have

to wait until Monday," which was July 16. On Monday, Mr. Willingham again emailed Ms. Champagne first thing, and Ms. Champagne replied that she had not had a chance to review the letter yet; Ms. Champagne called Mr. Willingham later on July 16 and told him that she would rewrite the letter and get it to him and Mr. Landrum on July 17 so they could move forward with the termination. The termination letter went out to Mr. Brooks on July 17.

On August 3, 2018, 17 days after the letter went out, Mr. Landrum suspended Mr. Willingham without pay for not disciplining Mr. Brooks fast enough and for grammatical errors in the letter he had drafted. Plaintiff was disciplined for something that was largely outside of his control—Ms. Champagne's delay in helping plaintiff and Mr. Landrum with the termination letter. Moreover, while the termination letter to Mr. Brooks went out only one day late, it took Mr. Landrum 17 days to issue discipline to plaintiff. Evidence demonstrating that the decision-maker engaged in the same policy violation proffered for an employee's discipline is "especially compelling" evidence of pretext. Damon, 196 F.3d at 1366.

Finally, despite Mr. Landrum's contention that plaintiff did not successfully complete the PIP, he and Ms. Champagne refused to examine the materials that Mr. Willingham brought to the meeting which he contends showed

that he had completed it. It would be difficult for a manager to judge a subordinate's completion of a PIP without reviewing what the subordinate says he accomplished. Moreover, during the midst of the PIP, Mr. Landrum performed a performance appraisal on plaintiff. He ranked plaintiff as "meets expectations" on 14 categories, but as "needs improvement" in only six. His overall rating was 2.7, which was well above "needs improvement." This relatively high performance appraisal score casts doubt on Mr. Landrum's claim that plaintiff did not successfully complete the PIP. The jury can decide whether, given the materials plaintiff presented that Mr. Landrum ignored and the performance appraisal, Mr. Landrum's claim that plaintiff failed to complete the PIP successfully is pretext.

For the foregoing reasons, the undersigned **REPORTS** that plaintiff has submitted probative evidence creating a triable issue over whether defendants' articulated reason for suspending and demoting him is pretextual. Therefore, the undersigned **RECOMMENDS** that Defendants' Motion for Summary Judgment be **DENIED** with respect to plaintiff's race discrimination claims asserted under Title VII (against the City), the Fourteenth Amendment's equal protection clause

(via Section 1983 against all defendants), and Section 1981 (via Section 1983 against all defendants).[42]

B. Plaintiff's Retaliation Claim

In the absence of direct evidence, retaliation claims are analyzed under the same burden-shifting framework as discrimination claims, which means that the plaintiff must first establish a prima facie case. See Olmsted v. Taco Bell Corp., 141 F.3d 1457, 1460 (11th Cir. 1998). A prima facie case for a retaliation claim requires plaintiff to establish that (1) he engaged in protected activity,[43] (2) he suffered a materially adverse employment action,[44] and (3) there was a causal

---

[42] Given the above recommendation, it is not necessary for the Court to reach plaintiff's alternative arguments that (1) he presented a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination under Smith, 644 F.3d at 1321, or (2) he established a "mixed motive" case. (Pl.'s Resp. [96] 21-24.)

[43] "An employee is protected from discrimination if (1) 'he has opposed any practice made an unlawful employment practice by this subchapter' (the opposition clause) or (2) 'he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter' (the participation clause)." Clover v. Total Sys. Servs., Inc., 176 F.3d 1346, 1350 (11th Cir. 1999) (quoting 42 U.S.C. § 2000e-3(a)). Because plaintiff opposed allegedly unlawful employment practices through complaints and grievances as well as through the filing of two EEOC charges, his claims arise under both clauses.

[44] An adverse employment action in the retaliation context is one that harmed the plaintiff and "well might have dissuaded a reasonable worker from

connection between the two events. Manley v. DeKalb Cty., Ga., 587 F. App'x 507, 512 (11th Cir. 2014) (per curiam). If a plaintiff establishes a prima facie case of retaliation, the burden of production shifts to the defendant to rebut the presumption by articulating a legitimate, non-retaliatory reason for the adverse employment action. Bryant, 575 F.3d at 1308. After the defendant makes this showing, the plaintiff has a full and fair opportunity to demonstrate that the defendant's proffered reason was merely a pretext. Id.

