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

SHANNON GLADDEN,	:	CIVIL ACTION NO.
	:	1:19-CV-2938-CAP-JSA
Plaintiff,	:	
	:	
v.	:	
	:	
THE PROCTER & GAMBLE DISTRIBUTING LLC,	:	**FINAL REPORT AND RECOMMENDATION ON A MOTION FOR SUMMARY JUDGMENT**
Defendant.	:	

Plaintiff Shannon Gladden filed this action on June 26, 2019. Plaintiff alleges that Defendant The Procter & Gamble Distributing LLC ("Defendant" or "P&G"), her former employer, discriminated against her based on her sex, and unlawfully retaliated against her for opposing discrimination, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq*.

The action is before the Court on the Defendant's Motion for Summary Judgment [58] and the Plaintiff's Motion for Summary Judgment [65]. For the reasons set forth below, the undersigned **RECOMMENDS** that Defendant's Motion for Summary Judgment [58] be **GRANTED** and that judgment be entered in favor of Defendant on all of Plaintiff's claims. The undersigned further **RECOMMENDS** that Plaintiff's Motion for Summary Judgment [65] be **DENIED**.

I. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. *Facts*

Unless otherwise indicated, the Court draws the following facts from Defendant's "Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment" [64] ("Def. SMF"), Plaintiff's "Statement of Additional Material Facts for Which There Are Genuine Issues" [79-2] ("Pl. SMF"), and their associated exhibits. Some facts may also be taken from Plaintiff's "Response to Procter & Gamble Distributing LLC's Statement of Material Facts in Support of Its Motion for Summary Judgment" [79-1] ("Pl. Resp. SMF") and Defendant's "Response to Plaintiff's Statement of Additional Facts" [92] ("Def. Resp. SMF").

For those facts submitted by Defendant that are supported by citations to record evidence, and for which Plaintiff has not expressly disputed with citations to record evidence, the Court must deem those facts admitted, pursuant to Local Rule 56.1(B). *See* LR 56.1(B)(2)(a)(2), NDGa ("This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1)."). Accordingly, for those facts

submitted by Defendant that Plaintiff has failed to dispute with citations to record evidence, the Court must accept the facts as true, so long as the facts are supported by citations to record evidence, do not make credibility determinations, and do not involve legal conclusions. *See E.E.O.C. v. Atlanta Gastroenterology Assocs., LLC*, No. 1:05-CV-2504-TWT, 2007 WL 602212, at *3 (N.D. Ga. Feb. 16, 2007).

In Plaintiff's Statement of Facts as well as in her response to Defendant's Statement of Facts, Plaintiff includes many purported "facts" that involve Defendant's alleged failure to produce certain documents or other evidence requested during discovery. *See*, *e.g.*, Pl. SMF at ¶ 1 ("Plaintiff requested the US results of P&G's gender-based compensation reviews for 2018-2020 which have not been provided as of this date. To date, the defendant has failed to provide them.") (citing Plaintiff's Exhibit C, Plaintiff's Second Declaration [79-10] at ¶ 21).

The discovery period in this case began on November 1, 2019, and after multiple extensions, including two *sua sponte* extensions as a result of the pandemic, discovery ended on December 3, 2020, giving the parties approximately thirteen months of discovery. *See* Scheduling Order [7]; Order [42]. Although Plaintiff filed a motion requesting another extension of discovery on December 3, 2020, the undersigned held a hearing on that motion on December 10, 2020, but ultimately denied the motion, finding that Plaintiff had failed to present substantial good cause for yet another extension. *See* Pl. Mot. [52]; Minute Sheet [55].

Nevertheless, although the parties had thirteen months of discovery, an extraordinary amount of time considering that the normal discovery period in this case would have been only four months, Plaintiff now contends that Defendant has failed to produce allegedly critical evidence during discovery and that Defendant's failure to do so means that Defendant's Motion for Summary Judgment must be denied. The Court finds, however, that Plaintiff has failed to comply with the requirements of Rule 56 to show that Defendant has failed to produce critical evidence that is necessary for Plaintiff to prove her claims.

Rule 56(d) provides, in relevant part:

> **(d) When Facts Are Unavailable to the Nonmovant**. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) defer considering the motion or deny it;
>
> (2) allow time to obtain affidavits or declarations or to take discovery; or
>
> (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

In this case, Plaintiff has presented no "affidavit or declaration" indicating that, "for specified reasons," she cannot present facts that are "essential" to justify her opposition to Defendant's Motion for Summary Judgment. While Plaintiff makes vague allegations that Defendant refused to produce certain documents during discovery, she has made no showing that Defendant withheld any critical evidence

that is "essential" to any of her claims. Thus, Plaintiff has failed to comply with the requirements of Rule 56(d). Moreover, as discussed, the Court previously held a conference with the parties on December 10, 2020, to discuss Plaintiff's request for further discovery, but after hearing argument from Plaintiff's counsel, denied Plaintiff's request for an additional extension of discovery on the ground that Plaintiff had failed to present substantial good cause for yet another extension. For these reasons, the Court has excluded all of Plaintiff's purported "facts" related to Defendant's alleged failure to produce certain documents during discovery.

The Court has also excluded assertions of fact by either party that are immaterial, or presented as arguments or legal conclusions, and has excluded assertions of fact unsupported by a citation to admissible evidence in the record or asserted only in a party's brief and not in its statement of facts.[1] *See* LR 56.1(B)(1), NDGa ("The court will not consider any fact: (a) not supported by a citation to evidence (including page or paragraph number); (b) supported by a citation to a

[1] The Court notes that both parties have included long and detailed "facts" sections in their briefs. Defendant devotes approximately 14 pages of its 25-page brief to a section titled "Factual Background." *See* Def. Br. [58-19]. Similarly, Plaintiff's brief includes a section titled "Facts Underlying Gladden's Claims" that is approximately eleven pages long, out of a total of 35 pages. *See* Pl. Br. [79-3]. As discussed, however, the Court cannot consider any fact that is included in a party's brief, but not the party's Statement of Facts. *See* LR 56.1(B)(1), NDGa. Accordingly, the Court generally confines its discussion to the facts presented by the parties in their respective Statement of Facts.

pleading rather than to evidence; (c) stated as an issue or legal conclusion; or (d) set out only in the brief and not in the movant's [or respondent's] statement of undisputed facts."); *see also* LR 56.1(B)(2)(b) (respondent's statement of facts must also comply with LR 56.1(B)(1)). The Court has nevertheless viewed all evidence and factual inferences in the light most favorable to Plaintiff, as required on a defendant's motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *McCabe v. Sharrett*, 12 F.3d 1558, 1560 (11th Cir. 1994); *Reynolds v. Bridgestone/Firestone, Inc.*, 989 F.2d 465, 469 (11th Cir. 1993).

P&G is a consumer goods company. Def. SMF at ¶ 1. P&G has policies and procedures in place to prohibit and eliminate gender discrimination, as well as retaliation against employees who complain about gender discrimination. Def. SMF at ¶ 2. While Plaintiff does not dispute that P&G has these policies, she contends that P&G violated its policies and procedures when it terminated her employment. Pl. Resp. SMF at ¶ 2; De Jesus Dep. [73] at 29, 35-36. P&G disseminates its policies and its Purpose, Values, and Principles ("PVPs") to employees via the P&G Worldwide Business Conduct Manual, among other ways. Def. SMF at ¶ 4. P&G encourages its employees and the public to bring any compliance, ethical, or legal concerns to the attention of the appropriate people at P&G. Def. SMF at ¶ 5.

According to P&G, it investigates allegations of wrongdoing and takes remedial action when appropriate to address legitimate concerns or issues. Def. SMF at ¶ 6; Def. Ex. A, Lickteig Decl. [58-3], Ex. 1, WWBC pp. 7-24, 57-59. Plaintiff disputes this, however, and claims that P&G did not investigate Plaintiff's "claim case" as required by Defendant's policies. Pl. Resp. SMF at ¶ 6; Pl. Supp. to Ex. C [72-1].

P&G has a division that focuses on oral healthcare (*e.g.*, toothbrushes, toothpaste, floss, etc.) that is commonly referred to as the Oral Care Division. Def. SMF at ¶ 7. Within its Oral Care Division, P&G has an organization called Professional Oral Health ("POH"), which, in part, focuses on selling and distributing P&G oral healthcare products to certain dentist offices. Def. SMF at ¶ 8. P&G has another organization called "Purchases" that is responsible for, among other things, contract compliance by vendors. Def. SMF at ¶ 9. If an operational employee identifies any issue of concern related to contract compliance with a vendor, P&G expects the employee to raise the issue to Purchases so Purchases can investigate and, to the extent necessary, remediate any issues with the vendor. Def. SMF at ¶ 10. While Plaintiff does not expressly dispute these facts, she contends that Purchases is not the only division responsible for contract compliance. Pl. Resp. SMF at ¶¶ 9-10.

According to P&G, it prohibits its employees from involving themselves in a vendor's employee/management relationship, and prohibits its employees from

discussing issues of hiring, compensation, discipline, termination, or other terms and conditions of a vendor's employment relationships with the vendor or the vendor's employees. Def. SMF at ¶ 11; Pl. Dep. Vol. II [60] at 298; Lickteig Decl. ¶19, Ex. 12; De Jesus Dep. 34-36, 70-71, 78. Plaintiff disputes this and contends that P&G's Statement of Work with Promoveo states: "SELLER shall remove or reassign from the Program any DSA promptly at BUYER's reasonable request." Pl. Resp. SMF at ¶ 11.

The vendor is responsible for how it compensates, disciplines, hires, or discharges its employees. Def. SMF at ¶ 12. P&G refers to this issue as "co-employment" or "joint employment." Def. SMF at ¶ 13. P&G trains its employees who work with vendors on avoiding co-employment or joint employment issues. Def. SMF at ¶ 14. While Plaintiff does not expressly dispute that P&G provides training on these issues, she contends that she had not received any training on co-employment for at least 24 months prior to her termination. Pl. Resp. SMF at ¶ 14; Pl. SMF at ¶¶ 40-41; Pl. Ex. G, Pl. Second Decl. [79-10] ¶ 1.

Plaintiff worked for P&G for approximately 18 years. Def. SMF at ¶ 15. On an unspecified date, Plaintiff was awarded the Torch Carrier Award, given annually to one person in North America for "their breakthrough work on diversity at P&G." Pl. SMF at ¶ 2. The parties dispute Plaintiff's actual title or position at P&G. P&G contends that, from 2015 through her termination on September 28, 2018, Plaintiff

was employed as a "NA Oral Care Professional Outsourcing and Capabilities Manager within POH." Def. SMF at ¶ 16; Pl. Dep. Vol. I 59-60; Lickteig Decl. ¶ 37, Ex. 28. Plaintiff disputes that, contending that Defendant's cited evidence does not support that fact. *See* Pl. Resp. SMF at ¶ 16. In the Complaint, Plaintiff alleges that she was employed from June of 2001 through October of 2018 as a "Senior Account Executive" in P&G's North America Oral Care Division. *See* Compl. [1] at ¶¶ 8, 47.

In any event, it is undisputed that Plaintiff reported to Dave Shull beginning in the summer of 2018 and Shull reported to Carlos De Jesus in 2018. Def. SMF at ¶¶ 18-19. While Plaintiff does not dispute that, she contends that she was also "directly managed" by Kelly Heaps. Pl. Resp. SMF at ¶ 18. Plaintiff had a history of working with Purchases on vendor contract issues. Def. SMF at ¶ 20. Between 2015 and 2018, P&G trained Plaintiff on the importance of avoiding co-employment issues. Def. SMF at ¶ 21. While Plaintiff does not expressly dispute that, she contends that she did not receive training for 24 months prior to September of 2018. Pl. Resp. SMF at ¶ 21; Pl. SMF at ¶¶ 40-41; Lickteig Decl. ¶ 19, Ex. 12; Pl. Sec. Decl. [79-10] ¶ 1.

According to P&G, over at least the period from 2014 into 2018, Plaintiff certified to P&G that she was not aware of any conduct that violated P&G's standards and/or the law. Def. SMF at ¶ 22; Lickteig Decl. ¶¶ 8-9, Ex. 2; Pl. Dep. Vol. II. 315-18. P&G contends that, as of May 4, 2018, Plaintiff certified to P&G

that she did not have personal knowledge of any instances in which an employee, non-employee, or other entity acting on P&G's behalf, violated P&G policies, the law, or any other obligation as outlined in P&G's Worldwide Business Conduct Manual. Def. SMF at ¶ 23. Plaintiff disputes that, however, and contends that the certification referenced reads: "not aware of any conduct that violates P&G's standards and/or the law NOT already reported [to P&G]." Pl. Resp. SMF at ¶¶ 22-23.

Between 2015 and 2018, Plaintiff worked with multiple P&G vendors, one of which was a company called Promoveo Health ("Promoveo"). Def. SMF at ¶ 24. Promoveo had and has a contract with P&G. Def. SMF at ¶ 25. In part, Promoveo employs Dental Sales Associates ("DSAs") and deploys them across the United States to sell P&G dental products to certain dental offices. Def. SMF at ¶ 26.

Promoveo's DSAs are Promoveo's employees.[2] Def. SMF at ¶ 27. P&G expects its employees not to dictate, decide, or otherwise control or influence whom

[2] While Plaintiff does not expressly dispute that, she contends that several Promoveo DSA and Promoveo Area Managers (DSA managers) profess themselves to work for P&G and profess to have/had managers within P&G. Pl. Resp. SMF at ¶ 27. In support of that contention Plaintiff cites to "Shull Decl. ¶ 13," but that citation does not support Plaintiff's contention. *See* Shull Decl. [58-11] at ¶ 13 ("From P&G's perspective, Promoveo's employees are Promoveo's employees and Promoveo is responsible for its employment decisions related to those employees."). Thus, for this fact, and any other fact for which Plaintiff fails to cite to record evidence supporting her contention, the Court must deem Defendant's fact to be admitted.

Promoveo, or any other vendor, hires, disciplines, or discharges, or how Promoveo compensates its employees. Def. SMF at ¶ 28. The P&G/Promoveo contract that was in effect in 2018 in no way required Promoveo to pay DSAs any particular amount of money. Def. SMF at ¶ 29; Shull Decl. [58-11], Ex. 1; De Jesus Dep. 54-56; Collado Dep. [77] 73-74. While Plaintiff does not expressly dispute that, she contends that the "average of the DSA's combined salaries was to come to a particular amount of money." Pl. Resp. SMF at ¶ 29; Shull Decl, Ex. 1 at 19. She also contends that De Jesus testified that, "Shannon's job with Promoveo is to ensure that the contract is being executed as committed to Procter & Gamble." Pl. Resp. SMF at ¶ 29; DeJesus Dep. 55-56.

According to P&G, the P&G/Promoveo contract referenced a confidential number, $38,625, as part of a budget for how much Promoveo would charge P&G per DSA in a particular category. Def. SMF at ¶ 30. Plaintiff contends, however, that P&G was charged $59,662.11 for a standard DSA. Pl. Resp. SMF at ¶ 30; Shull Decl., Ex. 1, at 19. P&G contends that the P&G/Promoveo contract did not require Promoveo to compensate its employees at $38,625 or even an average of $38,625. Def. SMF at ¶ 31; Shull Decl., Ex. 1; De Jesus Dep. 54-56; Collado Dep. 73-74. Plaintiff, again, disputes that and contends that the average of the salaries of the DSAs was to come to a particular amount of money. Pl. Resp. SMF at ¶ 31; Shull Decl., Ex. 1 at 19.

P&G contends that, before August 29, 2018, Plaintiff never raised concerns about any of the following issues: (1) Promoveo carrying adequate insurance required by the contract; (2) Promoveo providing its employees sufficient data under any cellular data plan; or (3) how or in what amount Promoveo paid its employees. Def. SMF at ¶ 32; Pl. Dep. Vol. II, 270-72. Plaintiff disputes that and contends that she "specifically raised concern several times over Promoveo adequately paying out promised bonus." Pl. Resp. SMF at ¶ 32. According to Plaintiff, "it is the reason the Promoveo contract was revised to create a penalty for turning a territory more than a certain number of times in a year, as it appeared Promoveo was potentially firing personnel to avoid paying out bonus." Pl. Resp. SMF at ¶ 32; Pl. Sec. Decl. ¶ 3.

Lesli Hayes lives on Plaintiff's street in Peachtree City, Georgia, approximately 121 feet away from Plaintiff's home, and she and Plaintiff are acquainted outside of work.[3] Def. SMF at ¶¶ 33-34; Pl. Dep. Vol. I [59] 121-22, 140-43 (Plaintiff testified that she has been to Hayes's home on an "unknown" number of occasions, and has also been on her back porch more than ten times and less than 500 times). In 2016, while Plaintiff oversaw the P&G/Promoveo relationship, Promoveo hired Hayes as a DSA. Def. SMF at ¶ 35. According to

[3] Although Defendant contends that Plaintiff and Hayes are "friends," when Plaintiff was asked during her deposition whether she and Hayes are friends, Plaintiff responded, "explain to me exactly what is the definition of a friend." *See* Def. SMF at ¶ 34: Pl. Dep. Vol. I at 140.

Promoveo, it felt pressured by Plaintiff to hire and retain Hayes as an employee. Def. SMF at ¶ 36; Sasse Decl. ¶ 5, Ex. 1 (PG/Gladden 000896-00089).

P&G contends that, on August 29, 2018, Promoveo discharged Hayes, and Hayes called Plaintiff to inform her that Promoveo fired her. Def. SMF at ¶¶ 37-39; Pl. Dep. Vol. I 144-45, 157-63; Pl. Dep. Vol. II. 394; Lickteig Decl. ¶ 39, Ex. 30(b) (September 27, 2018 Audio 2:39:30-45). Plaintiff then spoke with Rolando Collado, one of Promoveo's owners/executives, questioning him about certain issues, and Collado advised P&G that Plaintiff told him, "I understand we've had a change of personnel." Def. SMF at ¶ 40; Sasse Decl. ¶ 5, Ex. 1 (PG/Gladden000853). Plaintiff admits that she spoke with Collado by telephone and states that she was "disappointed that Promoveo had once again not followed the process for notifying P&G of a change in personnel so that P&G could limit the liability of data access." Pl. Resp. SMF at ¶ 40; Pl. Sec. Decl. ¶¶ 9, 17.

Plaintiff and Collado also had a regularly scheduled meeting for the next day, August 30, 2018. Def. SMF at ¶ 41. Plaintiff admits that she, Collado and Guy Bradley had a "standing telephone meeting every Thursday morning which Collado would typically attend from Ohio and Bradley would typically attend from California." Pl. Resp. SMF at ¶ 41; Pl. Sec. Decl. ¶ 18. According to P&G, on August 30, 2018, Plaintiff questioned Collado about how Promoveo pays its employees, specifically claiming that Promoveo needed to pay its DSAs $38,625.

Def. SMF at ¶¶ 42-43; Lickteig Decl. ¶ 39, Ex. 30(b) (September 27, 2018 Audio 2:39:30-45); Pl. Dep. Vol. I. 144-45, 157-73: Pl. Dep. Vol. II. 324-25; Sasse Decl. ¶ 5, Ex. 1 (PG/Gladden 000855). Plaintiff disputes that she claimed that Promoveo needed to pay its DSAs $38,625, but states that she "was following the contract that Promoveo needed to pay an average of $38,625 in salary (not total W2 compensation)." Pl. Resp. SMF at ¶ 43; Pl. Sec. Decl. ¶ 19. During that meeting, Plaintiff also questioned Collado about Promoveo's insurance coverage. Def. SMF at ¶ 44.

Plaintiff contacted a Promoveo DSA and asked her about the details of her compensation from Promoveo. Def. SMF at ¶ 45. According to P&G, prior to this, Plaintiff had never contacted Promoveo DSAs about their pay. Def. SMF at ¶ 46; Pl. Dep. Vol. I. 176-77. Plaintiff states, however, that she has had discussions with DSAs and Area Managers about bonuses, when the DSAs or Area Managers had claimed the bonus had not been paid. Pl. Resp. SMF at ¶ 46; Pl. SMF at ¶ 5; Pl. Decl. ¶¶ 3, 4, 19. Plaintiff also contends that an unnamed DSA notified her that her bonus had been withheld by Promoveo. Pl. SMF at ¶ 3; Pl. Sec. Decl. ¶ 4. Promoveo later reported to P&G that when the Promoveo employee told Plaintiff about her earnings on August 30, 2018, Plaintiff said, "I think we can do better than that." Def. SMF at ¶ 47; Sasse Decl. ¶ 5, Ex. 1 (PG/Gladden 000891-000892).

Promoveo also later informed P&G that at approximately 9:30 pm on August 30, 2018, Hayes called Collado with another person identified as "Stan Cruz" who claimed to represent Hayes. Def. SMF at ¶ 48; Lickteig Decl. ¶ 25, Ex. 18; Sasse Decl. ¶ 5, Ex. 1 (PG/Gladden 000855). Cruz informed Collado, "I'll tell you this[,] I'm [a] popular guy and I have friends at P&G and we need a new contract that has $38,625." Def. SMF at ¶ 48.

Also on August 30, 2018, Plaintiff sent an email to her manager, Shull, and two other P&G employees, Andy Fitzpatrick, NA Oral Care Finance Manager, and Kelly Heaps, Associate Marketing Director for Global Professional Oral Care, claiming to have concerns about the P&G/Promoveo contract. Def. SMF at ¶¶ 42, 49; Lickteig Decl. ¶ 11, Ex. 4. According to P&G, the August 30 email to Shull, Fitzpatrick, and Heaps was the first time Plaintiff ever raised any alleged concerns about the P&G/Promoveo contract. Def. SMF at ¶ 50; Lickteig Decl. ¶ 11, Ex. 4; Pl. Dep. Vol. II. 315-18; De Jesus Dep. 34-36, 70-75. Plaintiff, however, disputes that and states that she had "often raised concerns about the P&G/Promoveo contract and in fact had the contract revised to reflect concerns in the past." Pl. Resp. SMF at ¶ 50; Pl. Decl. ¶ 3. Plaintiff also contends that Heaps "confirms" that she "should continue to verify information with a 2nd DSA on salary." Pl. SMF at ¶ 6; Pl. Sec. Decl. ¶ 23. As of August 30, however, Plaintiff had not contacted Purchases. Def. SMF at ¶ 51; Pl. Dep. Vol. II 328.

On August 31, 2018, Plaintiff emailed Collado requesting proof of insurance from Promoveo. Def. SMF at ¶¶ 52, 53. Plaintiff also contends that she "questions" Promoveo "about bonus payments in general," although she does not state the person at Promoveo she contacted, nor the specific date of the conversation. Pl. SMF at ¶ 4; Pl. Sec. Decl. ¶¶ 3, 19. According to P&G, Plaintiff also discussed her alleged concerns regarding Promoveo with Fitzpatrick and Heaps at P&G, presenting them with a PowerPoint outlining her alleged concerns regarding Promoveo: (a) cash flow; (b) employee compensation; (c) proof of insurance; (d) excessive lunch costs for employees; and (e) "ipad case update not occurred." Def. SMF at ¶ 54; Pl. Dep. Vol. I. 161-62; Pl. Dep. Vol. II 328-30; Lickteig Decl. ¶¶ 13, 15-17, Exs. 6, 8-10.

Plaintiff contends that she "outlined the history of the cash flow audit and how it was an ongoing concern for Purchasing as P&G did not put the contract out for bid (RFP - Right for Purchase) as required as a result of the audit," "explained that Promoveo was siphoning $500,000 from the contract in employee compensation and was not paying out the average salary as required by the contract," and "shared that Promoveo had not yet provided Proof of any form of the three requested insurances and that she had concerns that Promoveo could not afford it." Pl. Resp. SMF at ¶ 54; Pl. SMF at ¶¶ 9, 33-35; Pl. Sec. Decl. ¶¶ 11, 27.

Plaintiff referenced the contract's budgetary number, $38,625, which was the same number on which "Cruz" seemed focused in his call to Collado. Def. SMF at

¶ 55. Fitzpatrick advised Plaintiff he thought this was a matter for Purchases to handle. Def. SMF at ¶ 56; Pl. Dep. Vol. I. 161-62; Pl. Dep. Vol. II 328-30; Lickteig Decl. ¶¶ 13, 15-17, Exs. 6, 8-10. While Plaintiff does not expressly dispute that, she contends that the evidence upon which P&G relies indicates that Fitzpatrick sent her an email on September 4, 2018, not August 31. *See* Pl. Resp. SMF at ¶ 56. She admits, however, that Fitzpatrick sent her an email stating "We need to get Purchasing involved." Pl. Resp. SMF at ¶ 56; Lickteig Decl. ¶ 13, Ex. 6.

Over the 2018 Labor Day Weekend, Hayes provided Plaintiff information about her alleged complaints concerning Promoveo, including the following: (a) three emails from Guy Bradley (Promoveo Executive) to Hayes about Hayes's alleged misuse of her Promoveo iPad – exceeding limits of a Promoveo cellular data plan; (b) a note from Bradley to Hayes terminating her employment; and (c) information about payroll deductions and reductions to pay at Promoveo. Def. SMF at ¶ 57; Lickteig Decl. ¶17, Ex. 10; Pl. Dep. Vol. II., 330-31. Although Plaintiff does not dispute that, she contends that "Plaintiff, Collado and Bradley received this information jointly as pictures in text messages sent from the DSA territory phone number for former DSA Hayes." Pl. Resp. SMF at ¶ 57; Pl. SMF at ¶ 8; Lickteig Decl. ¶ 17, Ex. 10; Pl. Dep. Vol. II. 330-31. Plaintiff also contends that, during September 1-4, she "verifies that the second DSA is not being paid the salary stated

by Promoveo management," although she does not state specifically that she is referring to Hayes. Pl. SMF at ¶ 7; Pl. Sec. Decl. ¶ 23.

On September 3, "Cruz" left a voicemail for Bradley in which "Cruz" threatened Bradley, claiming he would "rip" him "limb from limb down there . . . in Disney" at an upcoming POH conference to be held in early October at Disneyworld in Orlando, Florida, and "Cruz" also referenced the $38,625 figure referenced by Plaintiff. Def. SMF at ¶ 59; Lickteig Decl. ¶ 25, Ex. 18. P&G received this voicemail from Promoveo on or about September 13, 2018. Def. SMF at ¶ 59; Lickteig Decl. ¶ 25, Ex. 18.

P&G contends that Plaintiff was a key organizer of the Disney conference referenced by "Cruz" in the voicemail. Def. SMF at ¶ 60; Pl. Dep. Vol. II 279-83 (Plaintiff testified that there was a conference held on October 1-5, 2018 in Orlando, Florida, and "[t]he conference was one that [she] scheduled, arranged, did all of the planning and the functions for and had sole responsibility for within Procter & Gamble"). Although Plaintiff admits that she was "a key organizer of Disney conferences for P&G in 2017 and 2018," she states that she reported directly to Kelly Heaps as the "key organizer." Pl. Resp. SMF at ¶ 60.

According to P&G, on September 4, 2018, Plaintiff called another Promoveo DSA directly, and that Promoveo employee later reported that Plaintiff asked her, "What did you think about the bonus this year?" Def. SMF at ¶¶ 61-62; Sasse Decl.

¶ 5, Ex. 1 (PG/Gladden 000894-000895); Pl. Dep. Vol. I. 229-31; Pl. Dep. Vol. II. 331-32. While Plaintiff admits that she called another Promoveo DSA directly, she claims that she did so with the full support and knowledge of her manager, Kelly Heaps. Pl. Resp. SMF at ¶ 62; Pl. SMF at ¶ 6.

Fitzpatrick emailed Plaintiff concerning the concerns she had raised before Labor Day, and advised Plaintiff that: (a) Purchases must be involved; (b) Promoveo was free to pay its employees how it chose, consistent with the P&G/Promoveo contract and the co-employment avoidance training P&G gave Plaintiff; and (c) the contract provided an expected cost or billing amount per DSA ($38,625), but did not mandate any particular amount that Promoveo must pay individual sales representatives. Def. SMF at ¶ 63; Lickteig Decl. ¶ 13, Ex. 6. While Plaintiff does not dispute that Fitzpatrick sent her this email, she contends that P&G had not given her any training related to co-employment in the previous 24 months, and that, according to the P&G/Promoveo contract, Promoveo "needed to pay an average of $38,625 in base salary (not total W2 compensation)." Pl. Resp. SMF at ¶ 63; Pl. SMF at ¶¶ 40-41; Pl. Sec. Decl. ¶¶ 1, 19; Shull Decl. at 19.

Collado called John Long, a P&G Human Resources employee, who directed Collado to Jennifer Sasse, another P&G Human Resources employee. Def. SMF at ¶ 64; Collado Dep. 147-48. While Plaintiff does not expressly dispute that, she contends that this fact is "contradicted by notes of Collado from Sasse and Lickteig,

in that 'Sasse was the only one Collado could talk to.'" Pl. Resp. SMF at ¶ 64; Lickteig Decl. ¶¶ 33,35, Ex. 26. Collado called Sasse and told her about his concerns about Plaintiff's actions, in that: (a) Plaintiff had possibly shared confidential P&G/Promoveo contract information with Hayes and "Cruz" (e.g., the $38,625 figure); (b) Plaintiff was contacting him about Hayes's discharge, proof of insurance, employee cellular data plans, and employee compensation; and (c) Plaintiff was taking these steps in retaliation for Promoveo's termination of Hayes. Def. SMF at ¶ 65; Collado Dep. 147-48; Sasse Dep. [74] 12-15.

On September 5, 2018, Collado contacted Sasse again, advising her that Plaintiff had spoken to Promoveo sales employees about their pay. Def. SMF at ¶ 67; Sasse Dep. 12-15. Sasse, a P&G Human Resources Manager, began investigating the underlying facts related to Collado's concerns. Def. SMF at ¶ 68; Sasse Dep. 57-58, 62-85. Sasse aligned her steps with Shull, Plaintiff's manager, and together, they informed Plaintiff to stop all contact with Promoveo while P&G investigated the circumstances of everything that had arisen since August 29. Def. SMF at ¶¶ 69-70; Sasse Dep. 57-58, 62-85; Shull Decl. ¶¶ 19, 20. They told her to allow Shull to handle the business relationship with Promoveo until the matters were resolved. Def. SMF at ¶ 71; Sasse Dep. 57-58, 62-85; Shull Decl. ¶¶ 19-20.

In anticipation of the investigation, Collado sent Sasse information about his concerns regarding Plaintiff's conduct towards Promoveo and its employees. Def.

SMF at ¶ 72; Lickteig Decl. ¶ 14, Ex. 7. Plaintiff also provided Sasse information about her alleged concerns regarding Promoveo. Def. SMF at ¶ 73; Lickteig Decl. ¶ 15, Ex. 8. On September 6, 2018, Sasse had a conversation with Collado, and Alex Scherting, another P&G Human Resources employee, took notes during the discussion. Def. SMF at ¶¶ 74-75; Sasse Decl. ¶ 5.

On September 7, Sasse interviewed John Long, who had prior dealings with Plaintiff. Def. SMF at ¶ 76; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden000866- 000868). Long advised Sasse that he had trained Plaintiff on P&G's expectations to avoid risks associated with co-employment. Def. SMF at ¶ 78; Sasse Decl., Ex. 1 (PG/Gladden 000867); Lickteig Decl. ¶19, Ex. 12. Plaintiff admits that Long gave her training as her HR manager, but she contends that Sasse never gave her training during Sasse's tenure as HR manager from 2016 to 2018. Pl. Resp. SMF at ¶ 78; Pl. SMF at ¶¶ 40-41; Pl. Sec. Decl. ¶ 1. Also on September 7, Sasse interviewed Fitzpatrick. Def. SMF at ¶ 79; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000860-000865).

P&G contends that, on that same day, Sasse also interviewed Plaintiff in person at P&G's office headquarters in Cincinnati, Ohio. Def. SMF at ¶ 80; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000869-000884); Pl. Dep. Vol. I 215-19 (Plaintiff testified that she went to Cincinnati on September 7, 2018 and met with Jennifer Sasse and Alexandra Scherting). While Plaintiff admits that she met with Sasse and

Alexandra Scherting in person, she contends that the meeting actually occurred at the P&G offices in Mason, Ohio. Pl. Resp. SMF at ¶ 80; Sasse Decl. ¶¶ 4-5, Ex.1; PG/Gladden 000869-000884.

P&G contends that, during Plaintiff's meeting with Sasse, Plaintiff's responses to questions about her relationship with Hayes were "very peculiar and appeared deceitful." Def. SMF at ¶ 81. When asked about their relationship, Plaintiff said she and Hayes were "acquaintance[s]." Def. SMF at ¶ 81; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000876). Plaintiff states that she "objects to the determination" that her responses were "peculiar" or "deceitful," and states that "Sasse was fully aware that Gladden and Sasse were neighbors; Sasse received a 'Systems Data Sheet' bi-weekly for 2 years with Plaintiff and Hayes home addresses." Pl. Resp. SMF at ¶ 81; Pl. SMF at ¶¶ 35-36; Pl. Sec. Decl. ¶ 11. According to P&G, Plaintiff's responses demonstrated Plaintiff's lack of candor and/or deceit. Def. SMF at ¶ 82; Sasse Dep. 181-82; De Jesus Dep. 34-36, 70-71, 78; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000869-000884). Plaintiff also admitted contacting Promoveo's employees directly to discuss their compensation. Def. SMF at ¶ 83.

On September 10, 2018, Sasse spoke with Mercy Chang, the Purchases employee responsible for the Promoveo relationship. Def. SMF at ¶ 84; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000885-000891). Although Plaintiff does not expressly dispute this fact, she contends that Chang is one of the Purchases employees

responsible for the Promoveo relationship along with James McKinney. Pl. Resp. SMF at ¶ 84; Pl. Sec. Decl. ¶ 14. Chang discussed the importance of Purchases's role in vendor contract compliance and mentioned that Plaintiff's delayed engagement of Purchases and her direct communications with Promoveo were out of line with expectations. Def. SMF at ¶ 85; Sasse Decl. ¶¶ 4-5, Ex. 1 (PG/Gladden 000886-000891). Although Plaintiff does not dispute that Chang may have said this, she denies that her engagement of Purchasing was "delayed" or that her communications were "out of line with expectations." Pl. Resp. SMF at ¶ 85; De Jesus Dep. 55-56.

Late in the day on September 10, Plaintiff sent a note to Sasse complaining about Promoveo's discrimination against women. Def. SMF at ¶ 86; Lickteig Decl. ¶ 21, Ex. 14 [58-4] (P&G/Gladden000214). Plaintiff claimed that Promoveo was discriminating against her because she is a woman and that, if she were a man, Promoveo would not be raising the above-referenced issues. Def. SMF at ¶ 86; Lickteig Decl. ¶ 21, Ex. 14. According to P&G, Plaintiff's note said absolutely nothing about P&G discriminating against her. Def. SMF at ¶ 86; Lickteig Decl. ¶ 21, Ex. 14. Plaintiff disputes that. Pl. Resp. SMF at ¶ 86. Plaintiff's email to Sasse and Scherting dated September 10, 2018 at 5:17 p.m. stated as follows:

> Promoveo is bringing several accusations against me that are not true in an abuse of process. I believe Promoveo is discriminating on the basis of gender on a regular basis and they consider that women in these

> roles are expendable. Promveo Health's current workforce on the P&G POH business is more than 95% women. As a female in the position of liaising with Promoveo I was placed at a disadvantage as shown by them bringing baseless allegations against me after they understood that I had concerning information regarding their actions against women, that they would not have attempted against a man.

Lickteig Decl. ¶ 21, Ex. 14 [58-4] (P&G/Gladden000214).

On September 11, 2018, Hayes and "Cruz" began sending P&G employees emails related to Promoveo. Def. SMF at ¶ 87; Lickteig Decl. ¶ 22, Ex. 15; Sasse Dep., 85-87. According to P&G, Hayes and "Cruz," two non-P&G employees, addressed their emails to many people they did not know, including Sasse, who had just interviewed Plaintiff. Def. SMF at ¶ 88; Lickteig Decl. ¶ 22, Ex. 15. Plaintiff disputes that the emails were addressed to people that DSAs did not know because, she contends, "[e]very person emailed had an email contact address in the Crest & Oral B Dental Business Plan Guide ("DBP Guide") issued to all DSAs." Pl. Resp. SMF at ¶ 88; Pl. SMF at ¶¶ 44-45; Pl. Sec. Decl. ¶ 15.

These emails alleged, in part, the following: (a) Promoveo allegedly discriminated against women; (b) Promoveo employees only had a "100MB [cellular] data plan"; (c) the cost of lunches associated with "Lunch n Learns"; and (d) Promoveo docking paychecks upon termination. Def. SMF at ¶ 89; Lickteig Decl. ¶ 22, Ex. 15 (PG/Gladden 000231-000235). According to P&G, the emails mirrored Plaintiff's allegations against Promoveo and "strongly suggested a coordinated effort by Plaintiff, Hayes, and "Cruz" – particularly when combined

with the continued references to $38,625." Def. SMF at ¶¶ 89-90; Lickteig Decl. ¶ 22, Ex. 15 (PG/Gladden 000231-000235); De Jesus Dep. 34-36, 70-71. Plaintiff disputes this, contending that "that there is no suggestion of a coordinated effort, when Plaintiff was executing her role by sharing complaints from the field." Pl. Resp. SMF at ¶ 90.

On September 12, 2018, shortly after these emails started, Sasse sent an email to P&G employees being inundated with the Hayes/"Cruz" emails, and advised the employees to delete the emails from their workspaces. Def. SMF at ¶ 91; Lickteig Decl. ¶ 23, Ex. 16; Sasse Dep. 118-22. P&G was addressing the Hayes/"Cruz" emails independently and fully supported Sasse's email. Def. SMF at ¶ 91. Plaintiff contends that there were several items in Hayes's emails that "needed to be addressed," that other P&G employees such as Andrea Isch, Staci Cox, and Chris Naykki, were "agitated by Scherting's direction to delete and ignore the requested assurance that action was being taken to resolve the issues raised by Hayes." Pl. SMF at ¶¶ 14-16; Pl. SMF at ¶ 17; Pl. Sec. Decl. ¶ 30. Defendant, however, objects to Plaintiff's statement as hearsay because Plaintiff relies only on her own declaration and does not have any statements from these employees indicating that they were "agitated" when directed to delete the emails. *See* Def. Resp. SMF at ¶¶ 14-16.

On September 13, 2018, with Promoveo's permission, Sasse interviewed three of its employees. Def. SMF at ¶ 92. Hayes's former manager told Sasse that

she felt pressured by Plaintiff to hire and retain Hayes. Def. SMF at ¶ 93; Sasse Decl. ¶¶ 4-5, Sasse Decl. Ex. 1 (PG/Gladden 000852). The manager also informed P&G that she questioned whether Hayes was the right person for the job based on her living outside the relevant territory, but Plaintiff told the hiring manager that was not a concern. Def. SMF at ¶ 93; Sasse Decl. ¶¶ 4-5, Sasse Decl. Ex. 1 (PG/Gladden 000852). Despite her misgivings, the Promoveo manager informed P&G that she felt compelled to hire Hayes to "keep the client [P&G and Plaintiff] happy." Def. SMF at ¶ 93; Sasse Decl. ¶¶ 4-5, Sasse Decl. Ex. 1 (PG/Gladden 000852). While Plaintiff does not dispute that the Promoveo employee said these things, she denies that she talked to the hiring manager in regards to hiring Hayes, and denies that she "compelled Promoveo to hire Hayes to keep Plaintiff happy." Pl. Resp. SMF at ¶ 93.

Another Promoveo employee told Sasse that, when Plaintiff spoke with her about her compensation, Plaintiff told her, "I think we can do better than that." Def. SMF at ¶ 94; Sasse Decl. ¶¶ 4-5, Sasse Decl. Ex. 1 (PG/Gladden 000893). Plaintiff states that this is "[d]enied as Hearsay per Federal Rule of Evidence 802." Pl. Resp. SMF at ¶ 94.

On September 14, 2018, Sasse interviewed Plaintiff for the second time, this time by WebEx, a video conferencing application. Def. SMF at ¶ 96; Sasse Decl. ¶¶ 4-9, Ex. 1 (PG/Gladden 000900-000907), Ex. 2; Pl. Dep. Vol. II 359-60; Pl. Dep. Vol. III, 411-14. According to P&G, it did not record the audio or video from this

interview or any other interview in connection with Plaintiff and its practice is to not record interviews associated with an investigation. Def. SMF at ¶ 97; Sasse Decl. ¶ 6. Plaintiff disputes that and contends that "All meeting content is **automatically recorded** on the **WebEx** servers and is easily accessible." Pl. Resp. SMF at ¶ 97 (emphasis in original); Pl. Sec. Decl. ¶ 32; Webex Meeting Center Frequently Asked Questions, *Chapter: Recordings and Playback*, Cisco, (January 27, 2021).

P&G contends that, at the start of the interview, Sasse asked Plaintiff if she was recording the meeting and Plaintiff told Sasse that she was not recording the meeting. Def. SMF at ¶¶ 98-99; Sasse Decl., Ex. 1 (PG/Gladden 000900), Ex. 2, (September 14, 2018 Audio Recording at 3:57-4:20). Plaintiff disputes this and contends that Sasse stated only that she wanted "to confirm a practice of no taping, and Plaintiff made no tape but rather a digital recording for her own protection." Pl. Resp. SMF at ¶¶ 98-99. Plaintiff admits that she said, "Ok no taping," but she contends that a digital recording was not mentioned. Pl. Resp. SMF at ¶ 99. Plaintiff states that she also believed that Sasse was recording despite Sasse's statement that she was not, because all WebEx meetings have recordings available. Pl. Resp. SMF at ¶ 99.

It is undisputed that Plaintiff recorded the meeting with Sasse. Def. SMF at ¶ 100; Pl. Resp. SMF at ¶ 100; Pl. Dep. Vol. III 409. On the recording is a sequence in which Sasse had difficulty with the video conferencing application and stated, "I

am the least fortunate technical person I know." Def. SMF at ¶ 100; Sasse Decl. Ex. 2 (September 14, 2018 Audio Recording at 1:20-1:41). Plaintiff also confirmed that she and Hayes were "acquaintances" but Hayes was someone she could not recall seeing "socially." Def. SMF at ¶ 102; Sasse Decl. Ex. 2 (September 14, 2018 Audio Recording at 20:42-21:23).

To understand Plaintiff's claim that Promoveo allegedly discriminated against women, Sasse asked Plaintiff why she thought Promoveo discriminated against women. Def. SMF at ¶ 103; Sasse Decl. Ex. 1 (PG/Gladden 000905-06), Ex. 2, (September 14, 2018 Audio Transcript at 28:28-33:05). According to P&G, Plaintiff responded that she thought Promoveo would not have made the same complaint it made about her if she were a man. Def. SMF at ¶ 104. Plaintiff states that she also responded that Collado came after her "maliciously through the P&G review process" because Collado considered Plaintiff "expendable as a woman." Pl. Resp. SMF at ¶ 104; Sasse Decl. Ex. 2 (September 14, 2018 Audio Transcript at 28:28-33:05).

Shortly after her interview with Sasse, Plaintiff contacted Shull about her alleged concerns related to Promoveo and Collado. Def. SMF at ¶ 105; Pl. Dep. Vol. III 473-83, Ex. 3 (PG/Gladden 000289). Plaintiff also then sent an email to Fitzpatrick and Heaps. Def. SMF at ¶ 106. Plaintiff did not allege in this email that P&G had discriminated against her because of her gender. Def. SMF at ¶ 107.

On September 15, 2018, in an email to 21 P&G employees (including Sasse and Plaintiff), Hayes and "Cruz" attacked Sasse as a "mole" for Promoveo. Def. SMF at ¶ 108. According to P&G, Hayes and "Cruz" falsely claimed that Sasse had a conflict of interest. Def. SMF at ¶ 108; Lickteig Decl. ¶ 28, Ex. 21. While Plaintiff admits that Hayes sent an email to 21 P&G employees (including Sasse and Plaintiff), Plaintiff denies that Hayes "falsely" claimed that Sasse had a conflict of interest. Pl. Resp. SMF at ¶ 108. Plaintiff contends that the email claimed that Promoveo Health had not signed any confidentiality agreements with their employees since acquiring the business from Ventas, in violation of P&G/Promoveo's Master Service Agreement. Pl. Resp. SMF at ¶ 108; Collado Dep., Ex 2, p. 17, Section 7.1. Plaintiff contends that the email from Hayes also stated that no one from P&G had contacted her regarding her complaint of docked pay, and that Sasse lived 400 yards from Collado, that Collado and Sasse had "kids of different ages" who attended the same school that both had made donations to over several years, which was documented by said school's online magazine, and that Sasse and Bradley attended the same College. Pl. Resp. SMF at ¶ 108; Lickteig Decl. ¶27, Ex. 20.

According to P&G, Hayes also sent additional emails referencing personal and false information about Sasse, and some of the information referenced included Sasse's home address and personal information about her young children. Def. SMF

at ¶ 109; Lickteig Decl. ¶¶ 28-29, Exs. 21 & 22 (*see, e.g.*, PG/Gladden 000295 referencing Sasse's home address, husband, and children); Sasse Dep. 17-22, 104-05. P&G considered these emails an attempt to intimidate and harass Sasse and other P&G employees. Def. SMF at ¶ 110. While Plaintiff does not dispute that Hayes sent additional emails, she denies that Defendant's cited evidence includes a reference to "young" children. Pl. Resp. SMF at ¶ 109.

In an email that Plaintiff sent to Shull dated September 15, 2018, Plaintiff stated that Sasse "has not been working to protect the best interests of P&G." Def. SMF at ¶ 111; Lickteig Decl. ¶ 28, Ex. 21 [58-4] (PG/Gladden 000293-000294) (Plaintiff's September 15 email has the subject line: "FW: JENNIFER SASSE is the MOLE. TREAD LIGHTLY. BEWARE. Now it's THREE Promoveo STOOGES with Jennifer Sasse, Rolando Collado and Guy Bradley"). Plaintiff also wrote in the email that "[t]here is a possibility that Jen Sasse has a personal relationship with Rolando Collado or his family and/or Guy Bradley." Lickteig Decl., Ex. 21 (PG/Gladden 000294).

According to P&G, Plaintiff asserted that Sasse had a conflict of interest with Collado, which was false, as Plaintiff had introduced Sasse to Collado just a few months earlier and before that, Sasse had never met Collado. Def. SMF at ¶ 112; Lickteig Decl., Ex. 21; Sasse Dep. 12-14, 99, 104-05; Collado Dep. 81-83. P&G contends that Sasse and Collado do not have any type of relationship beyond brief

interactions through P&G. Def. SMF at ¶ 113; Sasse Dep. 12-14, 99, 104-05; Collado Dep. 81-83. Plaintiff disputes that she introduced Sasse to Collado and states that Sasse and Collado were never together with her. Pl. Resp. SMF at ¶¶ 112-13; Collado Dep. 158. She also contends that Collado and Sasse lived 400 yards from each other and both actively participated in the same small private school. Pl. Resp. SMF at ¶ 113; Sasse Dep. 98-100; Collado Dep. 158.

P&G contends that the Hayes/"Cruz" emails demonstrated a coordinated effort by Plaintiff, Hayes, and "Cruz" because the emails targeted Sasse and they came just one day after Sasse had a difficult discussion with Plaintiff, in part, about what she regarded as Plaintiff's inappropriate conduct. Def. SMF at ¶ 114; De Jesus Dep. 34-36, 70-75. Plaintiff disputes this and states that the "facts do not show a coordinated effort by Plaintiff, Hayes, and "Cruz"," and at best, "they show Plaintiff taking seriously Hayes's accusations despite the unconventional presentation." Pl. Resp. SMF at ¶ 114.

On September 17, 2018, Plaintiff submitted an ethics complaint regarding Sasse. Def. SMF at ¶ 115. According to P&G, Plaintiff's ethics complaint focused on her "false allegation that Sasse had a conflict of interest" and that Sasse "wrongly told employees they could delete certain foreign emails." Def. SMF at ¶ 115; Lickteig Decl. ¶ 30, Ex. 23. While Plaintiff admits that she submitted an ethics complaint to the Ethics Hotline, she claims that the complaint was about Sasse and

Scherting for "directing 20 P&G employees to delete and disregard emails containing information regarding wrongdoing of a vendor." Pl. Resp. SMF at ¶ 115; Lickteig Decl. ¶ 30, Ex. 23. Plaintiff contends that her complaint to the Ethics Hotline was only about the direction to delete emails, not any conflict of interest, and De Jesus and Sasse were not notified of her complaint. Pl. SMF at ¶¶ 19, 21, 22; Pl. Sec. Decl. ¶ 8; De Jesus Dep. 96.

On September 18, 2018, Plaintiff sent an email to another P&G Human Resources employee, John Long, requesting that P&G stop its investigation of Plaintiff. Def. SMF at ¶ 116; Lickteig Decl. ¶ 31, Ex. 24. After Long directed Plaintiff to Sarah Davies, another P&G Human Resources Director, Plaintiff emailed Davies requesting that P&G stop its investigation of Plaintiff. Def. SMF at ¶ 117. P&G contends that Plaintiff's emails to Long and Davies and her ethics complaint did not mention gender discrimination. Def. SMF at ¶ 118; Lickteig Decl. ¶¶ 30-31, Exs. 23-24. While Plaintiff does not cite to any portion of the emails that specifically referenced gender discrimination, she nevertheless states that this fact is "denied" because her ethics complaint "was in reference to deleting emails that detailed wrongdoings against the women of Promoveo." Pl. Resp. SMF at ¶ 118; Lickteig Decl. ¶ 31, Ex. 24.

According to P&G, Hayes continued to email many P&G employees targeting Sasse with intimidation. Def. SMF at ¶ 119; Lickteig Decl. ¶ 32, Ex. 25. P&G

contends that these emails from Hayes referenced information that could have only come from Plaintiff, further suggesting coordination between Hayes and Plaintiff. Def. SMF at ¶ 119. One email stated that Sasse was "an ostrich before we could get to deleting emails and company data retention policy." Def. SMF at ¶ 119; Lickteig Decl. ¶ 32, Ex. 25 (PG/Gladden 000407). P&G contends that this references Sasse's September 12 email to P&G employees. Def. SMF at ¶ 119. Another email stated that Sasse "has no idea about technology or emails," a reference to Sasse's comment at the start of the WebEx meeting with Plaintiff on September 14. Def. SMF at ¶ 119; Lickteig Decl. ¶ 32, Ex. 25 (PG/Gladden 000409). Plaintiff disputes that she engaged in coordination with Hayes, and states that she had no communication to Hayes or any other current or former Promoveo employee, as directed by Sasse on September 5, 2018, through Plaintiff's departure from P&G. Pl. Resp. SMF at ¶ 119; Pl. SMF at ¶ 42; Pl. Sec. Decl. ¶ 2.

According to P&G, although Sasse did not have any conflict of interest, P&G assigned a new team of investigators, including P&G employee Dan Lickteig, to investigate Plaintiff's newest allegations. Def. SMF at ¶ 120; Sasse Dep. 122-23; Lickteig Dep. [76] 48-49. Plaintiff disputes this and states that Lickteig did not investigate any issues that Plaintiff complained about, including her complaint of sex discrimination or her Ethics Hotline Complaint, and Lickteig subjected Plaintiff to "harassment" for raising ethics violations and gender bias complaints. Pl. Resp.

SMF at ¶ 120; Pl. SMF at ¶ 49; Pl. Sec. Decl. ¶ 7. Plaintiff also contends that Lickteig determine that her Ethics Hotline complaint was "unsubstantiated," and that Lickteig's investigation of her did not "resolve" until after she was terminated. Pl. SMF at ¶¶ 46-47; Pl. Ex. C (PG/Gladden 002811-002812). Defendant disputes that Lickteig's investigation was not complete, however, and contends that a written report was not required to complete the investigation. Def. Resp. SMF at ¶ 46; citing Def. SMF at ¶¶ 133-36.

P&G contends that, on September 19, 2018, Lickteig began interviewing various individuals to investigate Plaintiff's purported concerns as articulated in her September 15-18 emails and ethics complaint, and another P&G employee took notes of Lickteig's interviews. Def. SMF at ¶ 121; Lickteig Dep., 48-49; Lickteig Decl. ¶¶ 33-35, Ex. 26. Plaintiff again disputes this and states that Lickteig did not investigate any issues that Plaintiff complained about. Pl. Resp. SMF at ¶ 121; Pl. Sec. Decl. ¶ 7; Pl. Supp. to Ex. C [72-1]. According to P&G, it did not make audio recordings of these interviews. Def. SMF at ¶ 122; Lickteig Decl. ¶ 34. Plaintiff disputes this and contends again that "All meeting content is automatically recorded on the WebEx servers and is easily accessible." Pl. Resp. SMF at ¶ 122; Pl. Sec. Decl. ¶ 32.

On September 20, 2018, in person at P&G's headquarters in Cincinnati, Lickteig and his notetaker interviewed Plaintiff. Def. SMF at ¶ 123. According to

P&G, Lickteig asked her about her alleged concerns and other issues arising since Hayes's termination from Promoveo. Def. SMF at ¶ 123; Lickteig Decl. ¶ 35, Ex. 26 (PG/Gladden 000918-000926); Pl. Dep. Vol. II. 328. Although Plaintiff admits that Lickteig interviewed her, she claims that Lickteig did not let her talk about her alleged concerns regarding Promoveo as these were concerns that "GIA" or "Global Internal Audit" were handling, that these were issues of "Fraud" and Lickteig did not handle Fraud issues. Pl. Resp. SMF at ¶ 123; Pl. SMF at ¶ 23; Lickteig Decl., Ex 30a. Plaintiff was never contacted by Global Internal Audit. Pl. SMF at ¶ 24; Pl. Sec. Decl. ¶ 5.

P&G contends that Lickteig asked Plaintiff about whether she was communicating with or otherwise assisting Hayes and "Cruz." Def. SMF at ¶ 124; Lickteig Decl. ¶ 35, Ex. 26 (PG/Gladden 000918-000926); Pl. Dep. Vol. II. 328. Plaintiff, on the other hand, contends that Lickteig "harassed" her and asked her, "How would Lesli know that." Pl. Resp. SMF at ¶ 124; Lickteig Decl., Ex 30a, 30b. Plaintiff also contends that Lickteig "exhibits further discriminatory behavior as he makes derogatory references to DSAs (who are almost all female)," although Plaintiff does not specify what "derogatory" remark Lickteig allegedly made about DSAs. Pl. SMF at ¶ 10; Pl. Sec. Decl. ¶ 29. Plaintiff denied assisting Hayes or "Cruz" in any way. Def. SMF at ¶ 125.

According to P&G, Lickteig interviewed a number of other people between September 17 and 27, 2018, including the following: (1) Mercy Chang (September 19); (2) Jennifer Sasse (September 19); (3) Alexandra Scherting (September 21); and (4) Rolando Collado (September 25). Def. SMF at ¶ 126; Lickteig Decl. ¶¶ 33-35, Ex. 26. While Plaintiff does not dispute that Lickteig interviewed those individuals, she contends that "the information cited" does not reflect that Lickteig interviewed Sasse, Collado or Scherting regarding Plaintiff's ethics complaint or sex discrimination claims. Pl. Resp. SMF at ¶ 126. During this same time, Hayes and "Cruz" continued sending disturbing emails to P&G employees. Def. SMF at ¶ 127; Lickteig Decl. ¶ 36, Ex. 27.

On September 27, 2018, at P&G headquarters in Cincinnati, Lickteig and his notetaker interviewed Plaintiff in person for a second time. Def. SMF at ¶ 128; Lickteig Decl. ¶ 35, Ex. 26 (PG/Gladden 000931-000941); Pl. Dep. Vol. II 323-24, 328. Plaintiff confirmed at that time that she had discussed compensation issues with Promoveo's employees directly. Def. SMF at ¶ 129; Lickteig Decl. ¶ 35, Ex. 26 (PG/Gladden 000939-000941); Pl. Dep. Vol. II. 323-24, 328.

P&G contends that, at the end of the interview, Lickteig advised Plaintiff of the following: (a) P&G was placing her on paid administrative leave; (b) she was not to perform any work while on leave; and (c) she was not to attend a P&G National Sales Conference the next week at Disneyworld in Orlando, Florida. Def.

SMF at ¶ 128; Lickteig Decl. ¶ 39, Ex. 30(b) (September 27, 2018 Audio at 2:32.00-2:33:30). Plaintiff disputes that Lickteig said those things, and contends that she was told that she was being placed on a paid leave of absence, and "that she *did not have to* show up at the sales meeting on which she was not to do any *work*." Pl. Resp. SMF at ¶ 130 (emphasis in original). She also contends that Lickteig said that this was not an employment action. Pl. Resp. SMF at ¶ 130.

Plaintiff confirmed her understanding of this direction. Def. SMF at ¶ 131. Lickteig also took possession of Plaintiff's company phone, iPad, and computer at that time. Def. SMF at ¶ 132. P&G did not take possession of Plaintiff's company car or her ID. Pl. SMF at ¶¶ 25-26; Pl. Sec. Decl. ¶ 24. While Defendant does not dispute that, it contends that Plaintiff was advised in her notice of discharge letter from P&G that she was required to return the company car and "all company property" to Defendant. Def. Resp. SMF at ¶¶ 25-26; Lickteig Decl. ¶ 37, Ex. 28 (PG/Gladden 000013-00014).

On September 28, 2018, Dave Shull, Plaintiff's manager, and Carlos De Jesus, Shull's manager, met with Lickteig, Sarah Davies, and a few others to discuss next steps, although Jennifer Sasse was not involved in this discussion. Def. SMF at ¶ 133; Shull Decl. ¶¶ 22, 23; De Jesus Dep. 34-36, 70-71, 78. De Jesus and Shull agreed that discharging Plaintiff was the only appropriate next step. Def. SMF at ¶ 134; Shull Decl. ¶ 24; De Jesus Dep. 34-36, 70-71, 78. Everyone in the meeting

agreed that discharge was the appropriate next step. Def. SMF at ¶ 135; De Jesus Dep. 78.

De Jesus's articulation of P&G's decision to terminate Plaintiff shows that P&G terminated Plaintiff because her behavior caused P&G to lose trust and confidence in her ability to perform her job: (a) Plaintiff violated P&G's co-employment avoidance policies and training when she involved herself in Promoveo's discharge and compensation decisions; (b) Plaintiff failed to report her alleged contract compliance concerns to Purchases until she was explicitly told to do so; (c) Plaintiff retaliated against Promoveo for its decision to terminate Hayes, her friend and neighbor; and (d) based on particularized information outlined above, Plaintiff coordinated or conspired with Hayes to harass and intimidate P&G employees, like Sasse. Def. SMF at ¶ 136; De Jesus Dep 34-36, 70-71, 78. While Plaintiff does not dispute that De Jesus claimed that these were the reasons for her termination, she denies that she violated P&G's co-employment avoidance policies and denies that she failed to report her alleged concerns to Purchases until she was explicitly told to do so. Pl. Resp. SMF at ¶ 136; Pl. Sec. Decl. ¶¶ 2, 23, 33.

On September 28, 2018, Shull and Davies called Plaintiff and informed her that her employment was terminated. Def. SMF at ¶ 137. According to P&G, they informed her that her employment was being terminated because the "totality of circumstances"' caused P&G to lose trust and confidence in her ability to perform

her functions as a P&G employee. Def. SMF at ¶ 138; Shull Decl. ¶ 26; Pl. Dep. Vol. III 424-30. Plaintiff denies that was the real reason for her termination and states that "the reason is pretext for the discrimination Gladden has set out herein." Pl. Resp. SMF at ¶ 137.

According to P&G, it also sent Plaintiff a termination letter the same day. Def. SMF at ¶ 138; Lickteig Decl. ¶ 37, Ex. 28; Shull Decl. ¶ 27; Pl. Dep. Vol. III 424-30. While Plaintiff does not dispute that P&G sent her a letter, she contends that she took the letter P&G is referring to as a "discharge letter" to the Georgia Department of Labor to file for unemployment, and the Georgia Department of Labor denied that the letter was acceptable as a GA-DOL-800, required by Georgia to be issued by an employer upon termination. Pl. Resp. SMF at ¶ 138; Pl. SMF at ¶ 52; Pl. Sec. Decl. ¶ 35. According to Plaintiff, the letter was missing several required information items, including a business address. Pl. Resp. SMF at ¶ 138; Pl. SMF at ¶ 52; Pl. Sec. Decl. ¶ 35. Plaintiff also contends that the Department of Labor granted her unemployment, as "available facts do not show that you violated Employer Rules or Standards." Pl. Resp. SMF at ¶ 138; Pl. SMF at ¶ 52; Pl. Sec. Decl. ¶ 35; Pl. Ex. I.

P&G contends that is not aware of any individual engaging in similar conduct compared to Plaintiff. Def. SMF at ¶ 139; Shull Decl. ¶ 40; Def. Ex. M, De Jesus Decl. ¶ 8. According to P&G, Andrew Giangreco, Craig Harlan, and Dean Christopherson, P&G employees reporting to Dave Shull, were not responsible for

vendor relationships from 2015-2018. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. Further, P&G contends, it has never learned that any of these three alleged comparators engaged a P&G vendor or other third party's employees concerning employee-management relations like compensation and discharge issues like Plaintiff did. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G also contends that it has never learned that any of these three alleged comparators attempted to address alleged contract compliance issues with a third party, instead of working on such issues through Purchases. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G contends further that it has never learned that any of these three alleged comparators retaliated against a vendor or third party with which P&G conducted business. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G also states that it has never learned that any of these three alleged comparators shared confidential P&G information with third parties who had no reason to know the information; or coordinated or conspired to harass P&G employees in the way that Plaintiff did with Hayes. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39.

Plaintiff states that she disputes P&G's contention that it is not aware of any individual engaging in similar conduct compared to Plaintiff. Pl. Resp. SMF at ¶ 139. Plaintiff contends that, because P&G never completed an investigation into Plaintiff's behavior prior to termination, "there is no way for P&G to determine whether or not her behavior was abnormal from others." Pl. Resp. SMF at ¶ 139; Pl.

Decl. ¶ 7. Plaintiff further states that Andrew Giangreco, Craig Harlan, and Dean Christopherson, all P&G employees reporting to Dave Shull, had "issues with external 3rd parties that they oversaw that were not investigated by HR." Pl. Resp. SMF at ¶ 139; Pl. SMF at ¶ 51; Pl. Sec. Decl. ¶ 36. According to Plaintiff, P&G also utilized Giangreco, Christopherson and Harlan as Plaintiff's comparators when determining her annual Performance Rating, which is "dictated on a bell curve." Pl. Resp. SMF at ¶ 139; Pl. SMF at ¶ 50; Pl. Sec. Decl. ¶ 36.

It is undisputed that De Jesus has only terminated four individuals for violating P&G PVPs during his career: two are men and the other two are women, one of whom is Plaintiff. Def. SMF at ¶ 140; De Jesus Decl. ¶¶ 4, 5.

On September 29, 2018, and in the week following Plaintiff's discharge, Hayes and "Cruz" continued emailing large numbers of P&G employees. Def. SMF at ¶ 141. According to P&G, one email on September 29 contained audio recording excerpts from Plaintiff's September 14 interview with Sasse, although the evidence P&G cites in support of that contention indicates that the audio came from a meeting between Plaintiff and Lickteig. Def. SMF at ¶ 142; Lickteig Decl. ¶ 41 (Lickteig states that an email from Hayes to P&G employees dated September 29, 2018 contained an audio that "appears to be an excerpt from an interview I had with Ms. Gladden at which Ms. Hayes was not present as the interview was conducted in person and on P&G property in Cincinnati.").

One email stated: (a) "Everybody feel safe heading down to Disneyworld for the [P&G] National Sales Meeting?"; and (b) "Stan Cruz is thrilled that the Promoveo employees will have badges, that way [he] can easily interview them. Keep a look out at Disney for Stan Cruz." Def. SMF at ¶ 143; Lickteig Decl. ¶ 40, Ex. 31 [58-6] at 119, 125. P&G contends that, in another email to P&G employees, Hayes and "Cruz" attached images of envelopes and information sent by P&G to Plaintiff about her discharge. Def. SMF at ¶ 145; Lickteig Decl. ¶ 38, Ex. 29 [58-6] (PG/Gladden 000557-000558).

Plaintiff came to Disneyworld in Orlando and attempted to attend P&G's National Sales Conference. Def. SMF at ¶ 146; Pl. Dep. Vol. II. 279-83 (Plaintiff testified that, after her termination, she attended a conference in Orlando, Florida, on October 1-5, presumably in 2018). According to P&G, Plaintiff's attendance at the conference was in "direct contravention of P&G's September 27 direction and her September 28 discharge." Def. SMF at ¶ 147. Plaintiff disputes that and contends that she was "never directed on September 28, 2018, to not go to the P&G National Sales Conference." Pl. Resp. SMF at ¶¶ 130, 147.

From Plaintiff's termination on September 28, 2018, through January 2019, Hayes and "Cruz'' continued their internet harassment campaign of P&G employees and ultimately harassed people simply associated with P&G. Def. SMF at ¶ 148; Lickteig Decl. ¶¶ 38-41.

Plaintiff contends that, on an unspecified date, she "receives communication with an attachment of payment from Promoveo to Hayes for what appears to be docked pay and withheld bonus dated after August 31, 2018." Pl. SMF at ¶ 18; Pl. Sec. Decl. ¶ 25. Further, on an unspecified date, Promoveo stated to Plaintiff "that one of their highest paid DSA was making over $40,000 and the average of the DSA salaries met the contract provisions, regardless of bonus payments." Pl. SMF at ¶ 29; Pl. Sec. Decl. ¶ 38; Lickteig Decl. ¶ 13, Ex. 6 (PG/Gladden 000169). Plaintiff contends that the DSA informed Gladden she made $30,000 and was awarded a $3,000 bonus during the time in question, and that Fitzpatrick did research online and discovered that the offered salary for the DSA role appeared to be $30,000. Pl. SMF at ¶ 29; Pl. Sec. Decl. ¶ 38, Lickteig Decl. ¶ 13, Ex. 6. Plaintiff also contends that over 95% of DSAs were women in 2018. Pl. SMF at ¶ 30; Pl. Ex. C [79-6] (PG/Gladden 000215).[4] Defendant disputes that, and contends that Plaintiff's cited evidence does not support her contention. Def. Resp. SMF at ¶ 30.

[4] In support of that allegation that over 95% of DSAs were women, Plaintiff cites to her Exhibit C, at "PG/Gladden 000215." Pl. SMF at ¶ 31. The undersigned has been unable to locate any page with that number in Plaintiff's Exhibit C. *See* Pl. Ex. C [79-6] (including pages numbered PG/Gladden 000214, followed by PG/Gladden 000217, PG/Gladden 000218). Plaintiff's supplement to Exhibit C, filed in support of her Motion for Summary Judgment, also does not contain a page with that number. *See* Pl. Supp., Ex. C [72-1].

Plaintiff contends that, on an unspecified date, Lickteig "makes reference to how can a mother travel quickly and often from her children." Pl. SMF at ¶ 43; Lickteig Decl., Ex. 30b (2:41:00). Moreover, on an unspecified date in September of 2018, Plaintiff "raised her sex discrimination complaint with Shull and Sarah Davies (HR)" and "another P&G employee on October 11, 2018." Pl. SMF at ¶ 27; Pl. Sec. Decl. ¶ 39.

Plaintiff also contends that, after her employment was terminated, she was replaced by Lynn Neal, a "white male." Pl. SMF at ¶ 27b;[5] Pl. Sec. Decl. ¶ 26; Collado Dep. 11 (Collado testified that a "gentleman by the name of Lynn Neal" was his contact at P&G after Plaintiff). Defendant disputes that Plaintiff was replaced by Lynn Neal. Def. Resp. SMF at ¶ 28; Shull Sec. Decl. [91-2] ¶¶ 2-6. In Shull's Second Declaration attached to Defendant's reply brief, Shull states that, during that time that Plaintiff reported to him, her two main responsibilities were: 1) maintaining vendor relationships with Promoveo and Alta; and 2) organizing and planning P&G's yearly POH National Sales Conference. Shull Sec. Decl. at ¶ 2. After Plaintiff's employment was terminated, Shull states that he gave Lynn Neal, an existing male P&G employee, responsibility for maintaining vendor relationships

[5] Plaintiff's Statement of Facts includes two paragraphs numbered 27, so the Court refers to the second paragraph numbered 27 as "¶ 27b." *See* Pl. SMF at pp. 6, 7, ¶¶ 27, 27b.

with Promoveo and Alta, and he gave Cherie Rippey, an existing female P&G employee, responsibility for organizing and planning P&G's yearly POH National Sales Conference. *Id*. at ¶¶ 3-6.

B. *Discussion*

1. Summary Judgment Standard

Summary judgment is authorized when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 175 (1970); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924 (11th Cir. 1984). The movant carries this burden by showing the court that there is "an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In making its determination, the court must view the evidence and all factual inferences in the light most favorable to the nonmoving party.

Once the moving party has adequately supported its motion, the nonmoving party must come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party is required "to go beyond the pleadings" and

to present competent evidence designating "specific facts 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 nonmoving party's case is insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

If a fact is found to be material, the court must also consider the genuineness of the alleged factual dispute. *Id.* An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." *Id.* at 250. A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 242. Moreover, for factual issues to be genuine, they must have a real basis in the record. *Matsushita*, 475 U.S. at 587. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Id.* at 587 (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968)). Thus, the standard for summary judgment mirrors that for a directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 259.

When considering motions for summary judgment, the court does not make decisions as to the merits of disputed factual issues. *See Anderson*, 477 U.S. at 249; *Ryder Int'l Corp. v. First Am. Nat'l Bank*, 943 F.2d 1521, 1523 (11th Cir. 1991). Rather, the court only determines whether there are genuine issues of material fact to be tried. Applicable substantive law identifies those facts that are material and those that are irrelevant. *Anderson*, 477 U.S. at 248. Disputed facts that do not resolve or affect the outcome of a suit will not properly preclude the entry of summary judgment. *Id*.

2. Plaintiff's Claims

In the Complaint, Plaintiff asserts two counts. In Count I, she asserts a claim for "Gender Discrimination Pursuant to Title VII (Disparate Treatment)." Compl. [1] at ¶¶ 42-46. In Count II, she asserts a claim for "Title VII Retaliation." *Id*. at ¶¶ 47-53. Defendant has moved for summary judgment on all of Plaintiff's claims.

a. Sex Discrimination

Although Plaintiff has titled her claim in Count I as "gender discrimination" under Title VII, because Title VII prohibits discrimination on the basis of "sex" rather than "gender," the Court will refer to Plaintiff's claim as either "gender discrimination" or "sex discrimination," and will use these terms interchangeably in its discussion herein.

(1) Standards of Proof

Title VII provides that it is unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). To prevail on a Title VII claim for discrimination or retaliation based on disparate treatment, a plaintiff must prove that the defendant acted with discriminatory or retaliatory intent. *See Hawkins v. Ceco Corp.*, 883 F.2d 977, 980-81 (11th Cir. 1989); *Clark v. Huntsville City Bd. of Educ.*, 717 F.2d 525, 529 (11th Cir. 1983). Discriminatory intent may be established either by direct evidence or by circumstantial evidence meeting the four-pronged test set out for Title VII cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Lewis v. City of Union City*, 918 F.3d 1213, 1220 (11th Cir. 2019).

Direct evidence is evidence "that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Evidence, Black's Law Dictionary* 596 (8th ed. 2004); *see also Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1226 (11th Cir. 1993); *Carter v. City of Miami*, 870 F.2d 578, 581–82 (11th Cir. 1989); *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1528 n.6 (11th Cir. 1987). Only the most blatant remarks whose intent could only be to discriminate constitute direct evidence. *Clark*, 990 F.2d at 1226; *Carter*, 870 F.2d at 581. Evidence that only suggests discrimination or that is subject to more than one

interpretation does not constitute direct evidence. *See Harris v. Shelby Cty. Bd. of Educ.*, 99 F.3d 1078, 1083 n.2 (11th Cir. 1996). "[D]irect evidence relates to actions or statements of an employer reflecting a discriminatory or retaliatory attitude correlating to the discrimination or retaliation complained of by the employee." *Caban-Wheeler v. Elsea*, 904 F.2d 1549, 1555 (11th Cir. 1990); *see also Carter v. Three Springs Residential Treatment*, 132 F.3d 635, 641–42 (11th Cir. 1998).

Evidence that merely "suggests discrimination, leaving the trier of fact to infer discrimination based on the evidence" is, by definition, circumstantial. *Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1081–82 (11th Cir. 1990). Because direct evidence of discrimination is seldom available, a plaintiff must typically rely on circumstantial evidence to prove discriminatory intent, which can be done using the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). *See Holifield v. Reno*, 115 F.3d 1555, 1561–62 (11th Cir. 1997), *abrogated on other grounds by Lewis*, 918 F.3d at 1226; *Combs v. Plantation Patterns*, 106 F.3d 1519, 1527–28 (11th Cir. 1997). Under this framework, a plaintiff is first required to create an inference of discriminatory intent, and thus carries the initial burden of establishing a *prima facie* case of discrimination. *McDonnell Douglas*, 411 U.S. at 802; *see also Jones v. Bessemer Carraway Med. Ctr.*, 137 F.3d 1306, 1310, *reh'g*

denied and opinion superseded in part, 151 F.3d 1321 (11th Cir. 1998); *Combs*, 106 F.3d at 1527.

Demonstrating a *prima facie* case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination. *Jones*, 137 F.3d at 1310–11; *Holifield*, 115 F.3d at 1562; *see Burdine*, 450 U.S. at 253–54. Once the plaintiff establishes a *prima facie* case, the defendant must "articulate some legitimate, nondiscriminatory reason" for the adverse employment action. *McDonnell Douglas*, 411 U.S. at 802; *Jones*, 137 F.3d at 1310. If the defendant carries this burden and explains its rationale, the plaintiff must then show that the proffered reason is merely a pretext for discrimination. *See Burdine*, 450 U.S. at 253–54; *Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983).

A plaintiff is entitled to survive a defendant's motion for summary judgment if there is sufficient evidence to demonstrate the existence of a genuine issue of material fact regarding the truth of the employer's proffered reasons for its actions. *Combs*, 106 F.3d at 1529. A *prima facie* case along with sufficient evidence to reject the employer's explanation is all that is needed to permit a finding of intentional discrimination. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000); *see also St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993); *Combs*, 106 F.3d at 1529.

The *McDonnell Douglas* proof structure "was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983); *see also Grigsby v. Reynolds Metals Co.*, 821 F.2d 590, 594 (11th Cir. 1987). The Eleventh Circuit has held that this framework of shifting burdens of proof is a valuable tool for analyzing evidence in cases involving alleged disparate treatment, but the framework is only a tool. *Nix v. WLCY Radio/Rahall Comm.*, 738 F.2d 1181, 1184 (11th Cir. 1984), *abrogated on other grounds by Lewis*, 918 F.3d at 1226. Indeed, "establishing the elements of the *McDonnell Douglas* framework is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion in an employment discrimination case." *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011).

A plaintiff may also defeat a motion for summary judgment by presenting "a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker." *Id.* (internal quotation marks omitted). The Eleventh Circuit has held that a "plaintiff's failure to produce a comparator does not necessarily doom the plaintiff's case." *Lewis v. City of Union City*, 934 F.3d 1169, 1185 (11th Cir. 2019) (quoting *Smith*, 644 F.3d at 1328). "Even without similarly situated comparators," a plaintiff will survive summary judgment

if they present a convincing mosaic of circumstantial evidence from which a factfinder can infer discriminatory motivation. *Lewis*, 934 F.3d at 1185. The plaintiff retains the ultimate burden of proving that the defendant is guilty of intentional discrimination. *Burdine*, 450 U.S. at 253.

(2) Direct Evidence

Plaintiff first argues that she has presented direct evidence that P&G discriminated against her on the basis of her sex when it terminated her employment, so she is not required to present a *prima facie* case of discrimination under the *McDonnell Douglas* framework. *See* Pl. Br. [79-3] at 15-18. Plaintiff argues that she reported a claim that Promoveo was engaging in sex discrimination, and then Promoveo reported a malicious "concern" about her to P&G. *Id*. at 15. Plaintiff also argues that Lickteig made comments to her during her second interrogation that are direct evidence of sex discrimination. *Id*. The Court finds that Plaintiff has failed to demonstrate that any of this evidence constitutes direct evidence that P&G harbored a discriminatory animus against Plaintiff because she is female, or that it terminated her employment because she is a woman.

In her Statement of Facts, the only comments by Lickteig that Plaintiff references is that, on an unspecified date, Lickteig "makes reference to how can a mother travel quickly and often from her children." Pl. SMF at ¶ 43; Lickteig Decl., Ex. 30b (2:41:00). In her brief, Plaintiff adds that Lickteig's comment was made to

her at the end of her "second interrogation." Pl. Br. at 16. She also claims that his comments included asking her if she had children and "how was she able to leave them so quickly/often to travel for work." *Id*. As discussed above, the Court cannot consider any fact that a party includes only in a brief and not in the party's Statement of Facts. *See* LR 56.1(B)(1), NDGa. Nevertheless, even if the Court were to consider Plaintiff's allegation that Lickteig asked her if she had children and how she could leave them to travel for work, this statement falls short of constituting direct evidence that Lickteig harbored a discriminatory animus against her because she is a woman, or intended to recommend her termination on the basis that she is a woman, or even a woman with children.

Plaintiff argues that Lickteig's statement is similar to a statement such as a plaintiff "would be happier at home with her children," which, she argues, another court has held was direct evidence of discrimination in a pregnancy discrimination case. *See* Pl. Br. at 17 (citing *Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1044 (7th Cir. 1999)). In the case cited by Plaintiff, however, the statement at issue was made by the decisionmaker to the employee at the time of her discharge. "Graham's remarks to Sheehan and to her co-workers *at the time of the firing* that she would be happier at home with her children provided direct evidence of discrimination, 'evidence which in and of itself suggests' that someone with managerial authority was 'animated by an illegal employment criterion.'" *Sheehan*, 173 F.3d at 1039

(emphasis added) (quoting *Venters v. City of Delphi*, 123 F.3d 956, 972 (7th Cir. 1997)).

The *Sheehan* court noted that "[e]ven isolated comments may constitute direct evidence of discrimination if they are 'contemporaneous with the discharge or causally related to the discharge decision making process.'" *Id*. (quoting *Kennedy v. Schoenberg, Fisher & Newman, Ltd.*, 140 F.3d 716, 723 (7th Cir. 1998)). In contrast, in this case, Plaintiff has not shown that Lickteig's alleged comments to her about her children and her travel were "contemporaneous" with her discharge, or that his statements were causally related to her discharge in any way.

Moreover, Defendant argues, Plaintiff has not quoted Lickteig accurately from the evidence she cites to support her allegation that Lickteig's comments to her are direct evidence of sex discrimination. Def. Reply Br. [91] at 3. As support for her allegation about Lickteig's comments, Plaintiff has cited to Exhibit 30b from Lickteig's Declaration. *See* Pl. SMF at ¶ 43; Lickteig Decl., Ex. 30b [58-6] (at 2:41:00). Defendant contends that this reference is to a "secret audio recording" made by Plaintiff which actually reveals, contrary to Plaintiff's argument, that Lickteig and Plaintiff made "general chatter" about Plaintiff's travels and then had the following exchange:

> Lickteig: Do you have children? I don't know that.
>
> Gladden: Yes.

Lickteig: Do you have a babysitter for the kids then?

Gladden: Uh. Ye—, well yes.

Lickteig: Ok well get home then.

Def. Reply Br. [91] at 3 (citing Lickteig Decl. [58-6], Ex. 30b, 2:41:39-2:41:56).[6]

Defendant argues that this comment by Lickteig is not direct evidence of sex discrimination, and the Court agrees. *See id*. (citing *Guadamuz v. Entercom Miami LLC*, 2019 U.S. Dist. LEXIS 15678, *17-20 (S.D. Fl. 2019)). The Eleventh Circuit has held that, for a comment by a decisionmaker to be considered direct evidence of discriminatory intent, it cannot be merely a "stray remark" and must relate to the employment decision at issue. *See*, *e.g.*, *Rojas v. Florida*, 285 F.3d 1339, 1342–43 (11th Cir. 2002) (statement by female plaintiff's supervisor, who was the principal decisionmaker as to plaintiff's termination, that another former female employee did not deserve her job "because [she] was a woman," was, in itself, insufficient to establish discriminatory intent as to the plaintiff's termination because the remark was "isolated and unrelated to the challenged employment decision"); *see also Ritchie v. Industrial Steel, Inc.*, 426 F. App'x 867, 874 (May 19, 2010) (unpublished)

[6] Although the parties submitted various excerpts of audio recordings as exhibits to their Statements of Facts, neither party provided a transcript of this particular conversation in their Statements. *See* Def. SMF; Pl. SMF. The Court quotes Defendant's version of the conversation, which is not included in its Statement of Facts, only because Plaintiff includes references to alleged statements made by Lickteig in her brief that are also not included in her Statement of Facts.

(evidence that two separate decisionmakers referred to employee as "old man," and one supervisor did so "frequently," did not create a genuine issue of fact as to whether age was the real reason for the employee's termination, because the plaintiff "did not link those statements to the decision to terminate his employment").

Plaintiff also contends that Lickteig "exhibits further discriminatory behavior as he makes derogatory references to DSAs (who are almost all female)." Pl. SMF at ¶ 10; Pl. Sec. Decl. ¶ 29. Significantly, however, Plaintiff does not specify what "derogatory" remark Lickteig allegedly made about DSAs. But again, even assuming he did so, that appears to be at most another "stray remark" that Plaintiff has not shown was at all related to the decision to terminate her employment, nor has she even shown that the remark was about her or related to her in any way.

Plaintiff also cites to other evidence that she contends should be viewed as direct evidence that P&G discriminated against her because she is a woman. Plaintiff points to the following evidence as direct evidence of discrimination:

> Based on 1) Gladden's complaints of direct actions of sex discrimination 2) P&G not executing ANY investigation into Gladden's Sex Discrimination complant [sic] and 3) the temporal proximity (a few hours) of Lickteig's questioning the Plaintiff on how a woman could leave her children at home and Lickteig recommending termination of Plaintiff without completing any of his investigations, 4) the act of Lickteig not completing ANY of the investigations prior to recommending Gladden's termination, and 5) the lack of consideration by Defendant of any other factors, a jury can conclude, without connecting any dots, that Defendant fired Plaintiff because of

> Gladden's gender. On that basis alone, the Court should deny Defendant's motion and this case should go before a jury.

Pl. Br. at 17-18.

The Court notes that Plaintiff has not cited to evidence to support these allegations, and it is not clear that she has cited to any record evidence that Lickteig made a recommendation to terminate Plaintiff's employment only "a few hours" after he made the alleged comments to her about her children. In any event, assuming that Plaintiff has presented such evidence, the Court finds that all of the evidence cited by Plaintiff are examples of—at most—circumstantial evidence of sex discrimination, not direct evidence.

In sum, Plaintiff does not allege, nor has she cited to any record evidence, that anyone at P&G ever made any comment to her that reflected a discriminatory animus against her because she is a woman, nor does she allege that anyone at P&G said anything to her that could be construed as direct evidence that P&G terminated her employment because she is a woman. Thus, the Court finds that Plaintiff has not presented direct evidence of sex discrimination and her case rests solely on circumstantial evidence. Under the *McDonnell Douglas* framework, therefore, to defeat Defendant's Motion for Summary Judgment, Plaintiff must first present a *prima facie* case of sex discrimination.

(3) Plaintiff's *Prima Facie* Case

Under the *McDonnell Douglas* framework, a plaintiff may generally establish a *prima facie* case of unlawful sex discrimination under Title VII by showing that: (1) she is a member of a protected class, (2) she was subjected to an adverse employment action by her employer, (3) she was qualified to do the job in question, and (4) her employer treated similarly situated employees outside her protected classification (*i.e.*, those of a different sex or gender) more favorably than it treated her. *See McDonnell Douglas*, 411 U.S. at 802; *see also Wright v. Southland Corp.*, 187 F.3d 1287, 1290 (11th Cir. 1999).

In this case, Defendant does not dispute that Plaintiff is a woman and a member of a protected class under Title VII, nor does it dispute that Plaintiff was subjected to an adverse employment action when P&G terminated her employment. Defendant argues, however, that Plaintiff cannot establish a *prima facie* case of sex discrimination because, it argues, she was not qualified for her position and she cannot show that P&G treated any similarly situated male employee more favorably than it treated her. Def. Br. at 16-19.

With respect to Plaintiff's qualifications for her job, it is undisputed that Plaintiff worked for P&G for approximately 18 years. Def. SMF at ¶ 15. While the parties appear to dispute Plaintiff's specific title, it also appears to be undisputed that she held her last position with P&G from at least 2015 to 2018, or approximately

three years. *See* Def. SMF at ¶ 16; Pl. Resp. SMF at ¶ 16. P&G nevertheless contends that Plaintiff cannot establish that she was qualified for her position. According to P&G, Plaintiff's "undisputed and indisputable response to Hayes's termination from Promoveo demonstrates she is completely unqualified to perform her former job." Def. Br. at 18. P&G argues that, following Hayes's termination from Promoveo, Plaintiff "disregarded and violated numerous policies, practices, and PVPs when engaging in the conduct described above, including coordinating and conspiring with Hayes to harass P&G employees." *Id*. at 18-19. Thus, P&G argues, Plaintiff's "behavior disqualifies her from her prior job with P&G, making it impossible for her to prove a *prima facie* case of discrimination." *Id*. at 19 (citing *Williams v. Motorola, Inc.*, 303 F.3d 1284, 1290-94 (11th Cir. 2002) (holding that an employee is not qualified for a job if she cannot work well with others and threatens the safety of coworkers)).

Plaintiff argues, however, that "Defendant fundamentally misunderstands Plaintiff's burden at the *prima facie* stage." Pl. Br. at 20. According to Plaintiff, when an employee holds a position for several years before termination, she is presumed to be qualified for the job. *Id*. (citing *Young v. General Foods Corp.*, 840 F.2d 825, 830 n.3 (11th Cir. 1988) (qualification inferred when plaintiffs were terminated after three years in their jobs); *Stanfield v. Answering Serv. Inc.*, 867 F.2d 1290, 1293-94 (11th Cir. 1989) (employee's qualifications established by

performing responsibilities for several years without complaint)). Plaintiff argues that, because she had "successfully performed this job since entering it in 2015," she has established that she was qualified for the position. Pl. Br. at 20-21.

Upon review of the facts and the parties' arguments, the Court finds that Plaintiff has presented sufficient evidence to, at a minimum, create a genuine issue of fact as to whether she was qualified for her position. For the purposes of the *prima facie* case under Title VII, "qualified" generally refers to minimal qualifications rather than relative qualifications or optimal performance. *See, e.g., Goyette v. DCA Advertising, Inc.*, 828 F. Supp. 227, 233 (S.D.N.Y. 1993); *McCullough v. Consolidated Rail Corp.*, 776 F. Supp. 1289, 1295 (N.D. Ill. 1991); *Long v. First Family Financial Services Inc.*, 677 F. Supp. 1226, 1231 (S.D. Ga. 1987) ("'[q]ualified,' under any plain meaning given to the word, relates to the background and skills necessary to carry out the functions of the position. Whether the employee was applying those skills in a satisfactory manner is a separate question").

The Eleventh Circuit has held that, in order to determine if a plaintiff was qualified for a particular position, a court must focus on the plaintiff's skills and background. *Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1227 (11th Cir. 1993); *see also Woody v. St. Clair Cty. Comm'n*, 885 F.2d 1557, 1561-63 (11th Cir. 1989); *Wu v. Thomas*, 847 F.2d 1480, 1484 (11th Cir. 1988). At the *prima facie* stage, Plaintiff is not required to prove that she was qualified, but at the very least, she must

present evidence that would be sufficient to establish a genuine issue of fact regarding whether she was minimally qualified for her position. Viewing the evidence in the light most favorable to Plaintiff, the Court finds that she has done so in this case. *See Rosenfield v. Wellington Leisure Prod., Inc.*, 827 F.2d 1493, 1495 n.2 (11th Cir. 1987) ("in cases where a plaintiff has held a position for a significant period of time, qualification for that position sufficient to satisfy the test of a *prima facie* case can be inferred").

In addition to arguing that Plaintiff was not qualified for her job, Defendant argues further that Plaintiff cannot establish a *prima facie* case of sex discrimination because she cannot show that P&G treated any similarly situated male employee more favorably than it treated her. Def. Br. at 17-18. A plaintiff can generally establish a *prima facie* case of discrimination under Title VII by showing that her employer treated a similarly situated person outside her protected class more favorably than it treated her under similar circumstances. *See Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997); *see also Knight v. Baptist Hospital of Miami*, 330 F.3d 1313, 1316 (11th Cir. 2003); *Silvera v. Orange County School Bd.*, 244 F.3d 1253, 1259 (11th Cir. 2001); *Nix v. WLCY Radio/Rahall Comm.*, 738 F.2d 1181, 1185 (11th Cir. 1984).

"When evaluating an allegation of disparate treatment," courts "require that a comparator be similarly-situated to the plaintiff in all relevant respects." *Stone &*

Webster Constr. v. U.S. Dep't of Labor, 684 F.3d 1127, 1135 (11th Cir. 2012) (quotations and citation omitted). "Even if a plaintiff and comparator are similar in some respects, differences in their overall record may render them not 'similarly situated' for purposes of establishing a *prima facie* case." *Brown v. Jacobs Eng'g, Inc.*, 401 F. App'x 478, 480 (11th Cir. 2010). Courts also consider whether the plaintiff and the proffered comparator were employed for similar periods. *See Roy v. Broward Sheriff's Office*, 160 F. App'x 873, 875 (11th Cir. 2005) (finding that proffered comparator was not similarly situated because comparator had been with department for sixteen years, while plaintiff had less than 18 months of service).

Courts consider whether the proffered comparator had the same supervisor, *see Morris v. Potter*, 251 F. App'x 667, 668-669 (11th Cir. 2007), as well as the type of position the plaintiff holds and the content of the plaintiff's work. *See Simionescu v. Bd. of Tr. of the Univ. of Alabama*, 482 F. App'x 428, 430-431 (11th Cir. 2012) (finding that two university faculty members were not similarly situated because one was not tenure-track, while plaintiff was, and second faculty member taught in a different department than did plaintiff). Finally, courts also consider whether the plaintiff and the proffered comparator were employed for similar periods and whether they had similar records of performance. *See Jarvis v. Siemens Med. Solutions USA, Inc.*, 460 F. App'x 851, 857-858 (11th Cir. 2012) (minority plaintiff failed to show that Caucasian co-worker was similarly situated because the record

showed that the plaintiff had several significant employment performance deficiencies not seen in Caucasian employee's record); *Roy v. Broward Sheriff's Office*, 160 F. App'x 873, 875 (11th Cir. 2005) (proffered comparator was not similarly situated because comparator had been with department for sixteen years, while plaintiff had less than eighteen months of service).

In *Lewis v. City of Union City*, the Eleventh Circuit explained that evidence that an employer "has treated like employees differently" is necessary to "supply the missing link and provide a valid basis for inferring unlawful *discrimination*" through use of the framework. *Lewis v. City of Union City*, 918 F.3d 1213, 1221-24 (11th Cir. 2019) (emphasis in original). A plaintiff is "like" other employees only when "she and her comparators are similarly situated in all material respects." *Id.* at 1224. While a plaintiff need not show that she and her comparator are "nearly identical" in their circumstances, they should be similar in the legitimate circumstances that may have factored into their employer's decision to act adversely toward them, such as their conduct, their work histories, and the policies under which they operate. *See id.* at 1225-28. Without such a comparator, a plaintiff cannot generally establish a *prima facie* case under the *McDonnell Douglas* framework. *Id.* at 1224.

In this case, Defendant argues that Plaintiff has failed to present any evidence that a similarly situated male comparator received more favorable treatment than she did by P&G. Def. Br. at 17-18. According to P&G, Plaintiff claims that three male

P&G employees are relevant comparators: Andrew Giangreco, Craig Harlan, and Dean Christopherson. *Id*. at 17. P&G argues, however, that they were not similarly situated to Plaintiff because:

> (1) none of them were responsible for vendor relationships like Gladden; (2) none of them have engaged a P&G vendor or other third party's employees concerning employee-management relations like compensation and discharge issues like Gladden did; (3) none of them have attempted to address alleged contract compliance issues with a third party like Gladden did, instead of working on such issues through Purchases; (4) none of them have retaliated against a vendor or third party with which P&G conducted business like Gladden did; (5) none of them have shared confidential P&G information with third parties who had no reason to know the information like Gladden did; and (6) none of them have coordinated or conspired to harass P&G employees the way Gladden did with Hayes.

Id. at 17-18; Def. SMF at ¶ 139. Thus, P&G argues, while Giangreco, Harlan, and Christopherson all reported to Shull, as Plaintiff did, there is no other fact showing they were similarly situated to Plaintiff in any aspect. Def. Br. at 18.

The parties' facts and evidence regarding the alleged comparators is set forth above. P&G contends that Giangreco, Harlan, and Christopherson were not responsible for vendor relationships from 2015-2018. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. Further, P&G contends, it has never learned that any of these three alleged comparators engaged a P&G vendor or other third party's employees concerning employee-management relations like compensation and discharge issues like Plaintiff did. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G also contends that it

has never learned that any of these three alleged comparators attempted to address alleged contract compliance issues with a third party, instead of working on such issues through Purchases. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G contends further that it has never learned that any of these three alleged comparators retaliated against a vendor or third party with which P&G conducted business. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39. P&G also states that it has never learned that any of these three alleged comparators shared confidential P&G information with third parties who had no reason to know the information; or coordinated or conspired to harass P&G employees in the way that Plaintiff did with Hayes. Def. SMF at ¶ 139; Shull Decl. ¶¶ 29, 39.

For Plaintiff's part, she contends that, because P&G never completed an investigation into Plaintiff's behavior prior to termination, "there is no way for P&G to determine whether or not her behavior was abnormal from others." Pl. Resp. SMF at ¶ 139; Pl. Decl. ¶ 7. Plaintiff further states that Giangreco, Harlan, and Christopherson all "had issues with external 3rd parties that they oversaw that were not investigated by HR." Pl. Resp. SMF at ¶ 139; Pl. SMF at ¶ 51; Pl. Sec. Decl. ¶ 36. According to Plaintiff, P&G also utilized Giangreco, Christopherson and Harlan as Plaintiff's comparators when determining her annual Performance Rating, which is "dictated on a bell curve." Pl. Resp. SMF at ¶ 139; Pl. SMF at ¶ 50; Pl. Sec. Decl. ¶ 36.

Other than her allegation that the purported comparators had "issues with external 3rd parties that they oversaw that were not investigated by HR," Plaintiff has not alleged, nor has she cited to any record evidence, explaining what "issues" were raised by Giangreco, Christopherson or Harlan that were similar to the issues that Plaintiff was raising about Promoveo.[7] But more importantly, Plaintiff has cited to no evidence that any of the purported comparators engaged in conduct similar to hers, or were even accused of doing so. She cites to no evidence that they were accused of violating P&G's co-employment policies that Plaintiff was accused of violating. In particular, Plaintiff cites to no evidence that any of the purported comparators had contacted employees of vendors to discuss their salary or bonuses, or anything of that sort. Thus, even assuming that Plaintiff could show that Giangreco, Christopherson or Harlan were otherwise similarly situated to her, Plaintiff has failed to cite to any evidence that they engaged in conduct that was remotely similar to that of Plaintiff.

[7] In Plaintiff's Statement of Facts filed in support of her Motion for Summary Judgment [65], Plaintiff includes more facts and evidence about her purported comparators. Plaintiff alleges that Giangreco, Christopherson, and Harlan were all "Band III employees similar to Plaintiff," and that they all "had issues with vendors that HR was not involved in resolving." Pl. SMF [65-2] at ¶¶ 103-112. Plaintiff does not cite to any record evidence that any of the purported comparators were alleged to have violated the co-employment policies, however, or that the vendors with whom they worked had reported to P&G that they had done so.

Nevertheless, the consideration of whether Plaintiff has presented a *prima facie* of sex discrimination does not end there. A plaintiff alleging discriminatory discharge under Title VII may also establish a *prima facie* case by presenting evidence that he or she was replaced by someone outside his or her protected class. *See Cuddeback v. Florida Bd. of Educ.*, 381 F.3d 1230, 1235 (11th Cir. 2004); *Hawkins v. Ceco Corp.*, 883 F.2d 977, 982 (11th Cir. 1989); *see also McDonnell Douglas Corp.*, 411 U.S. at 802.

In this case, Plaintiff argues that, after P&G terminated her employment, she was replaced by Lynn Neal, a male. Pl. Br. at 20. According to Plaintiff, "P&G can hardly challenge the fourth element since it is undisputed that Plaintiff was replaced by Lynn Neal, a white male." *Id*. In support of her allegation that Neal was her replacement, Plaintiff has cited to her own Declaration and the deposition transcript of Rolando Collado. *See* Pl. SMF at ¶ 27b; Pl. Sec. Decl. ¶ 26; Collado Dep. 11. In Plaintiff's Second Declaration, she states that "Lynn Neal, my replacement at P&G per Rolando Collado, is a Caucasian male to the best of my knowledge." Pl. Sec. Decl. [79-10] ¶ 26. Thus, Plaintiff's statement in her Declaration indicates that she learned from Collado that Neal was her replacement. In Collado's deposition, however, he stated only that a "gentleman by the name of Lynn Neal" was his contact at P&G after Plaintiff. Collado Dep. at 11. Other than her citation to Collado's

deposition, Plaintiff has not cited to any evidence that Neal replaced Plaintiff in all of her job duties at P&G.

Although Plaintiff argues that it is "undisputed" that she was replaced by Neal, P&G argues that Plaintiff was not replaced by Neal. Def. Resp. SMF at ¶ 28. P&G has presented evidence that Neal did not take over all of Plaintiff's job responsibilities after her employment was terminated. *See* Def. Resp. SMF at ¶ 28; Shull Sec. Decl. [91-2] ¶¶ 2-6. In Shull's Second Declaration attached to Defendant's reply brief, Shull states that, during that time that Plaintiff reported to him, her two main responsibilities were: 1) maintaining vendor relationships with Promoveo and Alta; and 2) organizing and planning P&G's yearly POH National Sales Conference. Shull Sec. Decl. at ¶ 2. After Plaintiff's employment was terminated, Shull states that he gave Lynn Neal, an existing male P&G employee, responsibility for maintaining vendor relationships with Promoveo and Alta, and he gave Cherie Rippey, an existing female P&G employee, responsibility for organizing and planning P&G's yearly POH National Sales Conference. *Id*. at ¶¶ 3-6.

According to P&G, because Plaintiff's job responsibilities were later shared by both a male employee and a female employee, she cannot show that she was "replaced" by a male. P&G argues that an employer does not replace a former employee with someone outside her protected class when the employer spreads the

former employee's duties amongst existing employees, some of whom are in the same protected class as the former employee. Def. Reply Br. at 4-5 (citing *O'Neill v. Cotton Holdings*, 2020 U.S. Dist. LEXIS 145915, *27-29 (N.D. Ga. Jul. 2020) (*adopted at* 2020 U.S. Dist. LEXIS 148254 (N.D. Ga. Jul. 2020))).

Because P&G submitted Shull's Second Declaration in connection with its reply brief and advanced new arguments, Plaintiff was permitted to file a Sur-Reply Brief. *See* Pl. Sur-Reply Br. [96]. In her Sur-Reply, Plaintiff contends that:

> P&G now wants to raise that while a male (Lynn Neal) took over [her] role as stated by P&G in discovery, that a female took over project work of the National Sales Meeting. However, the National Sales Meeting work was ending for [her] in October of 2018, so who replaced [her] for that project is irrelevant. Further, there was another person on the planning committee of the National Sales meeting learning [her] role for 2019 if the organization should decide to have a 2019 National Sales meeting.

Id. at 7-8. In support of that allegation, Plaintiff cites to her Third Declaration [94-8] at ¶ 2, in which she states: "My work on the National Sales Meeting work was ending in October of 2018. Another person on the planning committee of the National Sales meeting was learning my role for 2019 if the organization should decide to have a 2019 National Sales meeting." Pl. Third Decl. at ¶ 2.

In Defendant's response to Plaintiff's Sur-Reply, it argues, again, that Neal did not replace Plaintiff in her position at P&G. *See* Def. Resp. Sur-Reply [97] at 1-3. P&G argues further that Plaintiff's Third Declaration contradicts her testimony

during her deposition in which Plaintiff testified that her primary "duties and responsibilities" in her position at P&G were as follows: "My role was, again, to manage the relationship with Alta, manage the relationship with Promoveo Health, and to oversee the national sales meeting and to—and to be the woman sponsor for the Women's Network." Pl. Dep. Vol. I [59] at 58-59.

Upon review of the facts and arguments presented by the parties, the Court finds that Plaintiff has presented sufficient evidence to create a genuine issue of fact as to whether Lynn Neal was her "replacement" at P&G. While P&G argues that Plaintiff's job responsibilities were shared between Neal, a man, and Rippey, a woman, it is undisputed that Neal took over the responsibility for maintaining vendor relationships with Promoveo and Alta after Plaintiff was terminated, and it was Plaintiff's relationship with Promoveo specifically that led to the events that caused her termination. Thus, viewing all facts and inferences in the light most favorable to Plaintiff, the Court finds that, although Rippey may have been given some of Plaintiff's former responsibilities, when viewing Plaintiff's position at P&G as the person who was responsible for maintaining the vendor relationship with Promoveo, it appears to be undisputed that Neal was the individual who replaced her in that specific role.

Accordingly, because it is undisputed that Neal replaced Plaintiff as the P&G employee responsible for the Promoveo vendor relationship, the Court finds that

Plaintiff has presented sufficient evidence to create a genuine issue of fact as to whether she was replaced by a male after her employment was terminated. As a result, the Court finds that Plaintiff has established a *prima facie* case of sex discrimination based on the termination of her employment. P&G contends, however, that it has presented evidence that it had a legitimate reason to terminate Plaintiff's employment that had nothing to do with her gender.

(4) Defendant's Legitimate Reason

Defendant argues that, even if Plaintiff has established a *prima facie* case of sex discrimination, it has presented sufficient evidence that it had a legitimate reason to terminate Plaintiff's employment that was not related to her gender or an intent to discriminate against her because of her gender. Def. Br. at 19-21. Thus, even assuming that Plaintiff were able to establish a *prima facie* case of sex discrimination, P&G argues, it is entitled to summary judgment because Plaintiff has failed to present any evidence that P&G's proffered reasons for terminating her employment were a mere pretext to disguise sex discrimination. *Id*. at 19-22.

The facts and circumstances surrounding P&G's decision to terminate Plaintiff's employment are set forth in great detail in the facts above. While many of the facts are disputed, P&G contends that the undisputed evidence demonstrates that Plaintiff committed multiple violations of P&G's co-employment policies, or at least P&G had a legitimate and reasonable basis to believe that she did so after

interviewing numerous people including Plaintiff. P&G also contends that, based on its investigation, it believed that Plaintiff had also cooperated or conspired with Lesli Hayes to send a series of harassing emails to multiple P&G employees, and as a result, P&G had lost confidence in Plaintiff's abilities as an employee.

P&G has presented evidence that it prohibits its employees from involving themselves in a vendor's employee/management relationship, and prohibits its employees from discussing issues of hiring, compensation, discipline, termination, or other terms and conditions of a vendor's employment relationships with the vendor or the vendor's employees. Def. SMF at ¶ 11. It is undisputed that the vendor is responsible for how it compensates, disciplines, hires, or discharges its employees. Def. SMF at ¶ 12. P&G refers to this issue as "co-employment" or "joint employment." Def. SMF at ¶ 13. P&G trains its employees who work with vendors, including Plaintiff, on avoiding co-employment or joint employment issues. Def. SMF at ¶ 14. Indeed, Plaintiff does not dispute that she received training on this issue. *See* Pl. Resp. SMF at ¶¶ 14, 21; Pl. SMF at ¶¶ 40-41.

P&G also has a division called "Purchases" that is responsible for, among other things, contract compliance by vendors. Def. SMF at ¶ 9. P&G expects its employees to raise any concern related to contract compliance with a vendor to Purchases so that Purchases can investigate and remediate any issues with the vendor. Def. SMF at ¶ 10.

Between 2015 and 2018, Plaintiff worked with Promoveo, a P&G vendor that has a contract with P&G. Def. SMF at ¶¶ 24-25. Promoveo employs Dental Sales Associates ("DSAs") and deploys them across the United States to sell P&G dental products to certain dental offices. Def. SMF at ¶ 26. It is undisputed that Promoveo's DSAs are Promoveo's employees, not employees of P&G, and that P&G expects its employees not to dictate, decide, or otherwise control or influence whom Promoveo, or any other vendor, hires, disciplines, or discharges, or how Promoveo compensates its employees. Def. SMF at ¶¶ 27-28. It is also undisputed that the P&G/Promoveo contract that was in effect in 2018 in no way required Promoveo to pay DSAs any particular salary. Def. SMF at ¶ 29.

In 2016, while Plaintiff oversaw the P&G/Promoveo relationship, Promoveo hired Lesli Hayes as a DSA. Def. SMF at ¶ 35. It is undisputed that Hayes is a Plaintiff's neighbor and that they are acquainted outside of work. Def. SMF at ¶¶ 33-34. Promoveo later reported to P&G that it felt pressured by Plaintiff to hire and retain Hayes as an employee. Def. SMF at ¶ 36. On August 29, 2018, Promoveo fired Hayes, and Hayes called Plaintiff to inform her that Promoveo fired her. Def. SMF at ¶¶ 37-39. Thereafter, Plaintiff spoke with Rolando Collado, one of Promoveo's owners/executives, and according to Collado, Plaintiff told him, "I understand we've had a change of personnel." Def. SMF at ¶ 40.

The day after Promoveo fired Hayes, August 30, 2018, Plaintiff questioned Collado about how Promoveo pays its employees. Def. SMF at ¶¶ 42-43. P&G claims that Plaintiff informed Collado, wrongly, that Promoveo was required to pay its DSAs $38,625. Def. SMF at ¶¶ 42-43. Plaintiff also questioned Collado about Promoveo's insurance coverage. Def. SMF at ¶ 44. It is undisputed that Plaintiff also contacted a Promoveo DSA and asked her about the details of her compensation from Promoveo. Def. SMF at ¶ 45. Promoveo later reported to P&G that when the Promoveo employee told Plaintiff about her earnings on August 30, 2018, Plaintiff said, "I think we can do better than that." Def. SMF at ¶ 47.

Also on August 30, 2018, Plaintiff sent an email to her manager, Shull, and two other P&G employees, Andy Fitzpatrick, NA Oral Care Finance Manager, and Kelly Heaps, Associate Marketing Director for Global Professional Oral Care, claiming to have concerns about the P&G/Promoveo contract. Def. SMF at ¶¶ 42. According to P&G, the August 30 email to Shull, Fitzpatrick, and Heaps was the first time Plaintiff ever raised any concerns about the P&G/Promoveo contract. Def. SMF at ¶ 50. Further, it is undisputed that, as of August 30, Plaintiff had not contacted Purchases to raise any concern about Promoveo. Def. SMF at ¶ 51.

On August 31, 2018, Plaintiff emailed Collado, again requesting proof of insurance from Promoveo. Def. SMF at ¶¶ 52, 53. According to P&G, Plaintiff also discussed her alleged concerns regarding Promoveo with Fitzpatrick and Heaps at

P&G, presenting them with a PowerPoint outlining various alleged concerns regarding Promoveo, including its compensation of its employees and its proof of insurance. Def. SMF at ¶ 54. Plaintiff referenced the contract's budgetary number, $38,625, which was the same number mentioned by Hayes and a person named "Stan Cruz," who claimed to represent Hayes, in a telephone call to Collado on August 30, 2018. Def. SMF at ¶¶ 48, 55. Fitzpatrick advised Plaintiff he thought this was a matter for Purchases to handle. Def. SMF at ¶ 56.

On September 3, "Cruz" left a voicemail for Guy Bradley, another executive at Promoveo, in which "Cruz" threatened Bradley, claiming he would "rip" him "limb from limb down there . . . in Disney" at an upcoming POH conference to be held in early October at Disneyworld in Orlando, Florida, and "Cruz" also referenced the $38,625 figure that had been referenced by Plaintiff. Def. SMF at ¶ 59. P&G later received this voicemail from Promoveo on or about September 13, 2018. Def. SMF at ¶ 59. Plaintiff was a key organizer of the Disney conference referenced by "Cruz" in the voicemail. Def. SMF at ¶ 60.

On September 4, 2018, Plaintiff called another Promoveo DSA directly, and that Promoveo employee later reported that Plaintiff asked her, "What did you think about the bonus this year?" Def. SMF at ¶¶ 61-62. Fitzpatrick emailed Plaintiff regarding her issues with Promoveo and advised Plaintiff that: (a) Purchases must be involved; (b) Promoveo was free to pay its employees how it chose, consistent

with the P&G/Promoveo contract and the co-employment avoidance training P&G gave Plaintiff; and (c) the contract provided an expected cost or billing amount per DSA ($38,625), but did not mandate any particular amount that Promoveo must pay individual sales representatives. Def. SMF at ¶ 63.

Collado also called Jennifer Sasse, a P&G Human Resources manager, and reported that he had concerns about Plaintiff's actions, in that: (a) Plaintiff had possibly shared confidential P&G/Promoveo contract information with Hayes and "Cruz" (e.g., the $38,625 figure); (b) Plaintiff was contacting him about Hayes's discharge, proof of insurance, employee cellular data plans, and employee compensation; and (c) Plaintiff was taking these steps in retaliation for Promoveo's termination of Hayes. Def. SMF at ¶ 65. On September 5, 2018, Collado contacted Sasse again, advising her that Plaintiff had spoken to Promoveo sales employees about their pay. Def. SMF at ¶ 67.

Sasse, along with Dave Shull, Plaintiff's manager, informed Plaintiff to stop all contact with Promoveo while P&G investigated the circumstances of everything that had arisen since August 29. Def. SMF at ¶¶ 69-70. They also told her to allow Shull to handle the business relationship with Promoveo until the matters were resolved. Def. SMF at ¶ 71. On September 7, Sasse interviewed John Long, a P&G Human Resources employee, who advised Sasse that he had trained Plaintiff on P&G's expectations to avoid risks associated with co-employment. Def. SMF at

¶¶ 76-78. Sasse also spoke with Collado and interviewed Fitzpatrick. Def. SMF at ¶¶ 74-79.

Also on September 7, Sasse interviewed Plaintiff in person at P&G's office headquarters in Ohio. Def. SMF at ¶ 80. P&G contends that, during Plaintiff's meeting with Sasse, Plaintiff's responses to questions about her relationship with Hayes were "very peculiar and appeared deceitful." Def. SMF at ¶ 81. When asked about their relationship, Plaintiff said she and Hayes were "acquaintance[s]." Def. SMF at ¶ 81. According to P&G, Plaintiff's responses demonstrated Plaintiff's lack of candor and/or deceit. Def. SMF at ¶ 82. Plaintiff also admitted contacting Promoveo's employees directly to discuss their compensation. Def. SMF at ¶ 83. On September 10, 2018, Sasse spoke with Mercy Chang, the Purchases employee responsible for the Promoveo relationship, and Chang told Sasse that Plaintiff's delayed engagement of Purchases and her direct communications with Promoveo were out of line with expectations. Def. SMF at ¶¶ 84-85.

On September 11, 2018, Hayes and "Cruz" began sending a series of emails related to Promoveo to multiple P&G employees. Def. SMF at ¶ 87. According to P&G, the emails mirrored Plaintiff's allegations against Promoveo and "strongly suggested a coordinated effort by Plaintiff, Hayes, and "Cruz"—particularly when combined with the continued references to $38,625." Def. SMF at ¶¶ 89-90.

On September 13, 2018, with Promoveo's permission, Sasse interviewed three of its employees. Def. SMF at ¶ 92. Hayes's former manager told Sasse that she felt pressured by Plaintiff to hire and retain Hayes. Def. SMF at ¶ 93. On September 14, 2018, Sasse interviewed Plaintiff for the second time, this time by WebEx, a video conferencing application. Def. SMF at ¶ 96. According to P&G, at the start of the interview, Sasse asked Plaintiff if she was recording the meeting and Plaintiff told Sasse that she was not recording the meeting. Def. SMF at ¶¶ 98-99. Plaintiff admits that she said "OK, no taping," but also admits that she recorded the interview in a digital recording. Def. SMF at ¶¶ 99-100; Pl. Resp. SMF at ¶ 99.

On September 15, 2018, in an email to 21 P&G employees (including Sasse and Plaintiff), Hayes and "Cruz" attacked Sasse as being a "mole" for Promoveo. Def. SMF at ¶ 108. According to P&G, Hayes also sent additional emails referencing personal and false information about Sasse, and some of the information referenced included Sasse's home address and personal information about her children, which P&G considered as an attempt to harass and intimidate Sasse and other P&G employees. Def. SMF at ¶¶ 109-10. On that same day, September 15, Plaintiff sent an email to Shull stating that Sasse "has not been working to protect the best interests of P&G." Def. SMF at ¶ 111. Plaintiff also wrote in the email that "[t]here is a possibility that Jen Sasse has a personal relationship with Rolando Collado or his family and/or Guy Bradley." Lickteig Decl., Ex. 21.

P&G contends that the Hayes/"Cruz" emails demonstrated a coordinated effort by Plaintiff, Hayes, and "Cruz" because the emails targeted Sasse and they came just one day after Sasse had a difficult discussion with Plaintiff, in part, about what she regarded as Plaintiff's inappropriate conduct. Def. SMF at ¶ 114. According to P&G, Hayes continued to email many P&G employees targeting Sasse with intimidation. Def. SMF at ¶ 119. P&G believed that these emails from Hayes referenced information that could have only come from Plaintiff, further suggesting coordination between Hayes and Plaintiff. Def. SMF at ¶ 119.

P&G assigned a new team of investigators, including P&G employee Dan Lickteig, to investigate Plaintiff's newest allegations. Def. SMF at ¶ 120. On September 20, 2018, in person at P&G's headquarters in Cincinnati, Lickteig interviewed Plaintiff. Def. SMF at ¶ 123. According to P&G, Lickteig interviewed a number of other people between September 17 and 27, 2018, including Chang, Sasse, Scherting, and Collado. Def. SMF at ¶ 126. On September 27, 2018, at P&G headquarters in Cincinnati, Lickteig interviewed Plaintiff in person for a second time, and Plaintiff confirmed that she had discussed compensation issues with Promoveo's employees directly. Def. SMF at ¶¶ 128-29. P&G contends that, at the end of the interview, Lickteig advised Plaintiff of the following: (a) P&G was placing her on paid administrative leave; (b) she was not to perform any work while on leave; and (c) she was not to attend a P&G National Sales Conference the next

week at Disneyworld in Orlando, Florida. Def. SMF at ¶ 128. Plaintiff confirmed her understanding of this direction. Def. SMF at ¶ 131.

On September 28, 2018, Dave Shull, Plaintiff's manager, and Carlos De Jesus, Shull's manager, met with Lickteig, Sarah Davies, and a few others to discuss next steps, and De Jesus and Shull agreed that discharging Plaintiff was the only appropriate next step. Def. SMF at ¶¶ 133-34. Everyone in the meeting agreed that discharge was the appropriate next step. Def. SMF at ¶ 135. According to De Jesus, P&G's decision to terminate Plaintiff was because P&G had lost trust and confidence in her ability to perform her job based on her conduct, including: (a) Plaintiff violated P&G's co-employment avoidance policies and training when she involved herself in Promoveo's discharge and compensation decisions; (b) Plaintiff failed to report her alleged contract compliance concerns to Purchases until she was explicitly told to do so; (c) Plaintiff retaliated against Promoveo for its decision to terminate Hayes, her friend and neighbor; and (d) Plaintiff coordinated or conspired with Hayes to harass and intimidate P&G employees. Def. SMF at ¶ 136.

Based upon the above facts and evidence presented by Defendant, the Court finds that Defendant has presented sufficient evidence that it had a legitimate reason to terminate Plaintiff's employment that was not related to Plaintiff's gender. To defeat Defendant's Motion for Summary Judgment, Plaintiff must present evidence

that Defendant's reasons were a mere pretext to disguise unlawful sex discrimination.

(5) Pretext

Under the *McDonnell Douglas* framework, a plaintiff may carry the burden of showing that the employer's proffered reasons are pretextual by showing that they have no basis in fact, that they were not the true factors motivating the decision, or that the stated reasons were insufficient to motivate the decision. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *see also Wisdom v. M.A. Hanna Co.*, 978 F. Supp. 1471, 1479 (N.D. Ga. 1997). A plaintiff can either directly persuade the court that a discriminatory or retaliatory reason more likely motivated the employer or show indirectly that the employer's ultimate justification is not believable. *See Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981); *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1522 (11th Cir. 1991).

In other words, a plaintiff can come forward with evidence, including the previously produced evidence establishing the *prima facie* case, sufficient to permit a reasonable factfinder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision. *Burdine*, 450 U.S. at 256; *McDonnell Douglas*, 411 U.S. at 804; *see also Chapman v. AI Transp.*, 229 F.3d 1012, 1024 (11th Cir. 2000) (*en banc*); *Combs v. Plantation Patterns*, 106 F.3d 1519, 1530 (11th Cir. 1997) ("In order to establish pretext, the plaintiff is not required to

introduce evidence beyond that already offered to establish the *prima facie* case."). A court may consider all of the plaintiff's evidence supporting the *prima facie* case, including comparator evidence, when evaluating whether the defendant's reasons for adverse employment action were pretextual. *See Rioux v. City of Atlanta*, 520 F.3d 1269, 1276–77 (11th Cir. 2008).

A plaintiff cannot show that an employer's proffered reasons for terminating him or her were pretextual simply by "quarreling with the wisdom" of those reasons. *See Brooks v. Cty. Comm'n of Jefferson Cty.*, 446 F.3d 1160, 1163 (11th Cir. 2006) (quoting *Chapman*, 229 F.3d at 1030). Nevertheless, a plaintiff may establish pretext by presenting sufficient evidence demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." *Combs*, 106 F.3d at 1538 (quoting *Sheridan v. E.I. DuPont De Nemours & Co.*, 100 F.3d 1061, 1072 (3d Cir. 1996) (*en banc*)).

If the employer offers more than one legitimate, non-discriminatory reason, however, the plaintiff must rebut each reason. *See Chapman v. AI Transp.*, 229 F.3d 1012, 1037 (11th Cir. 2000) (*en banc*). Moreover, to establish that the employer's reasons were pretextual, a plaintiff must show "*both* that the reason was false, *and* that discrimination was the real reason." *Brooks*, 446 F.3d at 1163 (emphasis in original) (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993)). Stated

another way, it is not the truth of the employer's justifications, alone, that a plaintiff is required to rebut. Rather, it is a plaintiff's burden to prove that the employer did not, in fact, rely on those justifications in taking any adverse action against him or her.

Because a plaintiff bears the burden of establishing that the defendant's reasons are a pretext for discrimination or retaliation, he or she "must present 'significantly probative' evidence on the issue to avoid summary judgment." *Young v. General Foods Corp.*, 840 F.2d 825, 829 (11th Cir. 1988) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)). "Conclusory allegations of discrimination, without more, are not sufficient to raise an inference of pretext or intentional discrimination where [a defendant] has offered extensive evidence of legitimate, non-discriminatory reasons for its actions." *Young*, 840 F.2d at 830; *see also Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1228 (11th Cir. 1993).

The Eleventh Circuit has recently reiterated that a plaintiff is not required to present evidence that rigidly follows the *McDonnell Douglas* factors in order to defeat a motion for summary judgment. In *Lewis v. City of Union City*, 934 F.3d 1169, 1185 (11th Cir. 2019) ("*Lewis II*"), the Eleventh Circuit held that a plaintiff can survive summary judgment if they present a "convincing mosaic" of circumstantial evidence from which a factfinder can infer discriminatory motivation. *Lewis II*, 934 F.3d at 1185. This can "be shown by evidence that demonstrates,

among other things, (1) 'suspicious timing, ambiguous statements . . ., and other bits and pieces from which an inference of discriminatory intent may be drawn,' (2) systematically better treatment of similarly situated employees, and (3) that the employer's justification is pretextual." *Id.* (quoting *Silverman v. Bd. of Educ. of City of Chi.*, 637 F.3d 729, 733–34 (7th Cir. 2011)). While the "convincing mosaic" method bears similarities to the *McDonnell Douglas* method, it operates as a totality-of-circumstances test rather than a rigid step-by-step analysis.

As set forth above, Defendant has presented evidence that Plaintiff's employment was terminated because P&G had lost trust and confidence in her ability to perform her job. P&G states that its decision was based on Plaintiff's conduct, including her violation of P&G's co-employment avoidance policies when she attempted to interfere in Promoveo's discharge and compensation decisions; her failure to report her contract compliance concerns to Purchases until she was explicitly told to do so; her retaliation against Promoveo for its decision to terminate Hayes, her friend and neighbor; and her cooperation with Hayes's email campaign to harass and intimidate P&G employees.

In arguing that she has presented evidence that P&G's reasons for her termination are pretextual, Plaintiff first argues that, "[a]t the onset of this case, P&G asserted NO reason as to why it terminated Plaintiff." Pl. Br. at 21. In support of that allegation, Plaintiff cites to her Statement of Facts at paragraph 32, but that

paragraph does not include any information about her termination or P&G's alleged reasons—or lack thereof—for terminating her employment. *See* Pl. SMF at ¶ 32.[8] Plaintiff argues further that, although P&G has presented multiple reasons for its decision to terminate her employment, she has presented "sufficient evidence for a jury to disbelieve all four of Defendant's explanations." Pl. Br. at 22.

In response to P&G's contention that Plaintiff violated P&G's co-employment policies, Plaintiff argues that "P&G specifically denied that Gladden had anything to do with the discharge of DSA Hayes." *Id*. at 23. But, as explained above, P&G does not allege that Plaintiff had anything to do with Promoveo's decision to terminate Hayes's employment. Instead, the undisputed evidence shows that Plaintiff had multiple discussions with Promoveo DSAs regarding their salary, bonuses, or other compensation. Plaintiff does not dispute that she had conversations with Collado and with Promoveo employees about the salaries and bonuses that Promoveo paid its employees, nor does she present any evidence to dispute P&G's contention that doing so was a violation of P&G's co-employment policies.

As to P&G's contention that Plaintiff failed to report her alleged concerns about Promoveo's contract compliance to Purchases until she was explicitly told to

[8] In paragraph 32, Plaintiff states that, on September 7, 2018, she "outlined the history of the cash flow audit and how it was an ongoing concern for Purchasing as P&G did not put the contract out for bid (RFP – Right for Purchase) as required as a result of the audit." Pl. SMF at ¶ 32.

do so, Plaintiff claims that she "remains dumbfounded" by Defendant's assertion. *Id*. at 23. According to Plaintiff, she reported her concerns to Purchases on September 7, 2018, which was only "two business days" after Plaintiff claims that she learned about the "vendor violation" on August 30, 2018.[9] *Id*. Plaintiff, however, fails to explain what specific "vendor violation" she learned about for the first time on August 30, 2018. The evidence cited by the parties indicates that, on that day, it was Plaintiff who was questioning Collado about the salaries that Promoveo paid to its DSAs and about Promoveo's insurance. Def. SMF at ¶¶ 42-43. Plaintiff cites to no evidence that she only learned about these alleged "vendor violations" for the first time on August 30. In fact, Plaintiff contends that, prior to that, she had discussions with DSAs and Area Managers about bonuses, when the DSAs or Area Managers had claimed the bonus had not been paid. *See* Pl. Resp. SMF at ¶ 46; Pl. SMF at ¶ 5.

Moreover, the undisputed evidence indicates that, on August 30, 2018, Plaintiff not only directed her alleged concerns about Promoveo's "vendor violations" to Collado directly, but she also sent emails to Shull, Fitzpatrick, and Heaps on that same day, claiming to have concerns about the P&G/Promoveo

[9] Plaintiff also does not explain how the time period between August 30, 2018, and September 7, 2018, was only "two business days." August 30, 2018 was a Thursday and September 7, 2018 was the following Friday, which appears to be five business days later, excluding the weekend and the Labor Day holiday.

contract and Promoveo's compliance with the contract. *See* Def. SMF at ¶¶ 42, 49. But although Plaintiff was complaining to all these other people, it is undisputed that she had failed to bring her alleged concerns about Promoveo to Purchases by August 30, although employees who have concerns related to contract compliance with a vendor are expected to report those concerns to Purchases. Def. SMF at ¶ 51. While Plaintiff argues that she brought her concerns to Purchases "as soon as humanly possible," she does not dispute that she addressed her concerns directly to Collado on August 30, 2018, before she reported her concerns to Purchases, and she did not make the report to Purchases until after she had been directed to do so. *See* Pl. Br. at 24.

In response to P&G's contention that it terminated Plaintiff's employment because she was trying to retaliate against Promoveo for its decision to terminate Hayes, Plaintiff argues that P&G has committed a "logical fallacy," because Plaintiff was simply "doing her job by reporting the issues that were uncovered as a result of Promoveo terminating a DSA whose pay they had docked and whose bonus they had withheld." Pl. Br. at 24. In essence, Plaintiff contends that it simply was not true that she raised alleged concerns about Promoveo only because she wanted to retaliate against it for firing Hayes. But significantly, Plaintiff has not cited to any evidence that she had raised these specific "compliance" concerns about Promoveo at any time prior to Hayes's termination on August 29, 2018, and it remains undisputed that

she made no report to Purchases about her concerns until September 7, 2018. The suspicious timing of Plaintiff's complaints coming immediately on the heels of Hayes's termination provided P&G with at least some basis to believe that Plaintiff was upset about Hayes's firing and was acting to retaliate against Promoveo.

Furthermore, it is undisputed that Collado told Sasse that, not only had Plaintiff possibly shared confidential P&G/Promoveo contract information with Hayes and "Cruz," but Plaintiff had also contacted him directly to talk about Hayes's discharge, proof of insurance, employee cellular data plans, and employee compensation, and he believed that Plaintiff had done those things in retaliation for Promoveo's termination of Hayes. Def. SMF at ¶ 65. Plaintiff claims that she was simply doing her job when she reported her concerns about Promoveo, not trying to retaliate against it. But, even viewing all evidence in the light most favorable to Plaintiff, the record evidence cited by the parties indicates that P&G had, at the very least, a reasonable basis to believe that Plaintiff's conduct may have been motivated by a desire to retaliate against Promoveo by firing Hayes.

Finally, in response to P&G's contention that it terminated Plaintiff's employment because it believed that she had cooperated and/or conspired with Hayes in her email campaign to harass and intimidate P&G employees, Plaintiff again argues that it was not true. Pl. Br. at 25. Plaintiff argues that, contrary to P&G's contentions, she was "cooperative in every facet of the investigation, providing

significant evidence which supported her complaints and responding to every inquiry from Defendant." *Id*. Plaintiff also argues that "defendant's characterization of Plaintiff as a gossip prone woman is itself discriminatory." *Id*. Plaintiff, however, has cited to no record evidence that anyone at P&G ever described her as a "gossip prone woman."

In sum, Plaintiff argues, she "has established that every reason set forth by Defendant for Plaintiffs' termination is pretextual. Further the Plaintiff and Defendant disagree about the material facts as to why the Plaintiff was terminated, and this presents genuine issues for trial. Accordingly, Defendant's request for summary judgment must be denied." *Id*.

Upon review of all the facts and evidence cited by the parties, the Court finds that none of Plaintiff's evidence, even when considered as a whole, constitutes sufficient evidence that Defendant's proffered reasons for terminating Plaintiff's employment were merely a pretext to disguise unlawful sex discrimination. While Plaintiff disputes that she intended to retaliate against Promoveo, and vehemently disputes that she conspired or cooperated with Hayes in her targeted email campaign directed at P&G employees, the undisputed evidence indicates that P&G had a reasonable basis for concluding that she did so. As set forth above, P&G was faced with many reasons that led it to conclude that Plaintiff was at the very least feeding information about P&G and its employees to Hayes, and much of that information—

that P&G reasonably believed could only have come from Plaintiff—ended up in Hayes's bizarre and threatening emails.

In essence, Plaintiff's argument is that it was unfair for P&G to assume that Plaintiff was acting in concert with Hayes, or that she otherwise did not have P&G's interests in mind when she complained about Collado and Promoveo. Plaintiff's argument of pretext, therefore, is a classic example of quarreling with the wisdom or fairness of P&G's decision, but that does not meet her burden to show that P&G's reasons for terminating her were a pretext to disguise sex discrimination.

While Title VII prohibits discrimination based on sex, harsh or unfair treatment by itself is not a violation of Title VII, and the Court cannot sit in judgment of an employer's decision, absent evidence that a discriminatory motive was the underlying basis. As the Eleventh Circuit has explained:

> Title VII does not take away an employer's right to interpret its rules as it chooses, and to make determinations as it sees fit under those rules. Title VII addresses discrimination. . . . Title VII is not a shield against harsh treatment at the workplace. Nor does the statute require the employer to have good cause for its decisions. The employer may fire an employee for a good reason, a bad reason, *a reason based on erroneous facts,* or for no reason at all, as long as its action is not for a discriminatory reason. While an employer's judgment or course of action may seem poor or erroneous to outsiders, the relevant question is simply whether the given reason was a pretext for illegal

> discrimination. The employer's stated legitimate reason . . . does not have to be a reason that the judge or jurors would act on or approve.

Nix v. WLCY Radio/Rahall Comm., 738 F.2d 1181, 1187 (11th Cir. 1984) (internal quotes and citations omitted, emphasis added); *see also Rojas v. State of Florida*, 285 F.3d 1339, 1344 (11th Cir. 2002) (Title VII does not permit courts to sit in judgment of "whether a business decision is wise or nice or accurate"); *Combs v. Plantation Patterns*, 106 F.3d 1519, 1543 (11th Cir. 1997) ("[f]ederal courts do not sit to second-guess the business judgment of employers"); *Shealy v. City of Albany*, 89 F.3d 804, 806 n.6 (11th Cir. 1996) (court "does not sit as a sort of 'super personnel officer . . . correcting what the judge perceives to be poor personnel decisions"); *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991) (the court does "not sit as a super-personnel department that reexamines an entity's business decisions . . . no matter how mistaken").

In the end, Plaintiff's argument is nothing more than a dispute with the wisdom or fairness of the Defendant's decision to terminate her employment, but as cited above, the Eleventh Circuit has repeatedly rejected this as evidence of pretext. Thus, even assuming, as the Court must in viewing all disputed evidence in Plaintiff's favor, that P&G was wrong when it concluded that Plaintiff gave Hayes information about P&G or cooperated or conspired with Hayes in her email campaign against P&G, it does not matter whether P&G was wrong about Plaintiff's conduct, it only matters whether P&G was motivated by an intent to discriminate

against Plaintiff because of her sex. "We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999).

Furthermore, although Plaintiff mentions the "convincing mosaic" test in her brief, she also has not cited to sufficient record evidence that would rise to the level of providing a "convincing mosaic" of circumstantial evidence of sex discrimination. *See* Pl. Br. at 29. Plaintiff cites to no evidence, whether direct or circumstantial, suggesting any inference that Shull, De Jesus, or anyone else at P&G harbored an intent to discriminate against her based on her sex. Plaintiff again mentions the alleged comment by Lickteig about "how can a mother travel quickly and often from her children," a comment that she contends "is in itself discrimination based on Plaintiffs' [sic] gender." Pl. Br. at 30. But as discussed above in connection with Plaintiff's argument that Lickteig's comment should be viewed as direct evidence of sex discrimination, Plaintiff has cited to no record evidence supporting her claim that Lickteig made any comment to her that could remotely be viewed as equivalent to stating that mothers should be home with their children rather than working or traveling. *See id*.

In sum, even viewing all evidence and inferences in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to present sufficient evidence to

create a genuine dispute of fact as to whether Defendant's stated reasons for its decision to terminate Plaintiff's employment were false or were not the true reasons motivating that decision. Thus, the Court finds that Plaintiff has failed to present sufficient evidence suggesting that Defendant's stated reasons for terminating her employment were merely a pretext to disguise unlawful sex discrimination. For that reason, the Court finds that Defendant is entitled to summary judgment on Plaintiff's claim of sex discrimination under Title VII.

Accordingly, the Court **RECOMMENDS** that Defendant's Motion for Summary Judgment [58] be **GRANTED** as to Plaintiff's claim of gender discrimination under Title VII, and that judgment be entered in Defendant's favor on Count I of the Complaint.

b. Retaliation

In Count II of the Complaint, Plaintiff asserts a claim for retaliation in violation of Title VII. Compl. at ¶¶ 47-53. Plaintiff alleges that she "engaged in protected activity in September 2018 when she complained to multiple PG human resources executives that PG's investigation of her reports against Promveo were being conducted in a more antagonistic manner compared to male counterparts at PG." *Id*. at ¶ 49. She further alleges that "[w]ithin days of Plaintiff's protected activity, PG placed Plaintiff on paid administrative leave," and P&G "terminated

Plaintiff's employment with [sic] days of Plaintiff being placed on administrative leave." *Id*. at ¶¶ 50-51.

(1) Standards of Proof under Title VII

Plaintiff has asserted a claim of retaliation under Title VII, which shields employees from retaliation for certain protected practices. Specifically, Title VII provides, in relevant part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because [the employee or applicant] has opposed any practice made an unlawful practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).

As with her claim of discrimination, Plaintiff contends that she has presented direct evidence that P&G intended to retaliate against her for making complaints about sex discrimination. Pl. Br. at 34-35. It is not entirely clear what evidence she contends is "direct evidence," however. *See id*. Plaintiff argues only that "P&G, by operating contrary to policy and continuing to investigate Gladden with HR on a Vendor issue, retaliated against Gladden." *Id*. at 35. The Court finds that Plaintiff has cited to no record evidence that anyone at P&G ever said anything to her that would rise to the level of direct evidence that P&G intended to retaliate against her for making a complaint about sex discrimination. Thus, Plaintiff's claim of unlawful

retaliation is based on circumstantial evidence and is governed by the framework of shifting evidentiary burdens established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981). *See Donnellon v. Fruehauf Corp.*, 794 F.2d 598, 600 (11th Cir. 1986); *see also Goldsmith v. City of Atmore*, 996 F.2d 1155, 1162-63 (11th Cir. 1993). In order to prevail, a plaintiff must first establish a *prima facie* case of retaliation. *Goldsmith*, 996 F.2d at 1162-63; *Donnellon*, 794 F.2d at 600-601; *see also Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1524 (11th Cir. 1991); *Simmons v. Camden County Bd. of Educ.*, 757 F.2d 1187, 1189 (11th Cir. 1985).

Once a *prima facie* case has been established, the employer must come forward with a legitimate non-discriminatory reason for its action. *Goldsmith*, 996 F.2d at 1162-63; *Donnellon*, 794 F.2d at 600-601; *see also Weaver*, 922 F.2d at 1525-1526. If the employer carries its burden of production to show a legitimate reason for its action, the plaintiff then bears the burden of proving by a preponderance of the evidence that the reason offered by the defendant is merely a pretext for discrimination. *Goldsmith*, 996 F.2d at 1162-63; *Donnellon*, 794 F.2d at 600-601.

(2) Plaintiff's *Prima Facie* Case

To establish a *prima facie* case of unlawful retaliation under Title VII, a plaintiff must generally show that: (1) she engaged in a protected activity or

expression; (2) she received an adverse employment action, and (3) there was a causal link between the protected expression and the adverse action. *See, e.g., Wideman v. Wal-Mart Stores, Inc.*, 141 F.3d 1453, 1454 (11th Cir. 1998); *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1524 (11th Cir. 1991); *Simmons v. Camden Cty. Bd. of Educ.*, 757 F.2d 1187, 1189 (11th Cir. 1985).

In this case, there is no dispute that Plaintiff suffered an adverse employment action when her employment was terminated on September 28, 2018. Defendant argues, however, that Plaintiff cannot establish a *prima facie* case of retaliation because, it argues, she did not engage in a protected activity when she complained about Promoveo because she did not make "even a reasonable argument for gender discrimination by Promoveo." Def. Br. at 24. Defendant also argues that, even if Plaintiff had engaged in an alleged protected activity, there was no causal connection between her alleged protected activity and her termination. *Id*.

(a) Protected Activity

The first *prima facie* element requires Plaintiff to show that she engaged in a protected activity or expression. A plaintiff alleging unlawful retaliation can show that she engaged in a protected act under Title VII through evidence of either "participation" or "opposition." *See* 42 U.S.C. § 2000e-3(a). Title VII expressly forbids retaliation against an employee who has "made a charge, testified, assisted, or participated in" a Title VII "investigation, proceeding, or hearing." *Id*.

Thus, an act of participation generally requires the existence of a Title VII proceeding or investigation. *See EEOC v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1174 (11th Cir. 2000); *Clover v. Total Sys. Servs., Inc.*, 176 F.3d 1346, 1353 (11th Cir. 1999). Under the participation clause, the filing of a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") generally meets the standard of a protected activity because the employee has "made a charge" or participated in a "proceeding." *See, e.g., Smith v. City of Fort Pierce, Fla.*, 565 F. App'x 774, 777 (11th Cir. 2014); *Hairston v. Gainesville Sun Pub. Co.*, 9 F.3d 913, 920 (11th Cir. 1993).

In this case, Plaintiff does not contend that she engaged in "participation" by filing an EEOC Charge, because Plaintiff does not allege that she filed an EEOC Charge before her employment was terminated in September of 2018. Plaintiff alleges, however, that she engaged in a protected activity when she made complaints about alleged sex discrimination. Thus, Plaintiff alleges that she engaged in "opposition" rather than "participation" in a proceeding under Title VII.

In general, making complaints to superiors about suspected illegal discrimination may qualify as protected expression under the opposition clause of Title VII. *Holifield v. Reno*, 115 F.3d 1555, 1566 (11th Cir. 1997); *see also Rollins v. Fla. Dep't. Of Law Enforcement*, 868 F.2d 397, 400 (11th Cir. 1989) ("[W]e recognize that the protection afforded by the statute is not limited to individuals who

have filed formal complaints, but extends as well to those, like [the plaintiff], who informally voice complaints to their superiors."). Nevertheless, not every complaint made by an employee automatically qualifies as a protected expression that shields the employee from subsequent retaliation.

In order for an employee engaging in opposition activity to be protected under the anti-retaliation provision of Title VII, she must be opposing conduct that is made an "unlawful employment practice" by Title VII. Title VII defines an "unlawful employment practice" as, *inter alia*, discrimination against an employee "with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). In other words, it is not enough for a plaintiff to show that she opposed garden-variety unfairness or harsh treatment in the workplace; she is only protected from retaliation if the practice she opposed is specifically prohibited by Title VII.

Thus, for a plaintiff to show that she engaged in a statutorily protected activity, she must show that she "'had a good faith, reasonable belief that the employer was engaged in unlawful employment practices.'" *Elite Amenities, Inc. v. Julington Creek*, 784 F. App'x 750, 752 (11th Cir. 2019) (quoting *Butler v. Ala. Dep't of Transp.*, 536 F.3d 1209, 1213 (11th Cir. 2008)). This standard requires showing not only that a plaintiff subjectively believed that her employer was engaged in unlawful employment practices, but also that this belief was objectively reasonable in light of

the all of the circumstances presented. *Butler*, 536 F.3d at 1213 (quoting *Little v. United Tech., Carrier Transicold Div.*, 103 F.3d 956, 960 (11th Cir. 1997)).

To recover under a theory of retaliation, a plaintiff need not *prove* the underlying claim of discrimination that led to the complaint, so long as she had a "good faith, reasonable belief" that the conduct or practice she was opposing constituted unlawful discrimination. *See Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1311 (11th Cir. 2016); *Clover v. Total System Services, Inc.*, 176 F.3d 1346, 1351 (11th Cir. 1999); *Taylor v. Runyon*, 175 F.3d 861, 868 (11th Cir. 1999); *Tipton v. Canadian Imperial Bank of Commerce*, 872 F.2d 1491, 1494 (11th Cir. 1989). The reasonableness of the plaintiff's belief is measured against the law as it existed at the time of the protected activity; thus, the plaintiff is charged with knowledge of the parameters of what Title VII does and does not prohibit. *Clover*, 176 F.3d at 1351; *Harper v. Blockbuster Entertainment Corp.*, 139 F.3d 1385, 1388 n.2 (11th Cir. 1998); *Little v. United Technologies*, 103 F.3d 956, 960 (11th Cir. 1997).

For example, an employee's complaint opposing alleged discrimination must involve more than just a report about a single offensive comment by a co-worker, because a stray remark or other isolated comment ordinarily cannot be considered a violation of Title VII by itself. It is well-settled law in the Eleventh Circuit that a single derogatory remark related to a person's race or sex, without more, does not

constitute an unlawful employment practice under the opposition clause of Title VII. Thus, an employee who complains about a single remark cannot have an objectively reasonable belief that one comment constituted an unlawful employment practice. *See Butler v. Ala. Dep't of Transp.*, 536 F.3d 1209, 1214 (11th Cir. 2008)); *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (emphasizing that "'simple teasing,' offhand comments, and isolated incidents (unless extremely serious) will not amount to" a hostile work environment) (internal citations omitted); *McCann v. Tillman*, 526 F.3d 1370, 1379 (11th Cir. 2008) (holding that "although [the plaintiff] alleges that she was upset by" isolated derogatory comments, they could not form the basis of a hostile work environment claim); *Hudson v. Norfolk S. Ry. Co.*, 209 F. Supp. 2d 1301, 1314 (N.D. Ga. 2001) (an employee could not reasonably believe in the existence of a hostile work environment because isolated racist remarks "come nowhere close to being actionable" under Title VII); *Holiness v. Moore-Handley, Inc.*, 114 F. Supp. 2d 1176, 1187 (N.D. Ala. 1999) ("[I]solated racial remarks are not in themselves sufficient to establish a claim of a racially hostile work environment.").

In this case, Defendant argues that Plaintiff's "only arguable protected activity under Title VII was her email to Sasse on September 10, 2018, in which she claimed Promoveo discriminated against women. P&G asked Gladden her basis for contending Promoveo discriminated against women and Gladden's response was

simply she did not think they would have complained about her had she been a man." Def. Br. at 24. Thus, Defendant argues, Plaintiff's complaint cannot be considered a protected activity under Title VII because "[t]his is not even a reasonable argument for gender discrimination by Promoveo." *Id*.

In response, Plaintiff claims that she engaged in other conduct that would be considered a protected activity under Title VII. According to Plaintiff, she "repeatedly engaged in protected conduct under Title VII." Pl. Br. at 32. Plaintiff contends that she "formally filed a complaint of sex discrimination with Sasse and Scherting on September 10, 2018," in which she stated that: "Promoveo is bringing several accusations against me that are not true in an abuse of power." *Id*. Plaintiff also complained that: "As a female placed in the position of liaising with Promoveo, I was placed at a disadvantage [by P&G]." *Id*. (citing Pl. Ex. C, at PG/Gladden 000214). Plaintiff also contends that, on September 14, 2018, she had a call with Sasse and Scherting in which she again stated that Collado "maliciously came after me with P&G's review process." *Id*. (citing Sasse Decl. [58-14], Ex 2, audio recording at 28:44-31:01). Plaintiff claims that she also "raised her sex discrimination complaint" with Shull and Sarah Davies in September and another unidentified P&G employee on October 11, 2018. *Id*. at 32-33. Plaintiff, however, provides no detail as to what her complaint to Shull and Davis was about on

October 11, 2018, other than to claim that she "raised her sex discrimination complaint."

The parties' evidence regarding Plaintiff's purported complaints about sex discrimination are set forth above in the facts. It appears to be undisputed that, in the late afternoon on September 10, 2018, Plaintiff sent an email to Sasse complaining about Promoveo's discrimination against women. Def. SMF at ¶ 86; Lickteig Decl. ¶ 21, Ex. 14 [58-4] (P&G/Gladden000214). Plaintiff's email to Sasse and Scherting dated September 10, 2018 at 5:17 p.m. stated as follows:

> Promoveo is bringing several accusations against me that are not true in an abuse of process. I believe Promoveo is discriminating on the basis of gender on a regular basis and they consider that women in these roles are expendable. Promveo Health's current workforce on the P&G POH business is more than 95% women. As a female in the position of liaising with Promoveo I was placed at a disadvantage as shown by them bringing baseless allegations against me after they understood that I had concerning information regarding their actions against women, that they would not have attempted against a man.

Lickteig Decl. ¶ 21, Ex. 14 [58-4] (P&G/Gladden000214).

This email that Plaintiff sent to Sasse and Scherting appears to be what Plaintiff is referring to as her "formally filed" complaint about sex discrimination. Pl. Br. at 32 ("Plaintiff first formally filed a complaint of sex discrimination with Sasse and Scherting on September 10, 2018"). According to P&G, Plaintiff's email said absolutely nothing about P&G discriminating against her. Def. SMF at ¶ 86. Plaintiff disputes that, and claims that when she said that she was "placed at a

disadvantage," she was complaining about P&G's treatment of her. *See* Pl. Resp. SMF at ¶ 86.

On September 14, 2018, during the Webex call that Plaintiff had with Sasse, Sasse asked Plaintiff why she thought Promoveo discriminated against women and Plaintiff said that she thought Promoveo would not have made the same complaint it made about her if she were a man. Def. SMF at ¶¶ 103-104; Sasse Decl. Ex. 1 (PG/Gladden 000905-06), Ex. 2, (September 14, 2018 Audio Transcript at 28:28-33:05). Plaintiff states that she also responded that Collado came after her "maliciously through the P&G review process" because Collado considered Plaintiff "expendable as a woman." Pl. Resp. SMF at ¶ 104; Sasse Decl. Ex. 2 (September 14, 2018 Audio Transcript at 28:28-33:05).

Shortly after her interview with Sasse, Plaintiff contacted Shull about her alleged concerns related to Promoveo and Collado, and also sent an email to Fitzpatrick and Heaps, but it is undisputed that Plaintiff did not allege in this email that P&G had discriminated against her because of her gender. Def. SMF at ¶¶ 105-07; Pl. Dep. Vol. III 473-83, Ex. 3 (PG/Gladden 000289). Plaintiff also contends that, on an unspecified date in September of 2018, Plaintiff "raised her sex discrimination complaint with Shull and Sarah Davies (HR)" and "another P&G employee on October 11, 2018." Pl. SMF at ¶ 27; Pl. Sec. Decl. ¶ 39. But, as noted, Plaintiff has not cited to any evidence explaining what this "sex discrimination

complaint" was about. She does not allege that she complained that any person at P&G had discriminated against her, nor does she state what action taken by P&G she was contending was discriminatory.

In sum, Plaintiff's complaints about sex discrimination appear to have been wholly based on alleged conduct by Promoveo or more specifically Collado, as the owner/executive of Promoveo. Plaintiff has not cited to any record evidence whatsoever that she ever made any specific complaint that anyone who was employed by P&G had ever discriminated against her because she is a woman.

The Eleventh Circuit has held that, in order to establish that an informal complaint was a protected activity for the purpose of a retaliation claim, the employee must "'at the very least, communicate her belief that discrimination is occurring to the employer,' and cannot rely on the employer to 'infer that discrimination has occurred.'" *Demers v. Adams Homes of Northwest Fla., Inc.*, 321 F. App'x 847, 852 (11th Cir. 2009) (*per curiam*) (unpublished) (quoting *Webb v. R & B Holding Co., Inc.*, 992 F. Supp. 1382, 1390 (S.D. Fla. 1998)); *see also Foster v. Humane Society of Rochester and Monroe County, Inc.*, 724 F.Supp.2d 382, 395 (W.D.N.Y. 2010) (granting a motion to dismiss on a retaliation claim on the ground that the plaintiff alleged only that she complained about problems she was having at work, not that she complained that she was being discriminated against on account of her sex); *Brown v. City of Opelika*, 211 F. App'x 862, 864 (11th Cir.

2006) (*per curiam*) (unpublished) ("the record contained no evidence that Brown engaged in a protected activity by making a complaint about racial discrimination or harassment"); *Jeronimus v. Polk County Opportunity Council*, 145 F. App'x 319, 326 (11th Cir. 2005) (*per curiam*) (unpublished) (while the plaintiff complained about being "singled out," being subjected to "a campaign of harassment," and working in a "hostile environment," "he never suggested that this treatment was in any way related to his race or sex"); *Fields v. Locke Lord Bissell & Liddell LLP*, No. 1:07–CV–2984–TWT, 2009 WL 2341981 at *12, 16 (N.D. Ga. July 28, 2009) (Thrash, J.) (unpublished) (plaintiff failed to engage in protected activity because she failed to show that she ever communicated her belief to the employer that she was being treated differently because of her race or sex); *Fitzhugh v. Topetzes*, No. 1:04-CV-3258-RWS, 2006 WL 2557921, at *11-12 (N.D. Ga. Sept. 1, 2006) (Story, J.) (unpublished) (granting summary judgment on a claim of race-based retaliation under 42 U.S.C. § 1981, on the ground that the plaintiff complained about personal animus, being "singled out" for unfair treatment, and "discrimination" against her as an individual, rather than complaints targeting race-based animus or disparate treatment).

In her email to Sasse and Scherting, Plaintiff claims that "As a female in the position of liaising with Promoveo I was placed at a disadvantage as shown by them bringing baseless allegations against me after they understood that I had concerning

information regarding their actions against women, that they would not have attempted against a man." Lickteig Decl. ¶ 21, Ex. 14 (P&G/Gladden000214). Plaintiff argues that her email to Sasse and Scherting was a complaint that P&G placed her "at a disadvantage" by putting her in the position of being the liaison with Promoveo, so P&G should have somehow considered that to be her complaint that P&G discriminated against her because she is a woman.

The Court cannot agree with Plaintiff's strained interpretation of that email. There is nothing in the email that would reasonably put P&G on notice that Plaintiff was claiming that P&G—not Promoveo or Collado—was discriminating against her on the basis of her gender. Indeed, the email does not even mention any specific action taken by P&G, or any person at P&G that Plaintiff claimed had done anything to her that could be considered discrimination against her on the basis of her sex. Moreover, to the extent that Plaintiff intended to claim in that email that P&G had discriminated against her on the basis of her sex, Plaintiff has not cited to any evidence at all showing that her belief would have been a reasonable, good-faith belief that P&G had taken any action against her that could be viewed as discriminatory. Indeed, in the email, she does not allege that P&G took any adverse action against her at all.

The undisputed evidence presented by the parties shows that the only person that Plaintiff specifically complained had discriminated against her for being a

woman was Collado, the owner/executive at Promoveo. It is undisputed that Plaintiff was employed by P&G, not Promoveo. Plaintiff has cited to no evidence that Collado or anyone at Promoveo had any control over her employment, or that Collado had the ability to take any adverse employment actions against her. Thus, based on the authority cited above, Plaintiff's complaints about Promoveo and Collado cannot be considered a protected activity under Title VII because she was not opposing any alleged discriminatory practice by her employer, P&G.

But even assuming that Plaintiff's complaints about Promoveo and Collado could be a protected activity under Title VII, Plaintiff has failed to cite to any record evidence that she had a good-faith and reasonable belief that Promoveo or Collado discriminated against Hayes or anyone else because of their sex. As discussed above, a complaint about a single derogatory remark about someone's race or sex cannot be considered a protected activity, because an isolated comment does not rise to the level of a Title VII violation. But in this case, Plaintiff's complaints do not even include a report that Collado made even one derogatory remark about women. Indeed, Plaintiff does not allege that Collado ever made a derogatory remark to her that she contends was sexist or discriminatory. Instead, she alleged only that Promoveo generally discriminated against women, without providing any reasonable basis for that belief.

When Plaintiff was pressed by Sasse to explain why she believed that Promoveo had discriminated against women, Plaintiff stated only that Promoveo would not have made the same complaint it made about her if she were a man, and that Collado came after her "maliciously through the P&G review process" because Collado considered Plaintiff "expendable as a woman." But Plaintiff provides no facts that would support this belief and it appears to be based on nothing more than her own speculation. Plaintiff does not allege that Promoveo paid male employees more than female employees. Plaintiff does not allege that Promoveo created a hostile work environment for female employees. Plaintiff does not even allege that Promoveo discriminated against Hayes because she was a woman. Plaintiff simply has cited to no record evidence showing that she had a good-faith and reasonable belief, based on any facts other than her own speculation or opinion, that Promoveo or Collado engaged in any discriminatory employment practice that would be prohibited under Title VII. For that reason, she has failed to establish a *prima facie* case of retaliation under Title VII.

(b) Causal Link

Defendant argues further that, even if Plaintiff had engaged in an alleged protected activity, there was no causal connection between her alleged protected activity and her termination. Def. Br. at 24. For the third and final element of a *prima facie* case of retaliation, a plaintiff must establish that there is a causal link

between the protected activity and the adverse employment action. A plaintiff is not required to establish "the sort of logical connection that would justify a prescription that the protected participation in fact prompted the adverse action. Such a connection would rise to the level of direct evidence of discrimination, shifting the burden of persuasion to the defendant." *Simmons v. Camden County Bd. of Educ.*, 757 F.2d 1187, 1189 (11th Cir. 1985); *see also Hairston v. Gainesville Sun Pub. Co.*, 9 F.3d 913, 920 (11th Cir. 1993); *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1525 (11th Cir. 1991).

Rather, to establish a causal connection, a plaintiff was traditionally required to show that the relevant decisionmaker was aware of the plaintiff's protected conduct, and that the protected activity and the adverse action "were not wholly unrelated." *Shannon v. BellSouth Telecommunications, Inc.*, 292 F.3d 712, 716 (11th Cir. 2002) (internal citation and quotations omitted). The Supreme Court has ruled, however, that "Title VII retaliation claims must be proved according to traditional principles of but-for causation." *Univ. of Texas S.W. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013). This standard "requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Id*.

In order to establish a causal connection between protected conduct and an adverse employment action, however, "[a]t a minimum, a plaintiff must generally

establish that the employer was actually aware of the protected expression at the time it took the adverse employment action." *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1163 (11th Cir. 1993); *see also Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004) ("A plaintiff satisfies this element if she provides sufficient evidence of knowledge of the protected expression and that there was a close temporal proximity between this awareness and the adverse action."); *Gupta v. Florida Bd. of Regents*, 212 F.3d 571, 590 (11th Cir. 2000) ("To establish a causal connection, a plaintiff must show that the decision-maker[s] [were] aware of the protected conduct, and that the protected activity and the adverse action were not wholly unrelated."). As the Eleventh Circuit has stated, this requirement "rests upon common sense. A decision maker cannot have been motivated to retaliate by something unknown to him." *Brungart v. BellSouth Telecommunications, Inc.*, 231 F.3d 791, 799 (11th Cir. 2000). The defendant's awareness of the protected statement, however, may be established by circumstantial evidence. *Goldsmith*, 996 F.2d at 1163.

A plaintiff may establish an inference of causation merely by showing that she suffered the adverse action shortly after she engaged in the protected activity. *Higdon*, 393 F.3d at 1220; *Brungart*, 231 F.3d at 798. For a plaintiff to establish such a link by mere temporal relationship, however, the challenged decision must follow almost immediately after the protected expression to support the logical inference that the two events were related. *See Clark County Sch. Dist. v. Breeden*,

532 U.S. 268, 273 (2001) ("The cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a *prima facie* case uniformly hold that the temporal proximity must be very close.") (internal quotes omitted).

The Eleventh Circuit has held that a gap of three months or more between the protected activity and the challenged personnel action, absent any other evidence linking the events, is too long to support the inference that the two events were connected. *See Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007) (three-month period does not rise to the level of "very close" to support an inference of a causal link); *Higdon*, 393 F.3d at 1221 (three-month period does not allow a reasonable inference of causation); *see also Conner v. Schnuck Markets, Inc.*, 123 F.3d 1390, 1395 (10th Cir. 1997) (lapse of four months between protected activity and termination did not support inference of casual connection); *Feltmann v. Sieben*, 108 F.3d 970, 977 (8th Cir. 1997) (passage of six months between plaintiff's complaint and firing insufficient, without more, to establish causation); *Hughes v. Derwinski*, 967 F.2d 1168, 1174-75 (7th Cir. 1992) (four-month gap between filing discrimination complaint and receipt of disciplinary letter did not give rise to inference of causal relation).

In this case, Defendant argues that, even if Plaintiff engaged in a protected activity when she complained about Promoveo and Collado, Plaintiff has failed to

present any evidence that there was a causal connection between her alleged protected activity and her termination. While it is undisputed that Plaintiff's termination on September 28, 2018, happened less than a month after she sent the email to Sasse and Scherting on September 10, Defendant argues that, even if there was a short lapse of time between the alleged protected expression and the adverse action, "any inference of retaliatory intent otherwise created by a short lapse of time can be dispelled when intervening factors are established." Def. Br. at 23-24 (citing *Wu v. Southeast-Atlantic Bev. Corp.*, 321 F. Supp. 2d 1317, 1337 (N.D. Ga. 2003)).

According to Defendant, Plaintiff engaged in a "litany of misconduct between August 29 and September 28, 2018, which violated P&G policies and PVPs and caused P&G to lose faith and confidence in her ability to perform her job." *Id*. at 24. "All the evidence demonstrates Gladden's decisions to ignore P&G protocols, policies, and PVPs are what led to her termination," and any "complaints" that she made about sex discrimination were not considered in any way when P&G decided to terminate her employment. *Id*.

When an employee engages in misconduct that ultimately leads to her termination before engaging in any protected activity, the "intervening act" of misconduct by a plaintiff may destroy the suggestion of a causal link. *See*, *e.g.*, *Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006) (when an employer contemplates an adverse action before an employee engages in protected activity,

temporal proximity between the protected activity and a later adverse action does not "suffice to show causation"); *see also Brown v. CRST Malone*, No. CV–12–BE–3954–S, 2014 WL 4681363, at *19 (N.D. Ala. Sep. 17, 2014) (causation prong not met because investigation into misconduct began before any protected activities occurred); *Smith v. Hyundai Motor Mfg. Ala.*, No. 2:06-cv-966-ID, 2008 WL 1698207, at *12 (M.D. Ala. April 9, 2008) (no causation because misconduct resulting in plaintiff's termination was prior to his internal complaint); *Forbes v. City of N. Miami*, No. 11-cv-21200, 2012 WL 1135820, at *12 (S.D. Fla. Apr. 4, 2012) (no causation when employer documented concerns about plaintiff's performance before protected activity), *aff'd*, 509 F. App'x 864 (11th Cir. 2013)).

Thus, Defendant is correct that intervening factors may negate a causal link that is otherwise suggested by mere temporal proximity. *See, e.g.*, *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 272-73 (2001) (when the evidence revealed that the employer contemplated transferring an employee before the employer learned that the employee filed a Title VII suit, the employer's decision to proceed "along the lines previously contemplated, though not yet definitively determined," did not establish evidence of causality)); *Alvarez v. Royal Atlantic Developers, Inc.*, 610 F.3d 1253, 1270 (11th Cir. 2010) ("We emphasize that Title VII's anti-retaliation provisions do not allow employees who are already on thin ice to insulate themselves

against termination or discipline by preemptively making a discrimination complaint.").

Judges in this district have frequently followed this "intervening act" rule when a plaintiff engages in misconduct and only later engages in a protected activity shortly before being terminated by her employer. *See Griffith v. Exel, Inc.*, No. 1:14-CV-1754-ODE-JSA, 2016 WL 8938585, at *24 (N.D. Ga. Feb. 5, 2016), *report and recommendation adopted*, 2016 WL 8938512 (N.D. Ga. Mar. 25, 2016); *Teal v. City of Dahlonega*, No. 2:09-CV-0187-RWS-SSC, 2011 WL 7006248, at *24 (N.D. Ga. Aug. 24, 2011) (holding "without more, the temporal proximity between plaintiff's protected activity, *i.e.*, her EEOC charge filed on or about March 5, 2008, and her termination on or about April 10, 2008, is insufficient to satisfy the causal connection element of her *prima facie* case," because plaintiff had been placed "on administrative leave on or about December 8, 2007 pending an investigation into alleged misconduct that occurred prior to that date"), *report and recommendation adopted,* 2012 WL 95555 (N.D.Ga., Jan. 12, 2012)); *Dowlatpanah v. Wellstar Douglas Hosp.*, No. 1:05-CV-2752-WSD-RGV, 2006 WL 4093123, at *14 (N.D. Ga. Dec. 5, 2006) (Vineyard, M.J.) (holding that "temporal proximity, standing alone, may not be sufficient to establish the causal link between them, particularly when the defendant establishes intervening factors"), *report and recommendation*

adopted, sub nom. Dowlatpanah v. Wellstar Health Sys., Inc., 2007 WL 639875 (N.D. Ga. Feb. 26, 2007).

In *Teal v. City of Dahlonega*, Magistrate Judge Cole held that "any inference of retaliatory intent otherwise created by a short lapse of time can be dispelled when intervening factors are established." *Teal*, 2011 WL 7006248 at *23 (internal quotes and citations omitted). In *Teal*, the plaintiff had been placed on administrative leave on December 8, 2007, pending an investigation into alleged misconduct. *Id*. at *24. It was only after the plaintiff had been placed on administrative leave for misconduct that she filed an EEOC charge on March 5, 2008, and the plaintiff's employment was then terminated a little over a month later, on April 10, 2008. *Id*. Under those circumstances, Magistrate Judge Cole found that the intervening cause of the plaintiff's alleged misconduct–that was already under investigation prior to the protected activity–destroyed any suggestion of a causal link from the temporal proximity:

> [W]ithout more, the temporal proximity between Plaintiff's protected activity, *i.e.*, her EEOC charge filed on or about March 5, 2008, and her termination on or about April 10, 2008, is insufficient to satisfy the causal connection element of her prima facie case. . . . The fact that Plaintiff had already been placed on administrative leave and was being investigated for the misconduct that ultimately formed the basis for her termination when she filed her EEOC charge undermines her contention that there is a causal connection between her protected activity and her termination.

Id.

Similarly, in *Dowlatpanah*, another case from this Court, the plaintiff was counseled for performance issues before he made any protected activity, and then was counseled again for performance issues after he engaged in the protected activity. *Dowlatpanah*, 2006 WL 4093123, at *14-15. Magistrate Judge Vineyard found that, because the "plaintiff's termination followed a period of progressive discipline that preceded his protected activity," the temporal proximity alone could not constitute evidence of a causal link between the protected activity and the termination. *Id*. at *15 (citing *Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006) ("[W]hen an employer contemplates an adverse employment action before an employee engages in protected activity, temporal proximity between the protected activity and the subsequent adverse employment action does not suffice to show causation.") and *Clark County Sch. Dist.*, 532 U.S. at 272-73)).

In this case, the undisputed evidence suggests that the conduct that led to Plaintiff's termination started on or about August 29, 2018, and on or around September 5, 2018, Sasse and Shull advised Plaintiff that she was required to stop all contact with Promoveo while P&G investigated the circumstances of everything that had happened between Plaintiff and Promoveo starting on August 29. Def. SMF at ¶¶ 69-70; Sasse Dep. 57-58, 62-85; Shull Decl. ¶¶ 19, 20. They told her to allow Shull to handle the business relationship with Promoveo until the matters were resolved. Def. SMF at ¶ 71; Sasse Dep. 57-58, 62-85; Shull Decl. ¶¶ 19-20. Thus, it

is undisputed that P&G was already investigating Plaintiff's conduct towards Promoveo before Plaintiff sent an email to Sasse and Scherting on September 10 accusing Promoveo of discriminating against women. Not only was P&G investigating Plaintiff's conduct and relationship with Promoveo, but P&G had also informed Plaintiff that they were doing so before she raised any issue of "sex discrimination" by Promoveo or Collado.

For that reason, although there was a close temporal proximity between Plaintiff's alleged protected activity and her termination, the intervening factors—specifically, Plaintiff's conduct and P&G's investigation into it—had already begun before Plaintiff's alleged protected activity, breaking any suggestion of a causal link from temporal proximity alone. Plaintiff has not cited to any other record evidence that would suggest a causal link between her complaint about Promoveo on September 10 and her termination on September 28. Thus, even assuming that Plaintiff had engaged in a protected activity when she complained about Promoveo's alleged discrimination against women, the undersigned finds that Plaintiff has failed to establish a *prima facie* case of retaliation under Title VII.

Furthermore, even if Plaintiff had presented a *prima facie* case of retaliation, as discussed above, P&G has presented significant evidence that it had a legitimate reason to terminate Plaintiff's employment that was not related to her gender or any intent to retaliate against her, and Plaintiff has failed to present evidence establishing

that P&G's reasons were false or were not the true reasons for its decision. Thus, based on all the facts and evidence, and viewing the disputed evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to present sufficient evidence suggesting that Defendant's stated reasons for terminating her employment was merely a pretext to disguise unlawful retaliation. The Court thus finds that Defendant is entitled to summary judgment on Plaintiff's claim of unlawful retaliation.

Accordingly, the Court **RECOMMENDS** that Defendant's Motion for Summary Judgment [58] be **GRANTED** as to Plaintiff's claim of retaliation under Title VII, and that judgment be entered in Defendant's favor on Count II of the Complaint.

II. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A. *Facts*

Plaintiff has also filed a separate Motion for Summary Judgment [65]. In connection with her motion, Plaintiff has filed a "Statement of Undisputed Material Facts in Support of Her Motion for Summary Judgment" [65-2] ("Pl. SMF"). In response, Defendant has filed its "Response in Opposition to Plaintiff's Statement of Facts" [70] ("Def. Resp. SMF"). The Court notes that, on a plaintiff's motion for summary judgment, the Court must view all evidence and factual inferences in the light most favorable to the defendant, as the non-movant. *See Matsushita Elec.*

Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); *McCabe v. Sharrett*, 12 F.3d 1558, 1560 (11th Cir. 1994); *Reynolds v. Bridgestone/Firestone, Inc.*, 989 F.2d 465, 469 (11th Cir. 1993).

The Court has reviewed Plaintiff's submitted facts, and Defendant's responses to those facts, and finds that, for the majority of the facts, the parties largely repeat the facts and evidence cited above. Plaintiff has included some additional facts, however, that were not included in her response to Defendant's Motion for Summary Judgment.[10] In particular, Plaintiff includes multiple allegations related to Rolando Collado and Promoveo, in which she contends that Collado and/or Promoveo failed to meet the terms of Promoveo's contract with P&G, or engaged in other forms of misconduct or wrongdoing. In particular, Plaintiff alleges that: Promoveo failed to provide proof of workers compensation, commercial liability, or automobile insurance to P&G prior to September of 2018; Promoveo was overbilling P&G by

[10] Plaintiff has also included several purported facts in her Statement of Facts for which she cites only to pleadings, but not evidence such as affidavits or depositions. For example, Plaintiff contends that she "became aware of 'several potential issues with Promoveo's conduct' in late August of 2018." Pl. SMF [65-2] at ¶ 8 (citing to Compl. ¶¶ 13-18; Answer ¶ 16). In support of that allegation, however, Plaintiff cites only to her Complaint and Defendant's Answer, which are not competent evidence that may be considered by the Court on a motion for summary judgment. *See* LR 56.1(B)(1), NDGa ("The court will not consider any fact: (a) not supported by a citation to evidence (including page or paragraph number); [or] (b) supported by a citation to a pleading rather than to evidence . . . ."). Thus, Plaintiff cannot bolster her claims by relying on allegations from her pleadings.

$500,000 in the fiscal year 2017-18; and Promoveo was providing false information regarding the salary of the highest paid DSAs. Pl. SMF at ¶¶ 9-13. Plaintiff also claims that Collado "falsely" represented to P&G that he was an "owner or part-owner" of Promoveo. Pl. SMF at ¶¶ 22-26; 59-81.

Significantly, Defendant has disputed all of these facts with citations to record evidence showing that these facts are in genuine dispute. *See* Def. Resp. SMF at ¶¶ 9-13; 22-26. According to P&G, Collado's deposition testimony reflects that Promoveo provided documentation of all of the necessary insurance to P&G, and P&G's Global Internal Audit Group reviewed Plaintiff's allegations about Promoveo's alleged non-compliance with the contract and found "no issues with Promoveo." Def. Resp. SMF at ¶¶ 9-13; 22-26; Collado Dep. 94-96, 153-56; De Jesus Dep. 81.

Plaintiff also contends that, on September 14, 2018, during her interview with Sasse and Scherting, she raised "concerns of gender bias" that were "related to the manner in which P&G was investigating Promoveo's complaint." Pl. SMF at ¶ 38; Pl. Ex. C [65-6] (P&G/Gladden000214). The only evidence cited by Plaintiff in support of that allegation, however, is the email that Plaintiff sent to Sasse and Scherting on September 10, 2018, that is quoted in full above. *See* Pl. Ex. C [65-6] (P&G/Gladden000214) (Plaintiff states: "Promoveo is bringing several accusations against me that are not true in an abuse of process. I believe Promoveo is

discriminating on the basis of gender on a regular basis and they consider that women in these roles are expendable. . . . As a female in the position of liaising with Promoveo I was placed at a disadvantage as shown by them bringing baseless allegations against me after they understood that I had concerning information regarding their actions against women, that they would not have attempted against a man."). Plaintiff has cited to no record evidence supporting her allegation that, on September 14, 2018, she raised "concerns of gender bias" that were "related to the manner in which P&G was investigating Promoveo's complaint."

Plaintiff also claims that "Rolando Collado discriminated against Plaintiff on the basis of gender." Pl. SMF at ¶ 59. Because that "fact" is a legal conclusion rather than a fact, however, the Court cannot consider it. *See* LR 56.1(B)(1), NDGa. Nevertheless, the Court notes that Plaintiff has attempted to support her allegation with a citation to Collado's deposition testimony in which he states that he would not have reported Andrew Giangreco to Jennifer Sasse because he has "no complaints or issues" with him, but if he had any complaints, he would have reported Giangreco to his "project lead." Collado Dep. at 149. Similarly, Collado testified that he would not have reported Craig Harlan to Jennifer Sasse because he had "no reason" to do so, but if he had any complaints about Harlan, he would have reported him to his "project lead." Collado Dep. at 150. This evidence falls short of establishing that Collado discriminated against Plaintiff on the basis of her gender.

As set forth above, Collado reported that Plaintiff had communicated with Promoveo DSAs directly about their salary and bonuses, and Plaintiff admits that she did talk to DSAs about their compensation on multiple occasions, although that is prohibited by P&G's co-employment policies.

The majority of Plaintiff's additional facts that were not included in her response to Defendant's Motion for Summary Judgment involve immaterial issues that have no bearing on the issue of whether P&G discriminated or retaliated against Plaintiff when it terminated her employment. *See*, e.g., Pl. SMF at ¶ 134 (contending that P&G made a $529,000 donation to "urge the US Soccer Federation to be a beacon of strength and end gender pay inequality once and for all" for the U.S. women's soccer team).

B. *Discussion*

As discussed above, the Court finds that, even when viewing all of the disputed facts and evidence in the light most favorable to Plaintiff, she has failed to present sufficient evidence to establish each element of her claims of sex discrimination and retaliation under Title VII. On Plaintiff's Motion for Summary Judgment, when the Court must view all of the facts and evidence in the light most favorable to Defendant rather than Plaintiff, Plaintiff's claims fare no better. Plaintiff has presented no direct evidence, nor sufficient circumstantial evidence, to establish her claim that P&G discriminated against her because she is a woman when it

terminated her employment. Plaintiff also has presented no direct evidence, nor sufficient circumstantial evidence, to establish her claim that P&G retaliated against her for opposing sex discrimination when it terminated her employment.

Plaintiff spends a lot of time arguing that Promoveo was in violation of its contract with P&G, and that she was just "doing her job" when she reported Promoveo's various alleged violations to P&G. When viewing all evidence in the light most favorable to Defendant, the Court must assume that Defendant is correct and that, after an investigation, P&G determined that Promoveo was not in violation of its contract. But even if Plaintiff were correct about Promoveo and Collado, and all of their various wrongdoings, it does not help her establish that P&G—who is the Defendant in this case and not Promoveo—discriminated against her because of her gender or retaliated against her.

Plaintiff also argues that P&G's treatment of her was "unfair" and "irrational," and argues that she had a "17-year impeccable record" with P&G before her termination. *See* Pl. Br. [65-1] at 9-10. As discussed above, however, Plaintiff's employment history with P&G and her allegations of "unfair" treatment do not make a case for sex discrimination or retaliation under Title VII. It does not matter whether P&G's decision to terminate Plaintiff was unfair or irrational, or even based on facts that turned out to be wrong. It only matters whether P&G terminated Plaintiff because she was a woman, or because she made complaints to P&G in which she

reasonably opposed acts of discrimination prohibited by Title VII. Plaintiff has not presented sufficient evidence to show that P&G did so in this case.

Accordingly, the Court **RECOMMENDS** that Plaintiff's Motion for Summary Judgment [65] be **DENIED**.

III. RECOMMENDATION

For the reasons discussed above, **IT IS RECOMMENDED** that Defendant's Motion for Summary Judgment [58] be **GRANTED** and that judgment be entered in favor of Defendant on all of Plaintiff's claims.

IT IS FURTHER RECOMMENDED that Plaintiff's Motion for Summary Judgment [65] be **DENIED**.

As this is a Final Report and Recommendation, there is nothing further in this action pending before the undersigned. Accordingly, the Clerk is **DIRECTED** to terminate the reference of this matter to the undersigned.

IT IS SO RECOMMENDED this 26th day of July, 2021.

JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE