IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARISSA BRIONES, Plaintiff, v. LABORATORY TOPS, INC., d/b/a DURCON INCORPORATED, and WILSONART LLC, Defendants.	§ § § § § § § § § § §	1:19-CV-878-RP

ORDER

Before the Court is Defendants Laboratory Tops, Inc. d/b/a Durcon Incorporated ("Durcon") and Wilsonart LLC's ("Wilsonart") (collectively, the "Defendants") Motion for Summary Judgment. (Dkt. 21). Plaintiff Marissa Briones ("Briones") filed a response, (Dkt. 23), and Defendants filed a reply, (Dkt. 24). Having considered the parties' submissions, the record, and the applicable law, the Court will grant in part and deny in part Defendants' motion for summary judgment.

I. BACKGROUND

Defendant Wilsonart is a manufacturer and distributor of engineered composite materials. (Mathers Decl., Dkt. 21-1, at 2). Co-defendant Durcon is a Taylor, Texas-based manufacturer of laboratory-grade work surfaces that Wilsonart acquired in 2013, though Durcan operates as an "independent business unit." (*Id.* at 2–3). Plaintiff Briones worked in Wilsonart's distribution and manufacturing center in Temple, Texas for almost two years before being terminated for "unprofessional behavior" in July 2018. (Dkt. 21, at 8; Briones Dep., Dkt. 23-3, at 1). Briones' duties in the warehouse included packing and pulling orders for customers, as well as training other

employees and contingent workers. (Dkt. 23-3, at 1–2). Briones was not employed by Durcon "in any capacity." (Dkt. 21-1, at 3).

During her employment, Briones made internal complaints about fellow coworkers. First, in 2016, she reported a male lead, Chris Cortez ("Cortez"), for failing to follow Wilsonart policy by asking Briones questions while they were alone together in an office. (Briones Dep., Dkt. 21-2, at 17). According to Wilsonart policy, two individuals must be present during meetings with employees of the opposite sex. (*Id.*). Jason Mathers ("Mathers"), of Wilsonart's human resources department, investigated the allegations and "took personnel action against Mr. Cortez." (Mathers Dep., Dkt. 21-4, at 6; Dkt. 23-2, at 17). Wilsonart does not identify what type of action it took against Cortez, but Briones testified that she was satisfied with the company's response to her complaint. (Dkt. 21-2, at 17).

In April 2018, Briones made another internal complaint, alleging that a male colleague, Jess Williams ("Williams"), called her a "whore" and a "prostitute." (April 2018 Complaint, Dkt. 21-5, at 2). In her complaint, Briones also said that a different male employee told her there was a rumor going around the warehouse that she was engaging in sex work. (*Id.*). Mathers could not substantiate Briones' complaint during his investigation, though Williams told Mathers that he had paid Briones for sex. (Dkt. 21-4, at 8). Wilsonart suspended Williams for a week without pay because "if you have an employee that self-identifies that they're paying another employee for sex, you know, that's not in line with the core values of any company I can think of." (Dkt. 21-4, at 9). Briones denied Williams' allegations regarding sex work. (Dkt. 21-4). Through his investigation, Mathers found the allegations regarding sex work to be "partially substantiated" because two other employees, Mark Remacki ("Remacki") and Brandon Shade ("Shade"), said that Briones spread a rumor that Remacki had paid her $150 for sex. (Mathers Investigation Notes, Dkt. 21-10, at 2). Briones maintains that she has

never been paid for sex by a coworker, and never told anyone that she had been paid for sex. (Dkt. 23-11, at 3).

On July 11, 2018, Clarissa Haley ("Haley") filed an internal written complaint alleging that her colleagues, including Briones, talked openly about Haley's sexual preferences at work. (Haley Complaint, Dkt. 21-8, at 2). Haley wrote in her complaint that another colleague, Remacki, had told her that Briones had started a conversation in the warehouse about Haley's sexual preferences. (*Id.*). Mathers investigated Haley's allegations, and found them to be substantiated after two other employees, including Remacki, confirmed that Briones had talked about Haley's sexual preferences in the warehouse. (July 11 Email, Dkt. 21-9, at 2; Mathers Investigation Notes, Dkt. 21-10, at 2). Briones reponds that she did not know Haley, and "did not ever make remarks or ask questions about the sexual orientation of anybody named Clarissa." (Briones Decl., Dkt. 23-11).