1. Prima Facie Case

Defendants do not challenge elements (1) and (2) of plaintiff's prima facie case. Thus, the Court focuses on element (3)—causal connection—but begins at the last alleged adverse employment action, i.e., the failure to promote plaintiff to Crew Chief.

To establish the requisite causal connection, the plaintiff must, at a minimum, show that the decisionmaker was aware of his protected activity, and that the protected activity and the adverse action were not "wholly unrelated."

---

making or supporting a charge of discrimination." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (internal quotation marks and citation omitted). Because plaintiff alleges that he lost a day's pay, was wrongly placed on a PIP and demoted, and then denied a promotion to Crew Chief, he suffered adverse employment actions.

McCann v. Tillman, 526 F.3d 1370, 1376 (11th Cir. 2008). It is undisputed that when Mr. Combs recommended Mr. Landers for promotion to Crew Chief over plaintiff, he was *unaware* of plaintiff's protected activity. It is further undisputed that Ms. Hampton had no involvement in this promotion decision, and that while Mr. Landrum could have vetoed Mr. Combs's recommendation, he did not speak to Mr. Combs about the candidates and did not involve himself in that process. Thus, plaintiff cannot establish a prima facie retaliation case regarding his failure to obtain promotion to Crew Chief because of a lack of causal connection—Mr. Combs was unaware of plaintiff's protected activity. See Griffin v. GTE Fla., Inc., 182 F.3d 1279, 1284 (11th Cir. 1999) (per curiam) ("At a minimum, [a plaintiff] must show that the adverse act followed the protected conduct; this minimum proof stems from the important requirement that the employer was actually aware of the protected expression at the time it took adverse employment action.") (internal quotation marks and citation omitted).

However, the undersigned's report regarding whether plaintiff established the causal connection element is different for the other adverse employment actions alleged. In this Circuit, close temporal proximity may be sufficient to show that the protected activity and the adverse action were not wholly unrelated. McCann, 526 F.3d at 1376.

Plaintiff engaged in protected activity on July 16, 2018 (letter to Ms. Hampton) and August 10, 2018 (grievance). Defendants assume for purposes of this Motion that Ms. Hampton was aware of plaintiff's protected activity in July and August 2018. (Defs.' Reply [101] 13.) On September 5, 2018 (less than a month after the grievance), Ms. Hampton denied plaintiff's appeal of the one-day suspension that had been imposed by Mr. Landrum and then, on September 20, 2018 (less than six weeks after the grievance), recommended that plaintiff be placed on a PIP.[45]

Given this series of events, plaintiff has established the causal connection element of his prima facie case by temporal proximity. See Thomas v. Ala. Home Constr., 271 F. App'x 865, 868 (11th Cir. 2008) (per curiam) ("[T]he amount of time between the protected activity and the adverse employment action is one factor that may tend to prove or disprove a causal link in a retaliation case."); see also Donnellon v. Fruehauf Corp., 794 F.2d 598, 601 (11th Cir. 1986) ("The short period of time [i.e., less than one month] between the filing of the

---

[45] Defendants erroneously argue that Mr. Landrum was responsible for plaintiff's placement on a PIP. (Defs.' Reply [101] 13.) DSUMF ¶ 34 states that this idea originated with Ms. Hampton.

discrimination complaint and the plaintiff's discharge belies any assertion by the defendant that the plaintiff failed to prove causation.").[46]

With regard to the December 20, 2018 demotion, the record shows that by this date, Ms. Hampton had shared with Mr. Landrum the fact that Mr. Willingham had accused him of race discrimination.[47] Within a relatively short time after learning of this protected expression, Mr. Landrum determined that plaintiff had not successfully completed the PIP and demoted him, even though he refused to review materials that plaintiff claims showed its successful completion and even though he had given him a 2.7 (almost "meets expectations") score on a concurrently prepared performance appraisal. Again, plaintiff has established the causal connection element of his retaliation prima facie case by temporal proximity. See Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) (per curiam) ("The burden of causation can be met

---

[46] Defendants argue that plaintiff's claims nevertheless fail because "[i]t would bely reason for an individual who was *not* the subject of a complaint to have retaliatory bias against the complainant." (Defs.' Reply [101] 13.) Defendants cite no authority to support this extraordinary assertion. There is no reason why the City Manager could not form retaliatory animus against someone who accused one of her Department heads of discrimination.

[47] Defendants erroneously assert that Mr. Landrum did not know of plaintiff's accusations until the filing of this suit. (Defs.' Reply [101] 13.) As noted above, Ms. Hampton's testimony contradicts that assertion.

by showing close temporal proximity between the statutorily protected activity and the adverse employment action").

Finally, plaintiff engaged in protected activity on December 12 or 13, 2018, when he told Ms. Hampton that he had overheard Mr. Landrum say, "I am going to get rid of that white boy, hopefully soon." Although Ms. Hampton knew of Mr. Willingham's complaint, she upheld plaintiff's demotion on January 22, 2019. Again, the passage of about six weeks between the protected activity and the adverse action allows plaintiff to establish a causal connection by close temporary proximity. See Robinson v. LaFarge N. Am., Inc., 240 F. App'x 824, 829 (11th Cir. 2007) (per curiam) ("Robinson established a prima facie case [of retaliation], as the demotion occurred only about two months after he filed a grievance.") (alteration supplied).

2. Legitimate, Non-Retaliatory Reason

Once a plaintiff establishes a prima facie case of retaliation, the employer must articulate a legitimate, non-retaliatory reason for the challenged adverse employment actions. Harrison v. Belk, Inc., 748 F. App'x 936, 943 (11th Cir. 2018) (per curiam). The same reason advanced by defendants in defense to plaintiff's race discrimination claim—his poor job performance—satisfies their burden of production.

3. Plaintiff's Pretext Burden

In the light of that stated reason, the burden shifts to the plaintiff to offer evidence that the employer's stated reason is pretextual. Brown v. Ala. Dep't of Transp., 597 F.3d 1160, 1181 (11th Cir. 2010). "A plaintiff must show that his 'protected activity was a but-for cause of the alleged adverse action by the employer.'" Harrison, 748 F. App'x at 943 (quoting Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 362 (2013)). "That is, the employee must show that he would not have suffered the adverse action if he had not engaged in the protected conduct." Long v. Ala. Dep't of Human Res., 650 F. App'x 957, 967 (11th Cir. 2016) (per curiam).

The parties' arguments over whether plaintiff raised a triable issue on pretext in his retaliation case mirror the arguments they made in the race discrimination case. As such, the undersigned's report here mirrors that made supra. Plaintiff has presented evidence sufficient to suggest that defendants took various adverse employment actions against him because of his dogged and repeated complaints of discrimination.[48] Although a jury may ultimately believe

---

[48] Defendants' reliance on Clark County School District v. Breeden, 532 U.S. 268 (2001), is misplaced. (Defs.' Reply [101], at 14.) In that case, the Court held that "[e]mployers need not suspend previously planned [employment

that Mr. Willingham was a bad manager who needed to be demoted and that his complaints had nothing to do with defendants' decisions, the disputed material facts can be interpreted to show that the written reprimand, suspension, and PIP were part of defendants' effort to build a case to demote him and silence his complaints. A manager with arguably similar problems (Mr. Thomas) did not suffer similar adverse employment actions, the factual basis of the discipline Mr. Landrum issued (and Ms. Hampton upheld) was questionable, Mr. Landrum refused to consider documents plaintiff asserted showed his successful completion of the PIP, Mr. Landrum gave plaintiff a 2.7 (almost "meets expectations") performance appraisal, and employees informed plaintiff that Mr. Landrum was meeting with them in private, creating dissension (revealed in the anonymous survey), and directing them to get on board with his plan.

For the foregoing reasons, the undersigned **REPORTS** that plaintiff has submitted probative evidence creating a triable issue over whether defendants'

---

decisions] upon discovering that [a plaintiff engaged in protected activity], and their proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality." Id. at 272. But, there is no evidence here that Mr. Landrum had already decided to demote plaintiff, heard about his protected activity, and then went ahead with what he had already planned to do.

articulated reason for suspending and demoting him is pretextual. Therefore, the undersigned **RECOMMENDS** that Defendants' Motion for Summary Judgment with respect to plaintiff's retaliation claim asserted under Title VII (against the City) and under Section 1981 (against all defendants via Section 1983) be **DENIED**.

C. Arguments Regarding Plaintiff's Section 1983 Claims

As noted above, plaintiff sued the City for (1) violation of his Fourteenth Amendment right to equal protection via Section 1983, and (2) for violation of his Section 1981 right to be free from race discrimination and retaliation (asserted via Section 1983). The City contends that plaintiff cannot establish municipal liability under Section 1983. (Defs.' Br. [79-2] 31-33.) The individual defendants, Mr. Hampton and Mr. Landrum, argue that they are entitled to qualified immunity as to plaintiff's section 1983 claims, as well as summary judgment against his demand for punitive damages. (Id. at 33-35.) The Court considers these arguments separately below.

1. Municipal Liability

Plaintiff sued the City under Section 1983 for race discrimination in violation of the Fourteenth Amendment's equal protection clause. (See Am. Compl. [15], Count I). The City argues that plaintiff cannot establish municipal

liability as to his Section 1983 claim. (Defs.' Br. [79-2] 31-33.) Plaintiff disagrees. (Pl.'s Resp. [96] 31-33.)

"A municipality . . . is a 'person' that may be sued under § 1983 for constitutional violations caused by policies or customs made by its lawmakers or by 'those whose edicts or acts may fairly be said to represent official policy.'" McMillian v. Johnson, 88 F.3d 1573, 1577 (11th Cir. 1996), aff'd sub nom. McMillian v. Monroe Cty., Ala., 520 U.S. 781 (1997 (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)). For the actions of a government official to be deemed representative of the local government entity, the acting official must be imbued with final policymaking authority. Denno v. Sch. Bd. of Volusia Cty., Fla., 218 F.3d 1267, 1276 (11th Cir. 2000) (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)).

The City concedes for purposes of this Motion that Ms. Hampton as City Manager was imbued with final policymaking authority. (Defs.' Br. [79-2] 32.) However, the City argues that it cannot be held liable for her actions under Section 1983 because there is no probative evidence from which a reasonable jury could find that she was motivated by discriminatory or retaliatory animus. (Id. at 32-33.) The City's argument fails because, as already discussed in detail supra, there is probative evidence from which a reasonable jury could find that Ms.

Hampton was motivated by discriminatory or retaliatory animus. Accordingly, the undersigned recommends that this argument be rejected.

2. Qualified Immunity for Individual Defendants

Plaintiff sued Ms. Hampton and Mr. Landrum for alleged race discrimination and retaliation. These two defendants assert that they are protected from individual liability under the doctrine of qualified immunity. (Defs.' Br. [79-2] 33-35.) Plaintiff disagrees. (Pl.'s Resp. [96] 34-35.)

"Qualified immunity offers complete protection for government officials sued in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known." Lee v. Ferraro, 284 F.3d 1188, 1193-94 (11th Cir. 2002). "Qualified immunity is intended to 'allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law.'" Hoyt v. Cooks, 672 F.3d 972, 977 (11th Cir. 2012) (quoting Lee, 284 F.3d at 1193-94).

A defendant who asserts qualified immunity has the initial burden of showing that he was acting within the scope of his discretionary authority when he allegedly violated a constitutional or statutory right. Bennett v. Hendrix, 423

F.3d 1247, 1250 (11th Cir. 2005). "To establish that the challenged actions were within the scope of his discretionary authority, a defendant must show that those actions were (1) undertaken pursuant to the performance of his duties, and (2) within the scope of his authority." Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1282 (11th Cir. 1998). Assuming that the defendant makes the required showing, the burden shifts to the plaintiff to establish that qualified immunity is not appropriate by showing that (1) the facts alleged make out a violation of a constitutional or statutory right and (2) that right was clearly established at the time of the alleged misconduct. Perez v. Suszczynski, 809 F.3d 1213, 1218 (11th Cir. 2016); Hadley v. Gutierrez, 526 F.3d 1324, 1329 (11th Cir. 2008).[49]

Defendants Hampton and Landrum do not assert that they were acting within their discretionary authority here. The analysis could end here. Nevertheless, given that defendants' failure to make that assertion was an apparent oversight, the Court will assume that these two defendants were acting within their discretionary authority. Thus, the burden shifts to Mr. Willingham to

---

[49] As the Supreme Court has explained, a right is clearly established when its contours are "sufficiently clear" such that "a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

establish that qualified immunity is not appropriate by showing that the facts, taken in the light most favorable to him, establish (1) that there was a violation of a constitutional or statutory right and (2) the right at issue was clearly established at the time of the alleged misconduct.

As discussed at length supra, plaintiff has raised a triable issue over whether his constitutional and statutory rights to be free from discrimination and retaliation were violated. Moreover, that right to be free from discrimination and retaliation has long been clearly established. See Bowman v. Birmingham, 777 F. App'x 416, 421 (11th Cir. 2019) (per curiam) ("Based on both Supreme Court and Eleventh Circuit precedents, a reasonable official would know that retaliating against an employee for making race-based complaints violates the law."); Forehand v. Fulton Cty., Ga., 510 F. Supp. 2d 1238, 1253 (N.D. Ga. 2007) ("Several courts have found that an official who retaliates against an employee in violation of section 1981 is not entitled to qualified immunity."); see also Bryant, 575 F.3d at 1300 (holding that because "a reasonable official would have known that discriminating against county managers on account of their race was unlawful, the district court ruled correctly in denying the defendants qualified immunity"); Bogle v. McClure, 332 F.3d 1347, 1355 (11th Cir. 2003) ("[T]here is no doubt that in May 2000, when the Librarians were transferred, it was clearly

established that intentional discrimination in the workplace on account of race violated federal law."); Yeldell v. Cooper Green Hosp., Inc., 956 F.2d 1056, 1064 (11th Cir. 1992) (finding it beyond question that laws proscribing intentional race discrimination in the workplace were clearly established). Therefore, the qualified immunity defense asserted by Ms. Hampton and Mr. Landrum against plaintiff's claims should be rejected.

3. Punitive Damages

Finally, defendants Hampton and Landrum assert that they are entitled to summary judgment as to plaintiff's claim for punitive damages under Section 1983. (Defs.' Br. [79-2] 35.) Plaintiff again disagrees. (Pl.'s Resp. [96] 35.) While punitive damages are not available for claims against a governmental entity or for official-capacity claims, individual-capacity claims can serve as the basis for an award of punitive damages. See Young Apartments, Inc. v. Town of Jupiter, 529 F.3d 1027, 1047 (11th Cir. 2008) ("In a § 1983 action, punitive damages are only available from government officials when they are sued in their individual capacities.").

In Smith v. Wade, 461 U.S. 30 (1983), the Court held that punitive damages are appropriate in a section 1983 action where a defendant's conduct is motivated by evil intent or involves callous or reckless indifference to federally

protected rights. Id. at 56. Given the disputed facts here, including defendants' alleged use of racially tinged language, a jury might be authorized to assess punitive damages. See Stallworth v. Shuler, 777 F.2d 1431, 1435 (11th Cir. 1985) (because a sham selection procedure and changing job requirements after the fact were deliberate and knowing actions which violated plaintiff's civil rights, award of punitive damages not clearly erroneous). This issue is best left to the discretion of the District Judge after hearing the evidence at trial.

IV. CONCLUSION

For the above reasons, the undersigned **REPORTS** that there are genuine disputes of material facts that would allow a jury to conclude that defendants treated plaintiff differently based on his race and retaliated against him. Therefore, the undersigned **RECOMMENDS** that Defendants' Motion for Summary Judgment [79] be **DENIED**.

The Clerk is **DIRECTED** to terminate the reference to the undersigned Magistrate Judge.

SO RECOMMENDED, this 30th day of March, 2021.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE