UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHANNON GLADDEN, Plaintiff, v. THE PROCTOR & GAMBLE DISTRIBUTING LLC, Defendant.	CIVIL ACTION NO. 1:19-CV-2938-CAP-JSA

ORDER

The plaintiff, Shannon Gladden, has filed this lawsuit against her former employer, The Proctor & Gamble Distributing LLC ("P&G"). She alleges that P&G discriminated against her based on her gender and unlawfully retaliated against her, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq*. ("Title VII"). Both Gladden and P&G have moved for summary judgment. The magistrate judge has issued a report and recommendation ("R&R") that P&G's motion for summary judgment be granted and Gladden's motion for summary judgment be denied. [Doc. No. 98]. Gladden has filed objections to the R&R. [Doc. No. 102]. P&G has filed a response to Gladden's objections. [Doc. No. 103].

I. Background

Gladden worked for P&G for approximately 18 years. Although the parties dispute what her title or position actually was at the time of her termination, it is undisputed that she worked with multiple P&G vendors. One such vendor was Promoveo Health ("Promoveo"), a company that employs dental sales associates who sell P&G dental products across the country. Gladden was the relationship manager for the contract between P&G and Promoveo. Vendors such as Promoveo are responsible for hiring, firing, compensating, and disciplining their employees. P&G trains its employees that work with vendors like Promoveo to avoid co-employment or joint employment issues, specifically the hiring, firing, compensating, and disciplining of vendor employees. Gladden maintains that she did not receive any such training for at least 24 months prior to her termination. She does admit, however, that a former Human Resources manager did train her on this topic prior to 2016.

P&G has a separate Purchases[1] division that is responsible for contract compliance by vendors. Any concerns related to contract compliance are to be presented to Purchases for investigation and remediation.

[1] Also referred to in the record as the Purchasing division.

The contract between Promoveo and P&G referenced $38,625 as how much Promoveo would charge P&G per dental sales associate in a particular category. P&G contends that the contract did not require Promoveo to pay its dental sales associates $38,625 in salary, either individually or on average. Gladden, however, maintains that the contract required Promoveo to pay the dental sales associates a set amount of money.

Lesli Hayes is Gladden's neighbor, and they have interacted socially in the past. Promoveo hired Hayes as a dental sales associate in 2016, during the period when Gladden oversaw the contract between P&G and Promoveo. On August 29, 2018, Promoveo fired Hayes. That same day, Gladden spoke via telephone with Rolando Collado, an owner/executive at Promoveo, at which time she referenced a change in personnel at Promoveo. On August 30, 2018, Gladden attended a previously scheduled meeting with Collado in which she questioned Collado about the salary and insurance coverage for Promoveo's dental sales associates. Following the meeting, she inquired directly with a dental sales associate who was not Hayes about the compensation she received from Promoveo.

Promoveo informed P&G that Gladden had spoken with a dental sales associate about her compensation. Promoveo also notified P&G that Gladden, along with an individual identified as Stan Cruz who claimed to

represent Hayes, had called Collado at approximately 9:30 PM on August 30, 2018. During the call, Cruz urged Collado to devise a new contract with P&G that increased the compensation for dental sales associates.

On August 30, 2018, Gladden emailed her manager Dave Shull and two other P&G employees with concerns about the contract between P&G and Promoveo. Although P&G avers that this is the first time Gladden raised concerns about the contract, Gladden disputes this. She contends that she raised concerns on multiple occasions and that the contract was reformed in the past to address some of her concerns. On August 31, 2018, she emailed Collado to request proof of insurance from Promoveo.

Over the Labor Day weekend in 2018, Hayes provided Gladden with information about Promoveo. The information included Hayes' termination letter, information about payroll deductions, and emails to Hayes from Guy Bradley, a Promoveo executive, about her alleged misuse of a company iPad by exceeding the limits on Promoveo's cellular data plan. Gladden states that Hayes sent this same information to Collado and Bradley.

Collado contacted the Human Resources department at P&G with concerns that Gladden was possibly sharing confidential information about the P&G/Promoveo contract with Hayes and Cruz. Collado also asserted that Gladden had asked him about Hayes' termination, employee compensation,

proof of insurance, and employee cellular data plans in retaliation for Promoveo's termination of Hayes. Collado contacted P&G Human Resources a second time on September 5, 2018. At that time, he advised Human Resources that Gladden had contacted Promoveo sales employees about their salary. Jennifer Sasse, a P&G Human Resources Manager, then began an investigation into the concerns raised by Collado. Gladden was informed about the investigation and directed to cease all contact with Promoveo.

On September 10, 2018, Gladden sent Sasse a note stating that Promoveo was discriminating against her because of her gender. She stated that Promoveo would not have raised any of these issues if she were a man. This letter did not include any allegation that P&G was discriminating against her. On September 11, 2018, Cruz and Hayes sent emails to many P&G employees alleging that Promoveo discriminated against women and docked paychecks when it terminated an employee. The emails also discussed the Promoveo employee cellular data plan and the cost of lunches associated with a "Lunch n Learns" program. P&G contends that these emails from Cruz and Hayes mirrored Gladden's allegations against Promoveo and suggest a coordinated effort by Cruz, Hayes, and Gladden.

As part of her investigation, Sasse interviewed three Promoveo employees, one of whom was Hayes' former manager. This manager

informed Sasse that she had felt pressured by Gladden to hire and retain Hayes. On September 15, 2018, Hayes and Cruz emailed 21 P&G employees, including Sasse and Gladden, alleging that Sasse was a "mole" for Promoveo and had a conflict of interest in her investigation. The emails included personal information about Sasse and alleged that she had various connections with Promoveo. The emails stated that Sasse lived 400 yards from Collado, and that her children attended the same school as Collado's children. The emails informed recipients that both Sasse and Collado had made donations to this school, and that Sasse and Bradley had attended the same college. Hayes also sent additional emails to P&G employees that included further personal information about Sasse, including her home address and personal information about her children. On September 15, 2018, Gladden sent an email to her manager Dave Shull forwarding one of Hayes' emails and stating that Sasse may have a personal relationship with either Collado or Bradley. On September 17, 2018, Gladden submitted an ethics complaint about Sasse, claiming that Sasse had wrongly directed P&G employees to delete the emails from Hayes and Cruz. P&G states that the complaint also asserted that Sasse had a conflict of interest regarding the investigation of Gladden's actions. Gladden denies that the complaint asserted any conflict of interest. Hayes continued to send emails about Sasse

to P&G employees. P&G maintains that some of the information in these emails could only have come from Gladden.

Gladden emailed John Long, another P&G Human Resources employee, on September 18, 2018, requesting a stop to the investigation. Long directed her to Sarah Davies, a P&G Human Resources Director. Gladden then emailed Davies with a similar request. P&G assigned Dan Lickteig to investigate allegations made by Gladden in her ethics complaint and emails. On September 19, 2018, Lickteig began to interview various individuals, including Collado, Sasse, and others. On September 20, 2018, he interviewed Gladden. Lickteig interviewed Gladden a second time on September 27, 2018. During the time that Lickteig was conducting interviews, Hayes and Cruz continued to send emails to P&G employees.

During her second interview with Lickteig, Gladden confirmed that she had discussed compensation directly with Promoveo employees. At the end of the interview, Lickteig informed Gladden that she was being placed on a paid leave of absence. P&G states that Lickteig also informed her that she should not attend the P&G National Sales Conference at Disneyland in Orlando, Florida the next week.[2] Gladden maintains that he only told her she was not

[2] On September 3, 2018, Cruz left Guy Bradley of Promoveo a voicemail threatening to "rip" him "limb from limb" at the conference. Promoveo

to do any work on the meeting and that she did not have to show up for the meeting. At the interview, Lickteig took possession of Gladden's company telephone, iPad, and computer. He did not take possession of Gladden's company car or her ID.

On September 28, 2018, Shull and Davies called Gladden and informed her that she was being terminated.[3] They stated that P&G had lost trust and confidence in her ability to perform her job. Gladden avers that this reason was pretext for discrimination. On September 29, 2018, and for a week following Gladden's discharge, Hayes and Cruz continued to email many P&G employees. One email contained an audio clip from one of Gladden's interviews with P&G Human Resources, at which neither Hayes nor Cruz were present. Another email asked if everyone felt safe going to the conference at Disneyland and informing them that Cruz was glad the Promoveo employees would be wearing badges at the conference, as that would make it easier for him to interview them. Another email contained images of envelopes and information that P&G sent Gladden about her termination. Gladden went to Disneyworld and attempted to attend the sales

provided this voicemail to P&G on September 13, 2018. Gladden was one of the principal organizers of the conference.

[3] P&G sent Gladden a letter that same day about her termination.

conference in early October 2018. P&G asserts that this was in contravention of both Licksteig's direction to her at the second interview on September 27, 2018, and her firing on September 28, 2018.

Gladden contends that she raised her sex discrimination complaint with Shull and Davies on an unspecified date in September 2018, and with another unidentified P&G employee on October 11, 2018. She maintains that she was replaced with a white male after she was terminated. P&G disputes this, and states that Gladden's two main job duties were split between a male and female who were already existing P&G employees. Hayes and Cruz continued to send emails to P&G employees through January 2019.

II. Standard of Review

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's R&R. 28 U.S.C. § 636(b)(1); *United States v. Powell*, 628 F.3d 1254, 1256 (11th Cir. 2010). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(2) (requiring the objecting party's objections to be "specific"). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." *Jeffrey S.*

v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990). The district judge reviews legal conclusions de novo, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994). "[T]he district court will review those portions of the R & R that are not objected [to] under a clearly erroneous standard." *Liberty Am. Ins. Group, Inc. v. WestPoint Underwriters, L.L.C.,* 199 F.Supp.2d 1271, 1276 (M.D. Fla. 2001).

III. The R&R on P&G's motion for summary judgment and Gladden's objections thereto

Gladden's complaint contains two claims – one for gender discrimination[4] (Count I) and one for retaliation (Count II). P&G has moved for summary judgment on both claims. The magistrate judge recommends that this court grant the motion.

A. Gladden's claim for sex discrimination

The magistrate judge determined that Gladden fails to demonstrate that the evidence presented "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." [Doc. No. 98 at 52]. The magistrate judge concluded that the evidence cited by Gladden was circumstantial, not direct, thus she must present a *prima facie* case of gender

[4] Also referred to in the R&R as "sex discrimination."

discrimination in order to defeat P&G's motion for summary judgment. [*Id.* at 57].

P&G argues that Gladden cannot present a *prima facie* case because she was not qualified for her position nor can she show that any male employees who were similarly situated were treated more favorably than her. Specifically, it contends that her response to Hayes' termination by Promoveo, as well as her disregard for P&G policies and practices, disqualify her from her prior job at P&G. Gladden responds that the fact that she worked in the position for several years indicates that she is presumed to be qualified for the position.

The magistrate judge found that Gladden had presented evidence sufficient to establish a genuine issue of fact concerning her qualification for the position. [*Id.* at 61]. As for the three male comparators presented by Gladden, the magistrate judge determined that "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." [*Id.* at 66]. The magistrate judge did find, however, that Gladden had presented sufficient evidence to create a genuine issue of fact concerning whether she

was replaced by a male after P&G terminated her. Thus, she had established a *prima facie* case of gender discrimination. [*Id.* at 71].

Analyzing the evidence in the record, the magistrate judge concluded that P&G had presented sufficient evidence that it had a legitimate reason to terminate Gladden, one that was not related to her gender. [*Id.* at 80]. This reason was that it "had lost trust and confidence in her ability to perform her job." [*Id.* at 84]. P&G indicated that the decision to terminate Gladden was based on her conduct, specifically her violation of P&G's policies about not interfering in vendor employment relationships, failing to report her concerns about Promoveo's compliance with the contract to the Purchases division, retaliating against Promoveo for terminating Hayes, and cooperating with Hayes and Cruz in their email campaign that harassed and intimidated P&G employees. The magistrate judge found that "the undisputed evidence indicates that P&G had a reasonable basis for concluding" that Gladden retaliated against Promoveo and cooperated in Hayes and Cruz's email campaign. As for violating P&G policy, the magistrate judge determined that Gladden complained to certain P&G employees about Promoveo's compliance with the contract but did not report her concerns to Purchases until after she was directed to do so. The magistrate judge also remarked that the undisputed evidence showed Gladden had discussed compensation with

Promoveo dental sales associates and Collado, and that Gladden had failed to dispute that doing this was a violation of P&G policy. In sum, the magistrate judge concluded that "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." [*Id*. at 98]. He therefore recommended that the court grant P&G's motion for summary judgment on Gladden's claim of sex discrimination.

Gladden objects to the R&R. She avers that the magistrate judge has improperly construed the facts in favor of P&G. [Doc. No. 102 at 2]. She argues that her job at P&G required her to inquire into the compensation of the dental sales associates after she learned that Promoveo may have violated its contract with P&G. She asserts that "[i]n the light most favorable to Gladden, the Magistrate Judge should have concluded there was no clear rule preventing her from contacting DSAs [dental sales associates] or discussing subject matter within P&G's contract with Promoveo." [Doc. No. 102 at 3]. She also makes the argument that "[i]f P&G is worried about the pay of the US Women's soccer team, it tends to prove that the allegation that

Gladden was legitimately fired for addressing compliance issues on a contract that P&G had agency on is pretextual." [*Id*. at 4].[5]

Although Gladden agrees with the magistrate judge's finding that she presented sufficient evidence to support a *prima facie* case of sex discrimination, she disagrees with his finding that P&G had a legitimate reason for terminating her. She avers that there is sufficient evidence to support a finding that this reason was actually pretext for discrimination, however, she does not break that down for the court. She also references a "credibility determination," but again does not explain how the magistrate judge may have improperly analyzed witness testimony other than her general allegation that he improperly construed the facts in favor of P&G.

These are general and conclusory objections. "Where a proper, specific objection to the magistrate judge's report is made, it is clear that the district court must conduct a *de novo* review of that issue. It is critical that the objection be sufficiently specific and not a general objection to the report." *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006) (internal

[5] Gladden references a contribution of $529,000 made by Secret deodorant, a P&G product, to the U.S. Women's National Soccer Team to help address gender disparity in compensation. She also included this in her statement of material facts. The magistrate judge deemed it to be "immaterial" and "hav[ing] no bearing on the issue of whether P&G discriminated or retaliated against Plaintiff when it terminated her employment." [Doc. No. 98 at 122].

citations omitted).[6] "A litigant who objects only in vague or general terms to the magistrate judge's recommendation, thereby preventing the district court from focusing on specific issues for review, renders the initial reference to the magistrate judge useless and frustrating to the purposes of the Magistrates Act. Such an objection does not constitute an 'objection' under 28 U.S.C. § 636(b)(1)." *Howard's Yellow Cabs, Inc. v. United States*, 987 F.Supp. 469, 474 (W.D. NC 1997) (internal citations omitted).

Furthermore, the law is clear that even though an employee may present a *prima facie* case of discrimination, an employer can rebut that by presenting a legitimate, non-discriminatory reason for the adverse employment action. The court in *McCoy v. Geico General Ins. Co.*, 510 F.Supp.2d 739, 748 (M.D. Fla. 2007), has provided a succinct outline of the burden of proof for Gladden's disparate treatment claim:

> A disparate treatment claim is evaluated under the traditional *McDonnell Douglas* burden-shifting framework. *Durley v. APAC, Inc.,* 236 F.3d 651, 657 (11th Cir. 2000). Under this approach, the employee must first establish a prima facie case of discrimination. *Raytheon Co. v. Hernandez,* 540 U.S. 44, 49 n.3, 124 S.Ct. 513, 157 L.Ed.2d 357 (2003). The burden then shifts to the employer to articulate a legitimate non-discriminatory reason for the adverse employment action. *Id.* If the employer meets this burden of production, the employee may still prove disparate

[6] The Eleventh Circuit Court of Appeals has held that the district court is required to review unobjected portions of the report and recommendation for clear error only. *Macort*, 208 F. App'x at 784.

> treatment, for instance, by demonstrating the employer's reason is pretextual. *Id.*

Gladden does not demonstrate how P&G failed to meet its burden of production. The court concurs with the magistrate judge's analysis that P&G has met its burden. In her objections, Gladden argues that she "has met the language of Title VII (42 U.S.C. Sec. 2000e-2(a)(1)) as recited in the R&R," and thus "should not be deprived of her right to jury trial given the prima facie case has been established and the alleged good faith reason from employer requires credibility determinations if it cannot be discarded out of hand." [Doc. No. 102 at 11-12]. "[W]hen objections to strictly legal issues are raised and no factual issues are challenged, *de novo* review of the record may be dispensed with." *Howard's Yellow Cabs*, 987 F.Supp. at 474. *See also Braxton v. Estelle*, 641 F.2d 392, 397 (5th Cir. 1981).

Gladden also objects to the R&R on the basis that it "errs in not classifying Gladden's presented direct evidence as direct evidence." [Doc. No. 102 at 12]. She avers that the magistrate judge viewed some of P&G's facts as undisputed when she "had several rebuttals and showed flaws to each of P[&]G's reasonings for termination." [Doc. No. 102 at 13]. Gladden's assertion that the magistrate judge has improperly resolved some disputed facts is also too general to warrant de novo review. *Jackson v. Hall County*

*Governmen*t, No. 2:11-CV-0058-WCO, 2012 WL 12864463, at *1 (N.D. Ga. Sept. 5, 2012).

Furthermore, "'only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of some impermissible factor' constitute direct evidence of discrimination." *Akouri v. Fla. Dep't of Transp.*, 408 F.3d 1338, 1347 (11th Cir. 2005) (quoting *Rojas v. Florida*, 285 F.3d 1339, 1342 n.2 (11th Cir. 2002) (per curiam)). The magistrate judge thoroughly analyzed the evidence and found that:

> 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.

[Doc. No. 98 at 57]. Having reviewed the magistrate judge's analysis, this court agrees.

Gladden purports to explain to the court how the issue of whether she violated P&G policy "is highly disputed" and "is an issue to be determined by a jury." [Doc. No. 102 at 14].[7] This goes to whether P&G's reason for firing

[7] Gladden raised this same argument before the magistrate judge. [Doc. No. 102 at 89].

her was pretext. The magistrate judge noted that many of the facts related to this issue were disputed. [Doc. No. 98 at 71]. The magistrate judge ultimately concluded that "[u]pon 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." [*Id*. at 89]. This court agrees. Indeed, the evidence undermines Gladden's argument. For instance, Gladden argues that it "has not been established that Gladden had any training that prohibited her from talking to others about salary and in fact she had permission from a direct manager to do so." [Doc. No. 102 at 14]. P&G responds that this assertion "contradicts the actual evidence and conflicts with her own admissions." [Doc. No. 103 at 10]. P&G refers the court to Gladden's deposition.

Gladden declares that one of her direct managers, Kelly Heaps, "confirmed" that she should continue to verify the salary of the dental sales associates. [Doc. No. 79-10 at 6, Second Gladden Decl. ¶23]. However, in her deposition, Gladden states that she never told anyone at P&G that she only called the dental sales associates because Heaps instructed her to do so. [Doc. No. 59 at 230, Gladden Dep. 229:1-229:19]. Next, she points the court

to language[8] in the contract between P&G and Promoveo that she contends "specifically allows discussion between P&G and Promoveo regarding hiring, firing, and salary." [Doc. No. 102 at 15]. She also refers to the deposition of Carlos De Jesus,[9] where he states that her job was to ensure that the contract was being executed as committed to P&G. Yet, in her deposition, she states that before she assumed oversight of the contract, P&G was engaged in co-employment with Promoveo to the extent of "everything except for hiring, firing, and payment" [Doc. No. 59 at 103, Gladden Dep. 102:5-102:9], even though "in 2015 the contract [between P&G and Promoveo] was written so that there should not be a co-employment violation" [Doc. No. 59 at 99, Gladden Dep. 98:16-98:18]. Gladden testified that when she took over as relationship manager, she implemented measures to reduce the level of co-employment between the companies. [*Id*. at 103, Gladden Dep. 102:102:15]. She testified that she "worked with John Long [in Human Resources] in regards to meetings that we were having, be it regional or national, to make sure that we were following co-employment guidelines as closely as possible." [Doc. No. 59 at 13, Gladden Dep 102:19-102:22]. It is apparent that

[8] Requiring Promoveo to comply with all applicable federal, state, and local laws and regulations.
[9] Gladden reported to Dave Shull starting in the summer of 2018. Shull reported to Carlos De Jesus in 2018.

overseeing the contract did not require interceding in the hiring, firing, and payment of Promoveo employees. It is also apparent that Gladden had some knowledge of P&G's policy on co-employment, including direction from the Human Resources Department.

Gladden also asserts that "[i]t was her duty to talk to the management team in her division and confirm what actions should be requested prior to talking to Purchasing." [Doc. No. 102 at 16]. However, she had worked with the Purchases division in the past on contract issues and even testified that the Purchases division was "very much involved in the contract and the processes that are going on with Promoveo." [Doc. No. 59 at 112, Gladden Dep. 112:12 -112:17].

"The inquiry into pretext requires this Court to determine whether, in view of all the evidence . . . the plaintiff has cast sufficient doubt on the defendant's proffered nondiscriminatory reasons to permit a reasonable factfinder to conclude that the employer's proffered legitimate reasons were not what actually motivated its conduct." *Watson v. Kelley Fleet Services, Inc.*, 430 F. App'x 790, 791 (11th Cir. 2011) (quoting *Combs v. Plantation Patterns,* 106 F.3d 1519, 1538 (11th Cir. 1997)). To establish pretext, Gladden must demonstrate "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." *Jackson v. State of Alabama State Tenure Comm'n,* 405 F.3d 1276, 1289 (11th Cir. 2005) (quotations and citations omitted). She must, in essence, meet P&G's proffered reason for terminating her employment head on and show both that it is false and that discrimination is the real reason she was fired. *Brooks v. County Comm'n of Jefferson County, Ala.*, 446 F.3d 1160, 1163 (11th Cir. 2006)*; St. Mary's Honor Center v. Hicks,* 509 U.S. 502 (1993). "When considering whether the basis for an employee's termination was merely pretext, the proper inquiry is whether the decisionmaker believed the employee was guilty of misconduct and whether that belief was the reason for the employee's discharge." *Wiggins v. Secretary, Dept. of Army*, 520 F. App'x 799, 801 (11th Cir. 2013).

Here, the evidence supports P&G's contention that it terminated Gladden because it had lost trust and confidence in her ability to do her job. P&G has stated that the decision to terminate her was based on her conduct. Gladden has admitted that she never informed anyone at P&G that Heaps directed her to contact Promoveo's dental sales associates about salary. Furthermore, emails that Hayes and Cruz sent to P&G employees contained information that neither Hayes nor Cruz could obtain on their own, as they were not P&G employees. The timing of certain actions taken by Gladden in

correlation to emails that Hayes and Cruz sent also raised suspicions at P&G that she was involved with this email campaign. As for P&G's belief that Gladden was retaliating against Promoveo for terminating Hayes, Gladden contends that this was a "logical fallacy." [Doc. No. 102 at 17]. Even if that were true, it would not affect the court's analysis. "Pretext means more than a mistake on the part of the employer; pretext means a lie, specifically a phony reason for some action." *Silvera v. Orange Cty. School Bd.*, 244 F.3d 1253, 1261 (11th Cir. 2001) (quoting *Wolf v. Buss (America) Inc.,* 77 F.3d 914, 919 (7th Cir. 1996)). "An employer's good faith, but incorrect, belief that an employee violated a work rule can constitute a non-discriminatory reason for that employee's suspension or termination." *Hendricks v. Baptist Health Servs.,* 278 F.Supp.2d 1276, 1288 (M.D. Ala. 2003). Indeed, "[a]n 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.*" *Damon v. Fleming Supermarkets of Florida, Inc.*, 196 F.3d 1354, 1363 n.3 (11th Cir. 1999) (internal quotation omitted) (emphasis in original). Thus, P&G's belief that Gladden had violated its policies and was involved with Hayes and Cruz's email campaign can be mistaken yet still support a legitimate reason for terminating Gladden's employment. "The failure to present significantly probative and concrete evidence of pretext

justifies summary judgment for the defendant." *Tolley v. United Parcel Service*, No. Civ.A.1:05CV606TWT, 2006 WL 486523, at *4 (N.D. Ga. 2006) (citing *Earley v. Champion Int'l Corp.,* 907 F.2d 1077, 1081 (11th Cir.1990); *Young v. General Foods Corp.,* 840 F.2d 825, 829 (11th Cir.1988)). By failing to rebut P&G's non-discriminatory reason for terminating her employment, Gladden has failed to raise a genuine issue of material fact concerning whether that reason was pretext for discrimination. Gladden's objections to this portion of the R&R are OVERRULED.

B. Gladden's claim of retaliation

Gladden has also brought a claim of retaliation in violation of Title VII. She alleges that she engaged in protected action in September 2018 when she complained to P&G Human Resources staff members about P&G's investigation, specifically that the investigation was being conducted "in a more antagonistic manner compared to male counterparts" at the company. [Doc. No. 1 at 11, Compl. ¶49]. She alleges that P&G placed her on paid administrative leave a few days after this, and then terminated her employment a few days after placing her on leave. [*Id.*, Compl. ¶50-51].

The magistrate judge determined that "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." [Doc. No. 98 at 104]. The magistrate judge also found that Gladden had not cited any record evidence that she had a good-faith and reasonable belief that Promoveo or Collado discriminated against their female employees. As for a causal link between Gladden's termination and the alleged protected activity, the magistrate judge determined that:

> 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.

[*Id*. at 98]. He consequently concluded that Gladden had failed to establish a *prima facie* case of retaliation under Title VII.

Gladden has not specifically objected to this portion of the R&R. Instead, she has intervowen a general objection that there is sufficient evidence in the record to create a genuine issue of material fact regarding the retaliation claim into her general objection on the same basis regarding the sex discrimination claim. She contends that P&G violated its own non-

retaliation policy by terminating her and that her exemplary record working for the company prior to the events at issue in this case should have shielded her from termination. [Doc. No. 102 at 21-22]. Niether of these contentions go to the heart of whether she engaged in protected activity or whether there was a causal link between engaging in protected activity and then being terminated.

In order for Gladden to establish a *prima facie* case of retaliation, there must be evidence that she engaged in a statutorily protected activity, that she was subjected to a materially adverse action by her employer, and that there was a causal connection between the protected acivity and the adverse action. *Kidd v. Mando Am. Corp.,* 731 F.3d 1196, 1211 (11th Cir.2013). Pretext comes into play only once a *prima facie* case of retaliation has been established. This is because the establishment of the *prima facie* case creates a rebuttable presumption that the driving force for the adverse action was the intent to retaliate against the employee. The employer may then seek to rebut this presumption by offering a legitimate, non-discriminatory reason for the adverse action. It is then that the plaintiff may bring forth proof that this proffered reason is pretext. *Brown v. Ala. Dep't of Transp.,* 597 F.3d 1160, 1181–82 (11th Cir. 2010). Here, Gladden has failed to establish a

prima facie case of retaliation. Gladden's objections to this portion of the R&R are OVERRULED.

IV. The R&R on Gladden's motion for summary judgment and Gladden's objections thereto

Gladden has also moved for summary judgment. The R&R recommends that the court deny this motion. The magistrate judge found that Gladden had not presented direct evidence to establish her sex discrimination and retaliation claims against P&G. He also found that she had not presented sufficient circumstantial evidence to establish the claims. [Doc. No. 98 at 122-23].

Gladden has not specifically objected to this portion of the R&R. Instead, her objections to the magistrate judge's recommendation on her motion for summary judgment are interwoven with her objection on his recommendation about P&G's motion for summary judgment. Gladden admits that this is the case, stating that "Plaintiff's objections also apply to the Magistrate Judge's recommendation that Plaintiff's Motion for Summary Judgment [65] be denied." [Doc. No. 102 at 1]. The court has already addressed those objections above. Gladden's objections to this portion of the R&R are OVERRULED.

V. Conclusion

For the reasons stated above, the court hereby OVERRULES Gladden's objections [Doc. No. 102] and ADOPTS the magistrate judge's R&R [Doc. No. 98]. P&G's motion for summary judgment is GRANTED. [Doc. No. 58]. Gladden's motion for summary judgment is DENIED. [Doc. No. 65]. The clerk is DIRECTED to enter judgment in favor of P&G on all of Gladden's claims and close this case.

SO ORDERED this 8th day of September, 2021.

/s/CHARLES A. PANNELL, JR.
CHARLES A. PANNELL, JR.
United States District Judge