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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANGELA PULLIAM,

Plaintiff,

v.

UNITED AIRLINES, INC., a Delaware
corporation,

Defendant.

Case No. 2:10-cv-01406-MMD-GWF

ORDER

Before the Court is Defendant United Airlines, Inc.’s Motion for Summary Judgment (dkt. no. 25), Motion to Strike Affidavit of Angela Pulliam (dkt. no. 38), and Motion to Strike Declaration of Jacqueline Van Dyke (dkt. no. 39). The Court has also considered the oppositions and replies filed for these motions.

I. BACKGROUND

Plaintiff Angela Pulliam (“Pulliam”), an African American, was previously employed by United Airlines, Inc. (“United”) as a Customer Service Representative at McCarran International Airport. In August 2010, Pulliam filed suit against United for race and color discrimination and retaliation. Pulliam alleges she was subjected to race and color discrimination on two occasions, the second of which Pulliam also believes was retaliatory in nature.

1 First, in August 2007, one of Pulliam’s supervisors, a Caucasian woman named
2 Patricia Giusti (“Giusti”), issued Pulliam a Level 1 disciplinary notice for being absent
3 from her work area during work hours (the “Giusti Incident”).¹ Pulliam made a complaint
4 against Giusti in November 2007, disputing Giusti’s claim that she was absent from her
5 work area and arguing that Giusti’s treatment of her was motivated by race. United
6 investigated Pulliam’s complaint and determined no race discrimination occurred. United
7 did, however, reduce Pulliam’s level 1 discipline to a letter of counsel.

8 Second, in December 2007 – approximately one month after Pulliam made the
9 complaint against Giusti – another one of Pulliam’s supervisors, LaToyia Hill (“Hill”), an
10 African American, recommended that Pulliam be fired for using inappropriate language
11 towards two United passengers and for leaving work early on a regular basis (the “Hill
12 Incident”). Pulliam was terminated in January 2008 after an investigative hearing where
13 Pulliam was represented by the Union.

14 Pulliam filed suit against United in August 2010 asserting the following claims: (1)
15 race and color discrimination in violation of Title VII of the Civil Rights Act of 1964 and
16 NRS 613.330, (2) race and color discrimination in violation of 42 U.S.C. § 1981, (3)
17 injunctive relief, and (4) retaliation in violation of Title VII. United has now filed a motion
18 for summary judgment as to all claims. Pulliam filed an opposition to United’s motion
19 and in support of that opposition attached, among other exhibits, her own affidavit and a
20 sworn declaration by Jacqueline Van Dyke, another former United employee. United
21 subsequently filed two motions to strike portions of both the affidavit and the declaration
22 for purported violations of the Federal Rules of Evidence. For the reasons discussed
23 below, the Court denies United’s motions to strike but grants its motion for summary
24 judgment.

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28 ¹ United has a progressive discipline policy with level 1 being the least severe.

1 **II. DISCUSSION**

2 **A. United's Motions To Strike**

3 United asks the Court to strike certain portions of Pulliam's affidavit and
4 Jacqueline Van Dyke's sworn declaration, both submitted by Pulliam in support of her
5 opposition to United's motion for summary judgment. United argues that the Court
6 should strike these portions because they are inadmissible as evidence. However, "[a]
7 trial court can only consider admissible evidence in ruling on a motion for summary
8 judgment." *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002). Therefore, a motion
9 to strike is unnecessary because the Court is already obliged to disregard any
10 inadmissible evidence in the affidavit and declaration. Therefore, United's motions to
11 strike are denied.

12 **B. United's Motion For Summary Judgment**

13 **1. Summary Judgment Legal Standard**

14 The purpose of summary judgment is to avoid unnecessary trials when there is no
15 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
16 F.3d 1468, 1471 (9th Cir.1994). Summary judgment is appropriate when the pleadings,
17 the discovery and disclosure materials on file, and any affidavits "show there is no
18 genuine issue as to any material fact and that the movant is entitled to judgment as a
19 matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine"
20 if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for
21 the nonmoving party and a dispute is "material" if it could affect the outcome of the suit
22 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).
23 Where reasonable minds could differ on the material facts at issue, however, summary
24 judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.
25 1995), *cert. denied*, 516 U.S. 1171 (1996). "The amount of evidence necessary to raise
26 a genuine issue of material fact is enough 'to require a jury or judge to resolve the
27 parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897,
28 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service Co.*, 391 U.S. 253, 288-89

1 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all
2 inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v.*
3 *Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

4 The moving party bears the burden of showing that there are no genuine issues
5 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In
6 order to carry its burden of production, the moving party must either produce evidence
7 negating an essential element of the nonmoving party’s claim or defense or show that
8 the nonmoving party does not have enough evidence of an essential element to carry its
9 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
10 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s
11 requirements, the burden shifts to the party resisting the motion to “set forth specific
12 facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The
13 nonmoving party “may not rely on denials in the pleadings but must produce specific
14 evidence, through affidavits or admissible discovery material, to show that the dispute
15 exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do
16 more than simply show that there is some metaphysical doubt as to the material facts.”
17 *Orr v. Bank of America*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted).
18 “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be
19 insufficient.” *Anderson*, 477 U.S. at 252.

20 2. Title VII Discrimination

21 To maintain a claim for Title VII discrimination, a plaintiff must either (1) produce
22 direct evidence demonstrating the employer’s conduct was, more likely than not,
23 motivated by a discriminatory reason, or (2) satisfy the factors of the *McDonnell Douglas*
24 burden-shifting framework. *Surell v. Cal. Water Serv.*, 518 F.3d 1097, 1105 (9th Cir.
25 2008). The Court will first discuss whether Pulliam produces sufficient direct evidence.

26 a. Direct Evidence

27 “Direct evidence is ‘evidence which, if believed, proves the fact [of discriminatory
28 animus] without inference or presumption.’” *Vasquez v. Cty. of Los Angeles*, 349 F.3d

1 634, 640 (9th Cir. 2003). Pulliam provides no direct evidence of discrimination. To the
2 contrary, with respect to the Giusti Incident, Pulliam admitted that Giusti never said
3 anything to her that was inappropriate with regard to race (dkt. 25, United's Motion for
4 Summary Judgment, Ex. 3, Pulliam's Depo., 118:9-19). With respect to the Hill Incident,
5 Pulliam admitted that Hill, also an African American, would not discriminate against her
6 on the basis of race. (*Id.*, at 162:24-164:4). Finally, Pulliam makes no argument in her
7 opposition that she has direct evidence of discrimination. Accordingly, Pulliam must
8 satisfy the factors of *McDonnell Douglas* to prevail on United's motion for summary
9 judgment.

10 **b. McDonnell Douglas Analysis**

11 Under the *McDonnell Douglas* framework, the plaintiff carries the initial burden to
12 establish a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411
13 U.S. 792, 802 (1973). The plaintiff must show that (1) she is a member of a protected
14 class, (2) she was performing according to her employer's legitimate expectations, (3)
15 she suffered an adverse employment action, and (4) similarly situated employees
16 outside her protected class were treated more favorably. *Vasquez*, 349 F.3d at 640 n. 5.
17 If the plaintiff meets her burden, the burden then shifts to the employer to articulate a
18 legitimate, non-discriminatory reason for its conduct. *Id.* at 640. If the employer
19 provides such a reason, the burden shifts back to the plaintiff to prove that the
20 employer's reason is a pretext for discrimination. *Id.*

21 As mentioned above, Pulliam alleges two separate occasions of discrimination,
22 the Giusti Incident and the Hill Incident. The Court will conduct the *McDonnell Douglas*
23 analysis as to each incident individually.

24 **i. The Giusti Incident**

25 Pulliam fails to establish a *prima facie* case of discrimination as to the Giusti
26 Incident because the evidence provided demonstrates she was not performing according
27 to United's legitimate expectations. Giusti issued Pulliam a Level 1 discipline because
28 Pulliam was absent from her work area during work hours, violating two of United's

1 Rules of Conduct (dkt. no. 25, Ex. 4, Rules of Conduct, Rules 37 and 41; *id.* at Ex. 5,
2 Report of Non-Punitive Disciplinary Action). Specifically, on the day in question, Pulliam
3 was required to assist passengers whose flight had been cancelled. (*Id.* at Ex. 6, Giusti
4 Depo., 21:24—24:10; *id.* at Ex. 5, Report of Non-Punitive Disciplinary Action.) However,
5 when Giusti (Pulliam’s supervisor that day) went to the terminal gate to supervise the
6 process, she could not locate Pulliam. (*Id.*) Giusti asked other United employees at the
7 terminal gate for Pulliam’s whereabouts but no one knew where she was. (*Id.*) Giusti
8 checked the terminal gate and the general work area, including the break room, and
9 could not locate Pulliam. (*Id.* at Ex. 6, Giusti Depo., 23:22—24:1.)

10 Pulliam claims that she did not leave her work area, and that Giusti could have
11 easily located her by calling her on the radio. However, Giusti did not believe Pulliam
12 was carrying a radio because employees working in that position do not carry radios.
13 (*Id.* at 24:7-10.) In any event, even if Pulliam was present in her work area, it is sufficient
14 that Giusti legitimately believed otherwise when she issued Pulliam a level 1 discipline.
15 *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (“courts ‘only
16 require that an employer honestly believed its reason for its actions, even if its reason is
17 foolish or trivial or even baseless’”).² Therefore, Pulliam fails to provide sufficient
18 evidence demonstrating that she was performing up to United’s reasonable
19 expectations.

20 However, even if Pulliam were performing according to United’s reasonable
21 expectations, Pulliam also cannot show that there is a factual dispute that similarly
22 situated employees outside her protected class were treated more favorably than her.
23 Indeed, Pulliam points to no other employee who was absent from the work area during

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25 ² United also claims that Pulliam’s computer transaction logs show that she was
26 logged off of her computer during her alleged absence. However, these logs, in the form
27 provided to the Court, are almost indecipherable, (See dkt. no. 25, Motion for Summary
28 Judgment, Ex. 8), and therefore unhelpful. Irrespective of what the logs show, however,
Giusti legitimately believed Pulliam was absent from her work area during the time in
question, and as stated above, this is sufficient.

1 work hours that was not issued a level 1 disciplinary notice. She merely argues that she
2 was the only African American working at the terminal gate during the shift in question,
3 and was also the only employee that was disciplined during the shift. However, this
4 argument is meaningless absent any evidence that there were non-African American
5 employees whom Giusti also believed was absent from the work area and whom she did
6 not discipline. Therefore, Pulliam fails to establish this element of the *prima facie* case
7 as to the Giusti Incident.

8 In addition, Pulliam fails to demonstrate that she suffered an adverse employment
9 action as to the Giusti Incident. For discrimination purposes, an adverse employment
10 action is defined as an adverse action that “materially affect[s] the compensation, terms,
11 conditions, or privilege[s] of [plaintiff’s] employment.” *Rodriquez v. Pierce Cty.*, 267 Fed.
12 Appx. 556, 557 (9th Cir. 2008) (quoting *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115,
13 1126 (9th Cir. 2000)). Initially, Giusti issued Pulliam a level 1 disciplinary notice, the
14 least severe level of discipline at United. (Dkt. no. 25, Motion for Summary Judgment,
15 Ex. 5, Report of Non-Punitive Disciplinary Action.) But ultimately the level 1 discipline
16 was reduced to a Letter of Counsel, a document which basically explained that Pulliam is
17 not to leave her work area again during work hours in order to avoid future discipline.
18 (*Id.* at Ex. 7.) This letter did not affect Pulliam’s employment terms, conditions, etc., and
19 is merely placed in her file as documentation of the incident. Also, the collective
20 bargaining agreement entered into between United and Pulliam’s union notes that letters
21 of counsel are non-disciplinary. (Dkt. no. 37, Reply, Ex. 1, CBA Agreement, Article XVII,
22 § D.) Therefore, Pulliam has not demonstrated she suffered an adverse employment
23 action as a result of the Guisti Incident.

24 In sum, Pulliam fails to provide sufficient evidence to establish a *prima facie* case
25 of discrimination with respect to the Giusti Incident. Accordingly, Pulliam fails to satisfy
26 the *McDonnell Douglas* factors and the Court grants United’s motion for summary
27 judgment as to the Giusti Incident.

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1 The Court will now discuss whether Pulliam satisfies the *McDonnell Douglas*
2 factors as to the second alleged incident of discrimination, the Hill Incident.

3 **ii. The Hill Incident**

4 Pulliam was terminated approximately two months after she made a complaint of
5 discrimination against Giusti. LaToyia Hill, one of Pulliam’s supervisors, recommended
6 Pulliam’s termination for two reasons: (1) a confrontation Pulliam had with two United
7 passengers, and (2) leaving work early regularly. Pulliam alleges she was terminated
8 because of her race, and that these two reasons are merely pretextual.³

9 Specifically, on December 16, 2007, Pulliam was working at a terminal gate when
10 two United passengers missed their flight. (Dkt. no. 25, Motion for Summary Judgment,
11 Ex.15, Incident Report prepared by Beth Nagurny; Ex. 16, Passenger Complaint from
12 Mike Schmid; Ex. 17, Passenger Complaint from Ron Clowes.) One of the passengers
13 purportedly told Pulliam that it was United’s fault that they missed the flight. (*Id.*) The
14 passengers both reported that Pulliam responded by calling him an “asshole.” (*Id.*)
15 Pulliam’s co-worker, Robert De Leon, was present and overheard Pulliam call him a
16 “smart ass.” (*Id.* at Ex. 18, Robert F. De Leon’s Written Statement.) Pulliam claims that
17 she did not use profanity, but instead said “don’t get smart asking me questions.” (*Id.* at
18 Ex. 3, Pulliam Depo., 154:7-155:3).

19 Following Pulliam’s exchange with the two passengers, Hill attempted to locate
20 Pulliam to discuss the incident but was not successful. (*Id.* at Ex. 25, Hill Decla., ¶ 6.)
21 Hill subsequently checked the employee parking lot records and discovered that Hill not
22 only swiped out of the parking lot prior to the end of her shift on the day of the Hill
23 Incident, but on numerous occasions during the months of November and December.

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27 ³ Hill recommended Pulliam’s termination and the termination decision was made
28 after an investigative review hearing where Pulliam was represented by her union
representative. Pulliam does not claim that she was subjected to discrimination or
retaliation during the investigative review hearing process.

1 (*Id.* at Ex. 25, Hill Decla., ¶¶ 6, 7; Ex. 20, Pulliam’s Parking Lot Records.)⁴ Hill
2 conducted an investigation into Pulliam’s exchange with the two passengers and her
3 leaving work early and ultimately decided to recommend that Pulliam be terminated. (*Id.*
4 at Ex. 25, Hill Decla., ¶ 11.)

5 The Court will now analyze the *McDonnell Douglas* factors as to Pulliam’s claim
6 that her termination was racially motivated.

7 **(1) Prima Facie Case**

8 Pulliam meets the elements of a *prima facie* case of discrimination as to the Hill
9 Incident, at least with respect to her leaving work early. First, Pulliam provides sufficient
10 evidence to demonstrate she was performing up to United’s expectations when she was
11 terminated because it was common for some employees to leave work early without
12 permission from supervisors. Pulliam attaches a declaration from another former United
13 employee, Jacqueline Van Dyke, wherein Van Dyke states that it was “very common that
14 when the last flight that we would be working on for a particular shift was finished that
15 the Service Directors (who were often delegated this task by Supervisors) or Supervisors
16 would dismiss us and tell us to leave and ‘have a good day’ even though it might still be
17 several minutes before our official stop work time.” (Dkt. no. 32, Van Dyke Decla., Ex. 2,
18 ¶ 5.)⁵ In her affidavit, Pulliam claims that supervisors would often “see them leaving and
19 wish them a good evening and thank them for their work that day.”⁶ (*Id.* at Ex. 3, ¶ 25.)

20 Additionally, Pulliam provides evidence that on the day in question, December 16,
21 two other employees scheduled for Pulliam’s shift, (*id.* at Ex. 29, Las Vegas Gate

22 ⁴ Because it takes Pulliam roughly 10 minutes to get to the parking lot from her
23 gate terminal, (dkt. no. 25, Motion for Summary Judgment, Ex. 3, Pulliam Depo.,
24 170:19), Pulliam must have actually left her work area about 12 minutes prior to the end
of her shift.

25 ⁵ United argues that this statement is inadmissible for lack of personal knowledge.
26 However, the Court finds that Van Dyke can testify as to her experiences as an
27 employee with United, and the things she observed. Furthermore, the supervisor’s
statement of “have a good day” is not hearsay because it is not offered to prove the truth
of the matter asserted, it is offered as a verbal act.

28 ⁶ This statement is admissible as evidence for the same reasons Van Dyke’s
statement is admissible.

1 Schedule), also left work early (*id.* at Exs. 30 and 31). Another United employee testified
2 that with a certain flight he would routinely leave “five minutes before the end of our
3 shift.” (*id.* at Ex. 8, De Leon Depo., 37:4-23.) Therefore, Pulliam’s evidence is sufficient
4 to establish, at least at this stage, that it was common for some employees to leave work
5 early, and that their supervisors were aware they were leaving early. Thus, viewing all
6 facts and drawing all inferences in the light most favorable to Pulliam, the Court finds
7 Pulliam demonstrates that she was performing up to United’s expectations when she
8 was leaving work early.

9 Pulliam fails, however, to establish she was performing up to United’s reasonable
10 expectations when she confronted the two United passengers. Pulliam’s only evidence
11 as to this confrontation is her own affidavit. (Dkt. no. 32, Opposition, Ex. 3, ¶ 33.)
12 Pulliam claims she did not use profanity during this confrontation but only said “don’t get
13 smart asking me questions.” (*id.*) However, as discussed above, both the passengers
14 and Pulliam’s co-worker claim she used profanity. (Ex. 16, Passenger Complaint from
15 Mike Schmid; Ex. 17, Passenger Complaint from Ron Clowes; *id.*, at Ex. 18, Robert F.
16 De Leon’s Written Statement.) More importantly, any of the above statements would
17 violate United’s Rules of Conduct. (Dkt. no. 25, Ex. 4, Rules of Conduct, Rule 41; *id.* at
18 Ex. 28, Nicholson Decla., ¶ 9.) Therefore, Pulliam fails to establish that she was
19 performing up to United’s expectations as to the confrontation with the two passengers.

20 The fourth element in a *prima facie* case for discrimination is that similarly situated
21 employees outside the plaintiff’s protected class were treated more favorably. *Vasquez*,
22 349 F.3d at 640 n. 5. Pulliam also meets this element as to her leaving work early
23 because, as discussed above, her evidence shows that other non-African American
24 employees left work early and were not discharged as she was. However, Pulliam fails
25 to establish that she was treated differently with respect to her exchange with the two
26 passengers. Pulliam provides no evidence that another, non-African American United
27 employee had such an exchange with United passengers and received no discipline.

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1 The other two elements of the *prima facie* case are undisputed; Pulliam is a
2 member of a protected class and she suffered an adverse employment action when she
3 was terminated. Therefore, in sum, Pulliam demonstrates a *prima facie* case as to her
4 being discharged for leaving work early but not for her exchange with the passengers.

5 **(2) Legitimate, Non-Discriminatory Reasons**

6 Now the burden shifts to United to demonstrate a legitimate, non-discriminatory
7 reason for discharging Pulliam. *Vasquez*, 349 F.3d at 640. United argues that it
8 discharged Pulliam for two reasons: (1) violating its policy forbidding employees from
9 leaving work before their shift ends, and (2) using inappropriate language in a
10 confrontation with two United passengers, a violation of United's Rules of Conduct.

11 First, with respect to Pulliam's leaving work early, Defendants point out that in
12 order to leave work early an employee must fill out an exceptions form and present it to
13 United for approval, something Pulliam did not do. (Dkt. no. 37, Reply, Ex. 7, French
14 Depo., 54:12-55:23.) Furthermore, United points out that it had an employee posting at
15 the job site reminding employees of this policy, so Pulliam should have known about it.
16 (*Id.* at Viera Depo., 36:16-25.) Thus, United argues, Pulliam violated its policy by leaving
17 work early without completing an exceptions form, and in so doing she also violated
18 United's Rules of Conduct. (*Id.* at Ex. 4. Rules of Conduct, Rule 3; dkt. no. 37, Reply,
19 Ex. 7, Chudoba-French Depo., 54:4-55:24.) The Court finds this is a legitimate non-
20 discriminatory reason for Pulliam's termination.

21 Second, even if Pulliam did establish a *prima facie* case of discrimination as to
22 her confrontation with the passengers, the Court finds that United had a legitimate, non-
23 discriminatory reason for terminating her for that confrontation. As discussed above, any
24 of the statements made by Pulliam that have been offered into evidence would violate
25 United's Rules of Conduct. (Dkt. no. 25, Ex. 4, Rules of Conduct, Rule 41; *id.* at Ex. 28,
26 Nicholson Decla., ¶ 9.) Thus, in sum, United provides sufficient evidence to show that
27 Hill had a legitimate, non-discriminatory basis on which to recommend Pulliam's
28 termination.

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(3) Pretext

The burden now shifts to Pulliam to demonstrate that United's proffered reasons are pretextual. The Court finds Pulliam has not shown pretext. First, Pulliam claims that she was terminated because of Giusti's racial animus towards her (dkt. no. 32, Opposition, 23:16-17), yet she offers no evidence that Giusti was involved in her termination process. Rather, it was Hill who recommended her termination and Pulliam admits that Hill did not discriminate against her on the basis of race. (Dkt. no. 25, Motion for Summary Judgment, Ex. 3, Pulliam Depo., 162:24-164:4.) Pulliam then points to evidence that others outside of her protected class left work early (*supra* at Sect. II(B)(2)(b)(ii)(1)), and were not disciplined. However, it is undisputed that Hill was not aware of these other employees when Hill recommended Pulliam's discharge (*id.* at Ex. 25, ¶ 10), undermining any claim that Hill discriminated between Pulliam and these other employees. While Pulliam offers sufficient evidence to show that it was common for some employees to leave work early without permission from supervisors (*supra* at Sect. II(B)(2)(b)(ii)(1)), there is no evidence that Hill knew about this practice or participated in this practice. And it is undisputed that if Hill had become aware of these other employees leaving early she would have recommended their termination. (*Id.*) Additionally, United provides evidence of other employees outside Pulliam's protected class who left work early and were terminated as Pulliam was. (Dkt. no. 25, Motion for Summary Judgment, Ex. 29, French Decla., ¶¶ 5, 6; *id.*, at Ex. 22, Viera Depo., 37:12—39:25; dkt. no. 57.) Therefore, the evidence before the Court demonstrates that United's proffered reasons for terminating Pulliam are credible, and therefore, not pretextual.

(4) Two Independent Reasons for Firing

24 As stated above, United had two independent reasons for discharging Pulliam, (1)
25 her exchange with the two United passengers, and (2) her leaving work early. However,
26 Pulliam did not establish a *prima facie* case as to her exchange with the two United
27 passengers. Therefore, even assuming Pulliam can show pretext as to her leaving work

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1 early, United still has another independent reason on which it discharged Pulliam – her
2 exchange with the passengers.

3 In general, when an employer has two independent reasons for discharging an
4 employee, the employee must show that both reasons were improper. See *Jaramillo v.*
5 *Colo. Jud. Dept.*, 427 F.3d 1303, 1310 (10th Cir. 2005) (“an employee must proffer
6 evidence that shows each of the employer’s justifications are pretextual”); *Ghosh v.*
7 *Indiana Dep’t of Env’tl. Mgmt.*, 192 F.3d 1087, 1092-93 (7th Cir. 1999) (“[w]hen the
8 defendant offers multiple reasons for its employment decision, the plaintiff must show
9 that all of the proffered reasons are pretextual in order to reverse the district court’s grant
10 of summary judgment”); *Combs v. Plantation Patters, Meadowcraft, Inc.*, 106 F.3d 1519,
11 1538-39 (11th Cir. 1997); *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1298 (D.C. Cir.
12 1998).

13 Exceptions to this rule do exist. For example, if the employer piles on a number
14 of reasons to support its employment decision, a reasonable jury could find *all* of the
15 reasons are suspicious even though there is evidence debunking only *some* of them.
16 *Smith v. Chrysler Corp.*, 155 F.3d 799, 809 (6th Cir. 1998); *Fuentes v. Perskie*, 32 F.3d
17 759, 764-65 n. 7 (3rd Cir. 1994); *Chapman v. Al Transp.*, 229 F.3d 1012, 1048-51 (11th
18 Cir. 2000). “Debunking one of the employer’s explanations defeats the case for
19 summary judgment ‘only if the company has offered no other reason that, if that reason
20 stood alone (more precisely if it did not have support from the tainted reason), would
21 have caused the company to take the action of which the plaintiff is complaining.’”
22 *Jarmillo*, 427 F.3d at 1310 (citing *Russell v. Acme-Evans Co.*, 51 F.3d 64, 69 (7th Cir.
23 1995)). However, the Court finds that none of these exceptions are present in this case.

24 United did not pile on numerous unrelated reasons to support its decision to
25 discharge Pulliam, it only provided two reasons, both of which grew out of the same
26 incident on December 16, 2007. Furthermore, it is undisputed that Hill would have
27 recommended termination for either reason, independent of the other. (Dkt. no. 25,
28 Motion for Summary Judgment, Ex. 25, Hill Decla., ¶ 11.) Therefore, the Court finds that

1 even if Pulliam had provided evidence of pretext as to one of United's reasons for
2 discharging her – her leaving work early – summary judgment is proper as to the entirety
3 of her claim (as to the Hill Incident). And because Pulliam has failed to establish a *prima*
4 *facie* case as to the Giusti Incident as well (see above), the Court grants United's motion
5 for summary judgment as to Pullman's Title VII discrimination claim.

6 **3. Section 1981 and NRS 613.330**

7 The Court grants United's motion for summary judgment as to Pulliam's § 1981
8 and NRS 613.330 claims for the same reasons it grants the motion as to the Title VII
9 discrimination claim.

10 **4. Title VII Retaliation**

11 To maintain a retaliation claim, a plaintiff must show (1) involvement in a
12 protected activity, (2) an adverse employment action, and (3) a causal link between the
13 two. *Payne v. Norwest Corp.*, 113 F.3d 1079, 1080 (9th Cir. 1997). Thereafter, the
14 burden of production shifts to the employer to present legitimate reasons for the adverse
15 employment action. See *id.* Once the employer carries this burden, plaintiff must
16 demonstrate a genuine issue of material fact as to whether the reason advanced by the
17 employer was a pretext. See *id.* Only then does the case proceed beyond the summary
18 judgment stage.

19 Pulliam's retaliation claim fails because she has not provided sufficient evidence
20 to establish a causal link between her involvement in a protected activity – her complaint
21 of race discrimination against Giusti – and the adverse employment action – her
22 termination. To the contrary, the evidence provided demonstrates that Hill, who
23 recommended Pulliam's termination, undisputedly did not even know that Pulliam made
24 a complaint of race discrimination against Giusti. (Dkt. no. 25, Latoyia Hill Decla., Ex.
25 25, ¶ 13; *id.* at Ex. 3:199:4-18; dkt. no. 37, Giusti Depo., Ex. 3, 42:16-22.) United's
26 investigations are kept confidential, (*id.* at Ex. 10, Nicholson Depo., 35:23-36:20), and it
27 is undisputed that Hill was not involved in United's investigation of Pulliam's
28 discrimination complaint against Giusti. (Dkt. no. 25, Latoya Hill Decla., Ex. 25 ¶ 13; *id.*

1 at Ex. 28, ¶ 5.) Pulliam fails to offer any admissible evidence to dispute that Hill did not
2 know about her complaint of discrimination against Giusti.⁷

3 Pulliam's only other evidence of causation is the closeness in time between her
4 discharge and her filing of a race discrimination complaint against Giusti. She filed the
5 complaint in November 2007 and was discharged two months later in January 2008.
6 "[W]hen adverse employment decisions are taken within a reasonable period of time
7 after complaints of discrimination have been made, retaliatory intent may be inferred."
8 *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d. 493, 507 (9th Cir. 2000).
9 Although there is a closeness in time present in this case, the Court finds that this fact
10 alone is insufficient to create a fact question as to causation, *Anderson*, 477 U.S. at 252
11 ("[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be
12 insufficient"), especially given the evidence that Hill had no knowledge of Pulliam's
13 complaint against Giusti.

14 Furthermore, even if Pulliam could establish a causal link – and therefore a *prima*
15 *facie* case of retaliation – the Court finds that, as discussed above, United has presented
16 legitimate reasons for discharging Pulliam, which Pulliam has not demonstrated as being
17 pretextual. Accordingly, the Court grants United's motion as to this claim.

18 5. Injunctive Relief

19 Pulliam seeks an injunction requiring United to, among other things, prevent and
20 remedy acts of race discrimination in its workplace. However, as Pulliam provides
21 insufficient evidence to establish such discriminatory acts occurred, or are occurring, at

22 ///

23 ⁷ Pulliam has admitted that she has no information to show that Hill knew about
24 her discrimination complaint to Giusti (dkt no. 25-3 at 199:4-18). Pulliam claims that
25 "many people" working at McCarran International Airport informed her that they "knew
26 about the complaint" she made against Giusti. (Dkt. no. 32, Pulliam Affidavit, ¶ 6.)
27 However, this is inadmissible hearsay and is far too vague to create a dispute of fact as
28 to Hill's knowledge. Additionally, Pulliam's statement does not clarify whether these
"many people" even knew Pulliam's complaint alleged racial discrimination. This is
critical because, for purposes of a Title VII retaliation claim, a complaint against a co-
worker only constitutes protected activity if the complaint asserts a violation of Title VII.
42 U.S.C. § 2000e-3(a).

1 United, the Court finds she is not entitled to the requested injunctive relief. Therefore,
2 the Court grants United's motion as to this claim as well.

3 **III. CONCLUSION**

4 Accordingly, and for good cause appearing,


5 IT IS HEREBY ORDERED that United's Motion to Strike Affidavit of Angela
6 Pulliam (dkt. no. 38) is DENIED.

7 IT IS FURTHER ORDERED that United's Motion to Strike Declaration of
8 Jacqueline Van Dyke (dkt. no. 39) is DENIED.

9 IT IS FURTHER ORDERED that United's Motion for Summary Judgment (dkt. no.
10 25) is GRANTED.

11 The Court instructs the Clerk of Court to close the case.

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13 DATED THIS 24th day of July 2012.

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17 UNITED STATES DISTRICT JUDGE
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