Later that month, Wilsonart received another written complaint about Briones from a staff agency, who said that a contingent worker had complained about "receiving threats" during his training with Briones. (July 20 Email, Dkt. 21-11, at 2). Specifically, Fredrick Snell ("Snell") had complained that Briones solicited him for prescription pills, harassed him when he declined to get her pills, threatened to get contingent workers fired, and indicated that she had a gun in the car and would "shoot anyone [i]n the face." (*Id.*). Briones maintains that she has never owned a gun and has never threatened anyone with violence. (Briones Decl., Dkt. 23-11, at 2). Mathers' investigation notes reveal that Snell reported the harassment to Danny Easley ("Easley"), the warehouse foreman and another manager at the warehouse, who allegedly failed to address Snell's complained and told him to "[l]earn to work with her or go somewhere else." (July 20 Email, Dkt. 21-11, at 2; Mathers Investigation Notes, Dkt. 21-10, at 2).

Through his investigation, which did not include a conversation with Briones, Mathers determined that Snell's allegations were "substantiated." (Mathers Investigation Notes, Dkt. 21-10,

at 2). Two other employees, Shade and Erica Banks ("Banks") said that Briones had worked at the warehouse under the influence of narcotics. (*Id.*). Briones says she has a prescription for an opioid-based pain medication, and thus does "not need or want other peoples' pain medications." (Dkt 23-11, at 3). She further asserts she did not care whether she worked with contingent employees or employees of Wilsonart, and never attempted to get contingent workers to quit or be fired. (*Id.* at 2–3). In fact, Briones had her own complaints about Snell and says that he was the one who acted inappropriately while they worked together.

Briones contends that Snell used "disrespectful language" towards her and refused to follow her directions during training. (Briones Dep., Dkt. 23-3, at 7). Specifically, Briones alleges that Snell called her a "bitch." (TWC Discrimination Charge, Dkt. 23-2). Believing that Snell did not want to follow her directions because she is a woman, Briones reported Snell's behavior to Easley, the warehouse foreman, who said he'd "talk to him." (Dkt. 23-3, at 3). On July 22, 2018, Easley also invited Briones to a meeting with him and John Hubbard, a shift supervisor, wherein Briones told them that Snell refused to work with her and had called her a "bitch." (Dkt. 23-3, at 3; TWC Discrimination Charge, Dkt. 23-2). Briones continued to work with Snell after this meeting and says that he called her a "bitch" for a third time after the meeting. (Dkt. 23-11). In total, Briones asserts that she reported Snell's behavior to three Wilsonart supervisors. (Dkt. 23-11). Mathers asserts that in July 2018, he was not aware of any complaints Briones had made about Snell's alleged use of "derogatory gender-based slurs during his training" and only became aware of such a complaint when Briones filed a Texas Workforce Commission ("TWC") Charge of Discrimination after she was terminated. (Dkt. 21-1, at 3).

Based on his investigation, Mathers decided that Briones should be suspended. (Mather Decl., Dkt. 21-1, at 3). Because he was out of office at the time, Mathers asked two of his colleagues, Jessica Miniard ("Miniard") and Cecilia Cruz ("Cruz"), to meet with Briones to tell her about her

suspension. (*Id.*). Mathers says that he made the decision to terminate Briones after she "was uncooperative" during her meeting with Miniard and Cruz. (Mather Decl., Dkt. 21-1, at 3; Mathers Dep., Dkt. 21-4, at 13). Yet Miniard testified that during the meeting, Miniard and Cruz did not attempt to question Briones or offer her a chance to refute the allegations against her, but rather informed Briones "of the fact that she was being suspended as we completed our investigation." (Miniard Dep., Dkt. 23-6, at 6). During the meeting, Briones denied the allegations against her. (*Id.* at 7). Mathers subsequently decided to terminate Briones based on the "very serious—and substantiated—allegations of hostile conduct, threats, harassment, and soliciting narcotics, as well as Ms. Briones's lack of cooperation in the meeting with Ms. Miniard." (Dkt. 21-1, at 3). As he was still out of office, Mathers instructed Miniard and Timothy Beaird ("Beaird"), another supervisor, to terminate Briones' employment. (Dkt. 21-1, at 3; Beaird Dep., Dkt. 21-7, at 8–9).

Briones filed this case on September 9, 2019, alleging that Defendants violated Title VII and the Texas Commission on Human Rights Act ("TCHRA") by discriminating against Briones because of her gender and terminating her employment based on her opposition to gender discrimination. (Compl., Dkt. 1, at 3–5). Defendants moved for summary judgment on December 7, 2020, arguing that Briones' claims should be dismissed against Durcon because of the lack of employment relationship between Briones and Durcon and because Wilsonart's decision to terminate Briones was "not unlawfully targeted towards Briones based on any protected category or protected complaint." (Mot. Summ. J., Dkt. 21, at 8).

II. LEGAL STANDARDS

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "A fact is material if its resolution in favor of one party might affect the outcome of the lawsuit under governing law." *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 326 (5th Cir. 2009) (quotations and footnote omitted). When reviewing a summary judgment motion, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255. Further, a court may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Furthermore, the nonmovant is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Id.* After the nonmovant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted. *Miss. River Basin All. v. Westphal,* 230 F.3d 170, 175 (5th Cir. 2000).

III. DISCUSSION

A. Standing as to Durcon

As an initial matter, Durcon argues that all claims against it should be dismissed because it "has never employed Briones" and Briones' Title VII and TCHRA claims require the existence of an

employment relationship for standing purposes.[1] (Dkt. 21, at 14); *Diggs v. Harris Hosp.--Methodist, Inc.*, 847 F.2d 270, 272 (5th Cir. 1988) ("[A] Title VII claim must necessarily involve an employment relationship."). First, Durcon contends that Briones herself admitted that she was not employed by Durcon and does not have complaints against it. (*Id.*). Next Durcon says that its discovery responses reveal that Durcon had no employment relationship with Briones and Briones failed to include Durcon in her discrimination charge. (*Id.* at 15). Lastly, Duron argues that Briones has failed to allege a joint venture between Durcon and Wilsonart, and none exists. (*Id.*). Briones did not address Durcon's arguments in her response.

The Court finds that Briones' claims against Durcon must be dismissed for lack of standing. Although Briones alleged in her complaint that Durcon served as her "employer or joint employer," she has failed to plead any facts to support the contention that Briones had an employment relationship with Durcon or that Defendants operated as a "single, integrated enterprise." (Compl., Dkt. 1, at 2); *Perry v. VHS San Antonio Partners, L.L.C.*, 990 F.3d 918 (5th Cir. 2021) ("In Title VII cases, superficially distinct entities may be exposed to liability upon a finding they represent a single, integrated enterprise: a single employer.") (cleaned up). In this Circuit, courts apply a four-factor test to determine whether two entities constitute a single employer for Title VII purposes: "(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." *Vance v. Union Planters Corp.*, 279 F.3d 295, 297 (5th Cir. 2002).

[1] "The law governing claims under the TCHRA and Title VII is identical." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 404 n.2 (5th Cir. 1999). "Courts analyze Title VII and parallel claims under the Texas Labor Code identically. Because TCHRA is intended to correlate with Title VII, the same analysis is applied for each claim." *Cornett v. United Airlines, Inc.*, No. A-18-CV-698 LY, 2019 WL 453365, at *3 (W.D. Tex. Feb. 5, 2019) (*citing Allen v. Radio One of Tex. II, L.L.C.*, 515 F. App'x. 295, 297 (5th Cir.), *cert. denied*, 571 U.S. 880 (2013); *Shackleford*, 190 F.3d at 404) (internal quotations omitted).

Briones has alleged no facts supporting the contention that Wilsonart and Durcon act as a single employer. Furthermore, at her deposition, Briones testified that she believed that she only worked for Wilsonart and had never worked for Durcon. (Briones Dep., Dkt. 21-2, at 7). In fact, Briones testified that she had never even heard of Durcon. (*Id.*). Given that Briones has admitted to working only for Wilsonart, testified that she has never heard of Ducron, and has not alleged any facts to support her contention that she was employed by Durcon, the Court will dismiss Briones' claims against Durcon for lack of standing.

B. Summary Judgment as to Wilsonart

1. Gender Discrimination

To establish a *prima facie* discrimination claim under Title VII,[2] a plaintiff must establish that she (1) belongs to a protected class; (2) is qualified for the position at issue; (3) was subject to an adverse employment action; and (4) was treated less favorably than other similarly situated employees outside of [her] class. *Thompson v. City of Waco*, 764 F.3d 500, 507 (5th Cir. 2014). Once this *prima facie* case has been established, there is a presumption of discrimination, and the burden shifts to the defendant to articulate some legitimate, non-discriminatory reason for the challenged employment action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973). If such a showing is made, the burden shifts back to the plaintiff to demonstrate that the articulated reason was merely a pretext for discrimination. *Id.*

With regard to establishing a prima facie case of discrimination, Wilsonart concedes that Briones has established the first three factors and only contests the fourth—arguing that Briones "cannot show that she received less favorable treatment than one or more male employees" because she has not shown that Snell was "given more favorable treatment in nearly identical

[2] The law governing discrimination claims under the TCHRA and Title VII is "identical." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 404 n.2 (5th Cir. 1999). As such, the Court analyzes these claims together.

circumstances." (Dkt. 21, at 18). Briones responds by offering an alternative standard for evaluating this element that does not require comparator evidence. (Dkt. 23, at 19) (citing *Black v. Pan Am. Lab'ys, L.L.C.*, 646 F.3d 254, 278 n.14 (5th Cir. 2011) (J. Dennis, concurrence) ("One treatise offers a similar, 'one-size-fits-all,' version of the prima facie case, which does not include comparator evidence.") (citing Charles A. Sullivan & Lauren M. Walter, Employment Discrimination Law & Practice § 2.09[F], at 122 (4th ed. 2009)). Because Briones' proffered standard is not the standard applied by the majority opinion in *Black* (or in any other Fifth Circuit opinion for that matter), the Court declines Briones's invitation to apply this more lenient standard to her discrimination claim.

Thus, the Court proceeds under the requirement that Briones must identify a similarly situated employee who was treated more favorably than her in nearly identical circumstances. *Thomas v. Tregre*, 913 F.3d 458, 462 (5th Cir. 2019). "The employment actions being compared will be deemed to have been taken under nearly identical circumstances when the employees being compared held the same job or responsibilities, shared the same supervisor or had their employment status determined by the same person, and have essentially comparable violation histories." *Harville v. City of Houston, Miss.*, 945 F.3d 870, 875 (5th Cir. 2019). Each employee's track record at the company need not comprise the identical number of identical infractions, albeit these records must be comparable. *Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 260–262 (5th Cir. 2009) (finding two employees similarly situated where they held identical positions, compiled a similar number of violations over a similar period of time, including an identical infraction for which the plaintiff was fired and the comparator was granted leniency, and their ultimate employment status rested with the same person); *see also Turner v. Kansas City S. Ry. Co.*, 675 F.3d 887, 893 (5th Cir. 2012).

Briones argues that she was similarly situated to Snell, and that she received less favorable treatment than him despite the complaints against both employees. (Dkt. 23, at 19–20). While Snell and Briones arguably held the same position as a packer and shipper in the warehouse and reported

to the same managers, Snell worked as a contingent, contract worker while Briones was a full-time Wilsonart employee. (Briones Dep., Dkt. 21-2, at 15; Dkt. 21-11, at 2). The differences in the "nature of their employment" with Wilsonart belies the assertion that Snell and Briones were similarly situated. *See Battle v. United Parcel Serv., Inc.*, 2011 WL 8202606, at *11 (W.D. Tex. Dec. 21, 2011). However, Briones' main obstacle is that Snell and Briones did not have a similar number of complaints against them over a similar period of time. While Briones complained of Snell's allegedly discriminatory behavior during July 2018, at the time she made her complaint, Briones had already racked up three separate complaints against her by several warehouse colleagues, including Snell. (Mathers Investigation Notes, Dkt. 21-10). Given the disparity in the number of complaints against Snell and Briones, this Court finds that Briones has failed to establish a *prima facie* case of gender discrimination because she has not demonstrated that she was treated disparately from any other similarly situated warehouse employee.

While there remains a factual dispute as to whether the complaints against Briones were legitimate, Mathers nonetheless deemed many of them substantiated—even though Briones argues that Williams' allegations of sex work on the job were retaliatory in nature and that Mathers failed to provide Briones with the opportunity to address the complaints before suspending and terminating her. (Briones Decl., Dkt. 23-11, at 2). In addition, Wilsonart previously investigated and acted on Briones' complaints of gender discrimination—showing its willingness to address such complaints while also revealing that Wilsonart's warehouse may have been a site for continued gender discrimination. (Mathers Dep., Dkt. 21-4, at 6–7). Indeed, Wilsonart only disciplined Williams for alleging that he paid Briones for sex, not for calling her a "whore." (*See* Mathers Dep., Dkt. 21-4, at 9).

Briones also argues that while her complaints against Snell were never investigated, the complaints against Briones were investigated without giving her the opportunity to rebut them,

"giving rise to the inference of gender discrimination." (Dkt. 23, at 20; Briones Decl., Dkt. 23-11, at 2; Mathers Investigation Notes, Dkt. 21-10). While Wilsonart's failure to investigate Briones' claims of gender discrimination by Snell is concerning, Snell and Briones simply did not have comparable track records of alleged violations, whether legitimate or not, under Wilsonart's policy. The difference in Snell and Briones' employment relationship with Wilsonart, coupled with the different number of complaints against the two workers defies Briones' assertion that she and Snell were similarly situated. Because Briones has failed to identify a similarly situated employee who was treated more favorably than her in nearly identical circumstances, her gender discrimination claim must be dismissed.

2. Retaliation

To state a claim for retaliation,[3] Briones must meet the initial burden of showing that: "(1) [she] engaged in a protected activity pursuant to one of the statutes, (2) an adverse employment action occurred, and (3) there exists a causal link connecting the protected activity to the adverse employment action." *Badgerow v. REJ Properties, Inc.*, 974 F.3d 610, 618 (5th Cir. 2020). Once the plaintiff meets her initial burden, the burden shifts to the employer "to articulate some legitimate, nondiscriminatory reason" for its actions. *See McDonnell Douglas*, 411 U.S. at 802, 93 S.Ct. 1817. If the employer proffers a legitimate, nondiscriminatory reason, the burden then returns to the plaintiff to prove that the employer's reason is pretext for unlawful discrimination. *See Septimus v. Univ. of Hous.*, 399 F.3d 601, 607 (5th Cir. 2005). At the pretext stage, the plaintiff must offer evidence "that the adverse action would not have occurred but for [her] employer's retaliatory motive." *See Feist v. La., Dep't of Justice Office of the Att'y Gen.*, 730 F.3d 450, 454 (5th Cir. 2013). "[T]he combination of

[3] Briones brings retaliation claims under Title VII and the TCHRA. The Court notes that these statutes have identical rules for retaliation claims. *Fabela v. Corpus Christi Indep. Sch. Dist.*, 2020 WL 2576175, at *5 (S.D. Tex. May 21, 2020).

suspicious timing with other significant evidence of pretext . . . can be sufficient to survive summary judgment." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 409 (5th Cir. 1999).

Wilsonart argues that Briones cannot demonstrate a *prima facie* case of retaliation or that Wilsonart's decision to terminate her employment was pretext for retaliation. (Dkt. 21, at 23–26). Briones responds that she has in fact established a *prima facie* case of retaliation and that Wilsonart's proffered reason for her termination was pretextual. (Dkt. 23, at 4–18).

First, Wilsonart argues that Briones did not engage in protected activity because she reported Snell's behavior after Wilsonart initiated its investigation against her, and her allegations against Snell did not constitute "allegations of discrimination or harassment." (Dkt. 21, at 24). Wilsonart insists that Snell's repeated use of the word "bitch" to refer to Briones constitutes a "mere stray remark by a contingent worker." (*Id.*). Briones responds that her "multiple reports that Fredrick Snell called her a 'bitch' at work and that he did not want to work with her because she is a woman constitute protected activity." (Dkt. 23, at 4). The Court agrees with Briones. As Briones points out, courts in this Circuit have found that use of the term "bitch" against a plaintiff based on her sex may constitute harassment. *Joseph v. Phillips 66*, 2014 WL 5429455, at *2 (E.D. La. Oct. 24, 2014). Here, Briones not only alleged that she reported Snell's use of the term "bitch" on multiple occasions, but also that she told her managers she believed that Snell refused to work with her or follow her direction on the basis of her sex. (Briones Decl., Dkt. 23-11, at 2). Briones has thus sufficiently demonstrated that she engaged in protected activity when she reported Snell's discriminatory comment and conduct to her supervisors. *See, e.g.*, *Keel v. Wal-Mart Stores, Inc.*, 2012 WL 3263575, at *11 (E.D. Tex. July 17, 2012), *aff'd* , 544 F. App'x 468 (5th Cir. 2013) (explicit complaint of "racially disparaging comment" constituted protected activity under Title VII).

To the extent Wilsonart argues that Briones did not timely report "these alleged issues" or posits that Snell only called her a "bitch" one time, those assertions present a factual dispute that

precludes summary judgment. While Wilsonart argues in its reply that this Court should disregard Briones' declaration in evaluating its motion for summary judgment, declarations based on personal knowledge do in fact constitute proper summary judgment evidence and Wilsonart offers no authority to the contrary. (Reply, Dkt. 24, at 5–7); Fed. R. Civ. P. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."). Wilsonart further attempts to rid itself of the myriad of factual disputes in this action by asserting that Briones' declaration contradicts her deposition testimony, yet Briones' declaration does not contradict her deposition testimony but rather supplements it. (*Compare* Briones Decl., Dkt. 12-11, at 1, *with* Briones Dept., Dkt. 21-2, at 18). The Court rejects Wilsonart's arguments as to the purported incompetence of Briones' sworn declaration.

Next, Wilsonart disputes the existence of a causal relationship between Briones' complaint about Snell and her termination because Mathers, as the decisionmaker with regard to Briones' termination, did not know about her complaint regarding Snell, and another female colleague had already complained about Briones before she made her complaint. (Dkt. 21, at 24–26). Briones counters that she has established a causal nexus through the temporal proximity of her complaint against Snell and her termination. (Dkt. 23, at 7–8). Indeed, Briones told her supervisors about Snell's derogatory comments and refusal to work for her on July 22, 2018, and was terminated on July 30, 2018. (Reply, Dkt. 24, at 3–5). Courts in this Circuit have found a lapse of a week between protected activity and adverse employment decision to be "sufficiently close" to establish causality in support of a *prima facie* case of retaliation. *See, e.g.*, *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 306 (5th Cir. 2020) ("[O]ne-week temporal proximity between filing the level one grievance and being removed from coaching basketball is sufficient evidence of causality to establish a prima facie case of retaliation arising out of those actions.").

With regard to Wilsonart's claim that "there is no evidence that Mathers knew about Briones's complaint" and as such Briones cannot establish that the decisionmaker had any knowledge of her complaint at the time he made the adverse employment decision, Briones has proffered deposition testimony contradicting Wilsonart's assertion. With regard to Mather's knowledge of Briones' complaint against Snell, Beaird recalled "Jason [Mathers] having that information when I spoke to him one time." (Beaird Dep., Dkt. 23-7, at 9). While the Court agrees with Wilsonart that it is "axiomatic that if the decision-maker had no knowledge of protected activity, he could not have used that activity as the basis for his decision," here a factual dispute exists as to whether Mathers knew or should have known about Briones' complaint against Snell at the time he decided to terminate Briones's employment.

The Court similarly rejects Wilsonart's argument that it "could not have been motivated by an unlawful reason in terminating Briones's employment" since she was already under investigation when she made her complaint. (Dkt. 21, at 25) (citing *Garrett v. Metro. Transit Auth. of Harris Cnty.*, 2009 WL 911659, at *7 (S.D. Tex. Mar. 31, 2009)). Yet in evaluating the issue of pretext, the Court in *Garrett* found the plaintiff's retaliation claim to be without merit where she failed to "establish a timeline" between her protected activities and the decision to terminate her employment, and plaintiff only leveled accusations of harassment when she was confronted about complaints against her. *Garrett*, 2009 WL 911659, at *8 (deciding "the issue on pretext: [plaintiff] was accused of unsafe bus operation and failing to pick up passengers; and failed to meet with her supervisors to discuss these complaints."). Here, in contrast, Briones has established a "timeline" between her protected activity and her termination that sufficiently establishes a causal nexus and was never given the opportunity to address the complaints against her. (Briones Decl., Dkt. 23-11, at 2–3; Mathers Decl., Dkt. 21-1, at 3). While *Garrett* is certainly applicable to whether Wilsonart's proffered legitimate,

non-discriminatory reason for Briones's termination was pretext, it does nothing to defeat Briones' success in having shown a causal nexus.

Having established a *prima facie* case of retaliation, the Court turns to Wilsonart's proffered legitimate, non-discriminatory reason for Briones' termination: "violation of company policies due to her inappropriate workplace behavior." (Dkt. 21, at 26). Mathers testified that he decided to terminate Briones' employment based on "very severe allegations that were corroborated by several witnesses" and Briones' supposed failure to cooperate during her July 27, 2018 suspension meeting with human resources. (Mathers, Dep., Dkt. 21-4, at 29–30). As noted above, Miniard testified that she did not seek Briones' cooperation during the July 27 meeting, but rather informed Briones of her suspension. (Miniard Dep., Dkt. 23-6, at 6). Miniard also noted that Briones denied the allegations against her. (*Id.* at 7). Indeed, in her declaration Briones continues to deny the allegations against her and affirm that she was never asked to defend herself against those allegations, but rather summarily told she was being suspended and then terminated. (Briones Decl., Dkt. 23-11, at 2–3). The disputed nature of the complaints against Briones, along with lack of clarity around her "cooperation" during the meeting announcing her suspension, raise a factual issue that precludes summary judgment on Briones' retaliation claim. *See, e.g.*, *Isley v. Aker Phila. Shipyard, Inc.*, 191 F. Supp. 3d 466, 472 (E.D. Pa. 2016) (denying summary judgment on Title VII retaliation claims where plaintiff offered "evidence that would permit a factfinder to disbelieve [d]efendant's justifications for its actions, allowing it to conclude that retaliation was the true motivation"); *Norris v. Wash. Metro. Area Transit Auth.*, 342 F. Supp. 3d 97, 117 (D.D.C. 2018) (denying summary judgment on Title VII sex discrimination claim where plaintiff's declaration did "not make subjective, conclusory statements regarding circumstances over which she lacks personal knowledge, but rather denies that she engaged in specific acts"). As such, Wilsonart's motion for summary judgment on Briones' retaliation claim is denied.

V. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Summary Judgment, (Dkt. 61), is **GRANTED IN PART** and **DENIED IN PART**. Briones's claims against Durcon are dismissed with prejudice. Briones's gender discrimination claims against Wilsonart are dismissed without prejudice. Defendants' motion is denied in all other respects.

SIGNED on April 16, 2021.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE