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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEPHEN ACHEAMPONG, *et al.*,

Plaintiffs,

v.

LAS VEGAS VALLEY WATER DISTRICT,

et al.,

Defendants.

Case No. 2:15-cv-00981-RFB-PAL

ORDER

Motions for Summary Judgment

I. INTRODUCTION

Before the Court are Defendant's Motions for Summary Judgment. ECF Nos. 45 – 54. For the reasons stated below, the Motions are granted in part and denied in part.

II. PROCEDURAL BACKGROUND

Defendant filed a petition for removal on May 27, 2015. ECF No. 1. On June 3, 2015, Defendant filed a Motion to Dismiss. ECF No. 7. On February 18, 2016, this Court held a hearing on the Motion to Dismiss, in which it granted the motion and gave the Plaintiffs 45 days to file an amended complaint. Plaintiffs filed an Amended Complaint on April 18, 2016. ECF No. 35. Defendant filed an Answer on May 2, 2016. ECF No. 37. Discovery closed on January 30, 2017.

1 ECF No. 42. Dispositive motions were due on March 30, 2017. ECF No. 44. Defendant filed the
2 instant Motions for Summary Judgment on March 17 and 18, 2017. ECF Nos. 45-54. On May 30,
3 2017, Defendant filed a Stipulation and Order to Consolidate Cases for Trial. ECF No. 75.
4

5 6 **III. LEGAL STANDARD**

7 **A. Motion for Summary Judgment**

8 Summary judgment is appropriate when the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
10 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
11 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering
12 the propriety of summary judgment, the court views all facts and draws all inferences in the light
13 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.
14 2014). If the movant has carried its burden, the non-moving party “must do more than simply show
15 that there is some metaphysical doubt as to the material facts Where the record taken as a
16 whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
17 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
18 marks omitted).
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22 **IV. UNDISPUTED FACTS**

23 The Court finds the following facts to be undisputed.
24

25 **A. Facts Relevant to All Plaintiffs**

26 The Las Vegas Valley Water District (“The District”) is a not-for-profit utility that began
27 providing water to the Las Vegas Valley in 1954. The Southern Nevada Water Authority
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1 (“SNWA”) is a separate joint powers authority formed in the early 1990’s by a number of area
2 political subdivisions of the State of Nevada (including the District, North Las Vegas, Las Vegas,
3 Boulder City, and Henderson) to manage the region’s water resources. The District supplies
4 personnel and funds to operate the SNWA.
5

6 When the District hires an employee, the employee receives a Handbook, which outlines
7 the District’s general policies and procedures (“Handbook”). Some, but not all, employees are
8 members of unions covered by Collective Bargaining Agreements (“CBAs”).
9

10 From 2008 to 2011, the nation was mired in a severe economic downturn, and Las Vegas’
11 economy was profoundly affected. The economic downturn dramatically diminished the District’s
12 revenues, as the level of new construction during that timeframe declined. Declining construction
13 meant declining connection fees. Connection revenue went from approximately \$188 million in
14 2008 to approximately \$3 million by 2010.
15

16 General Manager Pat Mulroy addressed the economic downturn in her “General Manager
17 Briefings” from 2009 to 2011. She informed those in attendance that, “under her watch,” the
18 District was doing its best to not lay anyone off during recession, and it was utilizing other options
19 in an effort to address the decreasing revenue. However, the District continued to have financial
20 challenges, experiencing the absence of new construction in the Valley and facing difficulties with
21 bond obligations. In 2013, the Board approved a new Strategic Plan, in which the central goal was
22 the management of resources in a responsible manner. This led to a major shift in the District’s
23 focus, from growth and development of new resources to operation and maintenance of existing
24 resources.
25

26 When the new General Manager, John Entsminger, took over in February of 2014, he met
27 with his Deputy General Managers to evaluate a reduction in force to address the lack of new
28

1 development, falling revenues, and to better meet the District’s new Strategic Plan. In doing so,
2 Entsminger directed department heads to review workload and staffing levels for their respective
3 departments and focus on retaining only what was necessary to sustain the core functions of the
4 District and SNWA from 2014 to the “reasonably foreseeable future.” Entsminger did not set any
5 targets for the reduction and each department was solely responsible for selection of employees
6 for the layoffs. It was not a District-wide reduction by any set classification. Department heads
7 would provide the list to the Senior Management Committee, and Pat Maxwell—the director of
8 the Human Resources department—would review the list for any disparate impact on protected
9 categories of employees. She ultimately approved a list that she believed had no disparate impact.
10 In total, 101 positions from the District and the SNWA were eliminated in the reduction in force
11 (“RIF”), spanning nearly all departments.

14 **B. Facts Relevant to Plaintiff Talley (ECF No. 48)**

15 Plaintiff Talley began working at the District in 2005 and was employed as a Materials
16 Handler II when he was included in the RIF in 2013. Plaintiff Talley was over forty years of age
17 when he was included in the RIF. Three of the four material handlers in Plaintiff Talley’s
18 department were included in the RIF, with only the most senior employee remaining with the
19 District. Plaintiff Talley was covered by a CBA.

21 **C. Facts Relevant to Plaintiff Pridgen (ECF No. 49)**

22 Plaintiff Pridgen was employed as a Business Analyst in the IT Department at the District
23 when she was included in the RIF in 2013. Plaintiff Pridgen was over forty years old when she
24 was included in the RIF. Plaintiff Pridgen was not covered by a CBA.

26 **D. Facts Relevant to Plaintiff Halverson (ECF No. 50)**

27 Plaintiff Halverson was employed as a Resource Analyst on the Resource Planning Team
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1 at the District when he was included in the RIF in 2013. Plaintiff Halverson was over forty years
2 old when he was included in the RIF. During the RIF, the District retained William Murray, the
3 other Resource Analyst on the Resource Planning Team, who was younger than Halverson and
4 had been with the District for less time. Plaintiff Halverson was not covered by a CBA.
5

6 **E. Facts Relevant to Plaintiff Bordelois (ECF No. 50)**

7 Plaintiff Bordelois was employed as a Civil Engineer at the District when she was included
8 in the RIF in 2013. Plaintiff Bordelois and her same-sex partner spoke with Pat Maxwell in human
9 resources regarding the mishandling of insurance and tax issues related to their status as a same-
10 sex couple and filed a complaint with the District regarding these issues. Plaintiff Bordelois was
11 included in the RIF fifteen months later.
12

13 **F. Facts Relevant to Plaintiff Jackson (ECF No. 51)**

14 Plaintiff Jackson was employed as a Civil Engineer in the Engineering Services Division
15 of the District when he was included in the RIF in 2013. Plaintiff Jackson was over forty years old
16 when he was included in the RIF. During the RIF, the District retained Jason Ghadery, another
17 Civil Engineer, who was younger than Plaintiff Jackson. Plaintiff Jackson was not covered by a
18 CBA.
19

20 **G. Facts Relevant to Plaintiff Morgan (ECF No. 51)**

21 Plaintiff Morgan was employed as a Senior Civil Engineer in the Engineering Services
22 Division of the District when he was included in the RIF in 2013. Plaintiff Morgan was over forty
23 years old when he was included in the RIF. During the RIF, the District retained Michael Dishari,
24 another Senior Civil Engineer, who was younger than Plaintiff Morgan. Plaintiff Morgan was not
25 covered by a CBA.
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27 **H. Facts Relevant to Plaintiff Russo (ECF No. 52)**
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1 Plaintiff Russo was employed as a Mechanical Engineer, P.E. at the District when he was
2 included in the RIF in 2013. Plaintiff Russo was over forty years old when he was included in the
3 RIF. Plaintiff Russo was not covered by a CBA.
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5 **I. Facts Relevant to Plaintiff Wilson (ECF No. 53)**

6 Plaintiff Wilson had been with the District for ten years and was employed as a
7 Construction Engineer, P.E. when he was included in the RIF in 2013. Plaintiff Wilson was over
8 forty years old when he was included in the RIF. Plaintiff Wilson was not covered by a CBA.
9

10 **V. DISCUSSION**

11 As a preliminary matter, the Court notes that the Plaintiffs only chose to defend certain
12 claims in responding to the Motions for Summary Judgment. The Court will only discuss those
13 claims that were defended and deems all other claims to be abandoned by the Plaintiffs.
14

15 **A. ADEA Disparate Treatment Claims**

16 **1. Legal Standard**

17 In response to the Motions for Summary Judgment, Plaintiffs have indicated that they are
18 only pursuing the ADEA claims under a disparate treatment theory. The ADEA makes it “unlawful
19 for an employer ... to ... discharge any individual [who is at least 40 years old] ... because of such
20 individual’s age.” 29 U.S.C. §§ 623(a)(1), 631(a); Pottenger v. Potlatch Corp., 329 F.3d 740, 745
21 (9th Cir. 2003). “To prevail on a claim for age discrimination under the ADEA, a plaintiff must
22 prove at trial that age was the ‘but-for’ cause of the employer's adverse action... ‘Unlike Title VII,
23 the ADEA's text does not provide that a plaintiff may establish discrimination by showing that age
24 was simply a motivating factor.’” Shelley v. Geren, 666 F.3d 599, 607 (9th Cir. 2012) (citing Gross
25 v. FBL Fin. Servs., 557 U.S. 167, 176 (2009)).
26

27 At the summary judgment stage, the Ninth Circuit applies the burden-shifting framework
28 established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) in ADEA cases. Shelley,

1 666 F.3d at 607. First, the Plaintiff must establish a prima facie case of age discrimination through
2 circumstantial evidence by showing that: he was “(1) a member of a protected class [age 40-70];
3 (2) performing his job in a satisfactory manner; (3) discharged; and (4) replaced by a substantially
4 younger employee with equal or inferior qualifications.” Nidds v. Schindler Elevator Corp., 113
5 F.3d 912, 917 (9th Cir. 1996)(internal citations omitted). As to the fourth element, when the
6 discharge results from a general reduction in workforce, courts require instead “circumstantial,
7 statistical, or direct evidence that the discharge occurred under circumstances giving rise to an
8 inference of age discrimination.” Rose v. Wells Fargo & Co., 902 F.2d 1417, 1421 (9th Cir. 1990).

9 If the plaintiff establishes a prima facie case, the burden shifts to the employer to articulate
10 a non-discriminatory reason for its employment decision. Coleman v. Quaker Oats Co., 232 F.3d
11 1271, 1281 (9th Cir. 2000). If the employer does so, then in order to prevail, the plaintiff must
12 show that the alleged reason for the adverse employment action was a pretext for a discriminatory
13 motive. Id. The plaintiff can prove pretext “(1) indirectly, by showing that the employer's proffered
14 explanation is 'unworthy of credence' because it is internally inconsistent or otherwise not
15 believable, or (2) directly, by showing that unlawful discrimination more likely motivated the
16 employer.” Shelley, 666 F.3d at 609 (internal citation omitted).

17 18 **2. Discussion**

19 The Court, prior to addressing the arguments for each plaintiff, makes one preliminary
20 finding. Specifically, the Court finds that Plaintiffs have not established through disputed or
21 undisputed evidence that the District engaged in a systemic effort to target older employees for
22 inclusion in the RIF. Plaintiffs have presented no systemic analysis of the termination of District
23 employees under the RIF to suggest the existence of a pattern of discrimination in relation to
24 inclusion of an employee in the RIF. Indeed, the Plaintiffs conceded at oral argument that they had
25 no such analysis or expert testimony in this regard. Plaintiffs simply seek to rely upon the
26 proximity to retirement of some of the plaintiffs who were terminated under the RIF—without
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1 even identifying if this itself was a verifiable or documented pattern throughout the RIF. This is
2 insufficient by itself to create an inference of pretext for all of the older employees included in the
3 RIF or to support an argument for disparate impact as to the RIF.

4
5 *i. Plaintiff Talley (ECF No. 48)*

6 As to the prima facie case, Defendant LVVWD concedes that Plaintiff was over 40 (and
7 thus falls in a protected class) and was discharged as part of the RIF, but argues that he cannot
8 establish the other necessary elements. Although Defendant never explicitly concedes that Plaintiff
9 Talley was performing his job in a satisfactory manner, it does not make any arguments regarding
10 this element. Rather, it focuses solely on the argument that Plaintiff Talley has not offered
11 sufficient direct or circumstantial evidence that his inclusion in the RIF was due to a discriminatory
12 motive. As Talley has offered evidence that his job duties were still necessary to and performed
13 by employees at the District after he was included in the RIF, the Court finds that Plaintiff has
14 raised a sufficient inference of discriminatory intent to establish a prima facie case. See Merrick
15 v. Hilton Worldwide, Inc., 867 F.3d 1139, 1146 (9th Cir. 2017).
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18 Plaintiff argues that this same evidence also raises an inference of pretext sufficient to
19 survive summary judgment. Plaintiff states that his primary job duties as a Materials Handler II
20 were “receiving and shipping items, stock and supplies the District ordered. We checked out
21 materials the employees of the District needed. We kept the warehouse stocked to meet the Water
22 District’s needs.” ECF No. 61, Ex. A at ¶ 12. Plaintiff states that out of the four Materials Handler
23 IIs, he was the only one laid off. However, he admits that the Materials Handler IIs who were
24 retained were more senior than him in the Department and possibly in the District. ECF No. 48,
25 Ex. G at 89:21-90:10. Plaintiff Talley’s CBA provided, “employees shall be laid off by District
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1 seniority from the affected job classifications as follows...” ECF No. 48, Ex. H.¹ Defendant
2 includes a declaration from the former Human Resources Director, Patricia Maxwell, who states
3 that “[t]he only consideration given to Talley being chosen for the RIF was his seniority in the
4 department.” As Plaintiff Talley does not dispute that he was the least senior employee in his job
5 classification, the Court finds that the District was merely following the requirements of the CBA
6 when it selected him for the RIF. The Court finds that Plaintiff Talley has not established a disputed
7 fact regarding whether the District’s stated reason for terminating him was pretextual. Summary
8 judgment is granted as to Plaintiff Talley.
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11 *ii. Plaintiff Pridgen (ECF No. 49)*

12 As to the prima facie case, the District also does not dispute that Plaintiff Pridgen was over
13 forty years old or that she was included in the RIF and does not raise any arguments regarding job
14 performance. Plaintiff Pridgen argues that she has raised an inference of discrimination because
15 her duties continue to be performed at the District after she left. She states that she was a project
16 manager for the Learning Management System implementation, which tracked training and
17 certification for District employees, and that she managed the IT budget. ECF No. 72, Ex. A at ¶¶
18 10-13. She claims that “[t]he type of work I was responsible for never ceased during the recession
19 and continues regardless of the status of the economy” and that “[t]his type of work continues after
20 the layoffs.” *Id.* at ¶¶ 16-17. Based on this information, the Court finds that Plaintiff Pridgen has
21 established a prima facie case. Merrick, 867 F.3d at 1146.
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24 Defendant argues that the reason it included Plaintiff Pridgen in the RIF was that “her skills
25 did not fit the needs of the IT department, as she did not perform software development or business
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¹ Plaintiff urges the Court to interpret this provision to mean that the District would lay off employees covered by this CBA from a pool of all covered employees, rather than from within each affected apartment. As explained below in the discussion of Plaintiff’s promissory estoppel claim, the Court rejects this interpretation.

1 analyst work.” ECF No. 49 at 14. However, Plaintiff Pridgen states in her declaration and
2 deposition that there were employees in the IT Department who had functions besides software
3 development and business analysis, including the work she did in project management and
4 budgeting. As Defendant’s stated reason for terminating her conflicts with other evidence in the
5 record, the Court finds that Plaintiff Pridgen has established a question of fact regarding pretext.
6
7 Summary judgment is denied as to Plaintiff Pridgen.

8 *iii. Plaintiff Halverson (ECF No. 50)*

9 The Court finds that Plaintiff Halverson has also provided sufficient circumstantial
10 evidence of discriminatory intent to survive summary judgment on this claim. Plaintiff Halverson
11 identifies William Murray, the other Resource Analyst on the Resource Planning Team, who was
12 younger than Halverson and had been with the District for less time, but was not included in the
13 RIF when Halverson was. The District provides a declaration from Patricia Maxwell, the former
14 human resources director, who explains that the District decided to retain Murray rather than
15 Halverson because it found Murray’s job functions to be more essential and because the District
16 was looking into automating some of Halverson’s job functions. Under these circumstances, with
17 two competing declarations attempting to explain a decision, Plaintiff Halverson has raised a
18 material question of fact regarding whether his age was the true motivation for his inclusion in the
19 RIF. This is sufficient to establish a prima facie case and to raise a factual dispute regarding pretext.
20
21 Summary judgment is denied as to Plaintiff Halverson.
22

23 *iv. Plaintiffs Morgan and Jackson (ECF No. 51)*

24 Plaintiffs Morgan and Jackson also identify younger employees in their departments who
25 were retained after the RIF. Morgan identifies Michael Dishari, who was younger than Morgan
26 and remained at the District in the same position he held – Senior Civil Engineer – when Morgan
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1 was included in the RIF. Morgan acknowledges that Dishari was hired at the District before him,
2 but points out that Dishari had only been in the Engineering Services Division for one year,
3 whereas Morgan had been there for his entire tenure of eleven years at the District. Jackson
4 identifies Jason Ghadery, who was younger than him and remained at the District after the RIF,
5 even though he had only one year of experience as a Civil Engineer at the time. Once again,
6 Defendant argues that these employees were retained because of their experience in certain areas
7 and performance of various job functions, and not because of Defendant's preference for younger
8 employees. The Court finds, however, that this conflicting evidence is sufficient to establish a
9 prima facie case and raise a genuine question of material fact regarding pretext. The Court denies
10 summary judgment as to Plaintiffs Morgan and Jackson.
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12
13 *v. Plaintiff Russo (ECF No. 52)*

14 The District concedes that Plaintiff Russo was over forty years old at the time he was
15 terminated and that he was included in the RIF, and they fail to make an argument regarding his
16 performance. Plaintiff Russo argues that the fact that three out of the four mechanical engineers in
17 his group were retained and continued to do maintenance and repair work while he was terminated
18 gives rise to an inference of age discrimination sufficient to establish a prima facie case. The Court
19 disagrees.
20

21 The only project he was working on at the time of his termination, an assessment of all
22 pipelines within the Southern Nevada Water Systems called Project 340R, was in its final stages
23 and the only remaining task for the project was the receipt of a final report from the consultant
24 who assisted with the closeout paperwork. Plaintiff Russo admits that the District had not yet
25 agreed to implement any of his additional recommendations at the time he was terminated and he
26 was thus not aware of any additional tasks he would be assigned. The Court thus finds that Plaintiff
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1 has not raised a factual dispute regarding pretext for his termination. Summary judgment is granted
2 as to Plaintiff Russo.

3 *vi. Plaintiff Wilson (ECF No. 53)*

4 The District concedes that Plaintiff Wilson was over forty years old at the time he was
5 terminated and that he was included in the RIF, and they fail to make an argument regarding his
6 performance. Plaintiff Wilson argues that at least some of his job duties continued to be performed
7 at the District after he was included in the RIF. The Court finds this sufficient to establish a prima
8 facie case. Merrick, 867 F.3d at 1146.

9 Defendant asserts that Plaintiff Wilson was included in the RIF because he was a
10 construction engineer and, due to the decline in construction, the District had less work for him to
11 perform. Plaintiff Wilson responds that he performed a variety of tasks at the District, “including
12 updating the water infrastructure and facilities, maintaining equipment warranties, handling
13 contracts for well-abandonment projects, developing a valve operations plan[], and reviewing and
14 updating storm runoff plans.” ECF No. 73 at 6-7. He states that these projects are necessary for
15 the continued operation of the District and continued after he left. Id. at 7. The Court finds that
16 Plaintiff Wilson has raised a question of fact regarding whether the District’s stated reasons for
17 including him in the RIF were pretextual. Summary judgment is denied as to Plaintiff Wilson.

18 **B. Promissory Estoppel Claims**

19 ***1. Legal Standard***

20 All employees in Nevada are presumptively at-will employees. Martin v. Sears, Roebuck
21 & Co., 899 P.2d 551, 554 (Nev. 1995) (internal citations omitted). The Nevada Supreme Court has
22 held that “at-will employment can be terminated without liability by either the employer or the
23 employee at any time and for any reason or no reason,” unless the reason violates public policy.
24 Id. at 553-54. “This presumption may be rebutted by proving, by a preponderance of the evidence,
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1 that there was an express or implied contract between the employer and the employee which
2 indicates that the employer would only terminate the employee for cause.” *Id.* at 554 (internal
3 citation omitted). Promissory estoppel allows a party that has reasonably relied on the promise of
4 another to their detriment to enforce a contract against the other party, even though there was no
5 consideration given. *Vancheri v. GNLV Corp.*, 777 P.2d 366, 369 (Nev. 1989). In the employment
6 context, the employee must show that the employer’s conduct expressed an intention to create
7 something other than an at-will employee relationship. *Id.*

9 **2. Discussion**

10 *i. Plaintiff Talley (ECF No. 48)*

11
12 Plaintiff Talley was a member of a union and thus covered by a collective bargaining
13 agreement (“CBA”). The Employee Handbook explicitly states, “Employees covered by this
14 handbook include regular (not temporary) employees who are (1) not represented by a recognized
15 bargaining unit (union)...” ECF No. 61, Ex. D at 4 (emphasis in original). Therefore, the Court
16 finds that Plaintiff Talley was not covered by the Employee Handbook and the only possible basis
17 for Plaintiff Talley’s promissory estoppel claim is his CBA. Plaintiff Talley’s CBA provided that
18 “employees shall be laid off by District seniority from the affected job classifications as follows...”
19 ECF No. 48, Ex. H. Plaintiff Talley argues that the Court should interpret this policy to mean that
20 Defendant would lay off employees in order of seniority from a pool of all affected departments
21 in the RIF, rather than in order of seniority from within each affected department. Plaintiff Talley
22 argues that if the CBA is interpreted in this manner, the District violated it by selecting him for the
23 RIF when less senior employees were retained elsewhere at the District. The only evidence that
24 Plaintiff Talley submits to support his interpretation of the CBA and his claim that Defendant
25 violated it is his own self-serving affidavit. The Court rejects Plaintiff Talley’s interpretation as
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1 illogical and instead reads this provision to mean that in the event of a layoff, each department
2 would choose which employees by “job classification” to lay off in order of seniority. Plaintiff
3 Talley has not identified a less senior employee who was kept in his job classification after the
4 RIF. As Plaintiff Talley has not identified a promise that the District failed to keep, his promissory
5 estoppel claim necessarily fails. Summary judgment is granted as to Plaintiff Talley.
6

7 *ii. Plaintiff Pridgen (ECF No. 49)*

8
9 Plaintiff Pridgen argues that she relied on promises Defendant made in its Employee
10 Handbook to follow certain procedures in the event of a layoff, including laying employees off in
11 order of seniority. The Employee Handbook includes the following section regarding layoffs:

12 While the employment relationship at the District is considered to be “at-will,” and
13 thus subject to termination at any time for whatever reason, unless business needs
14 dictate otherwise, employees from the affected job classifications will generally be
15 laid off in the following order:

1. temporary employees,
2. employees in the introductory period, and
3. regular employees.

16 When it becomes necessary to lay off a regular employee, skill, ability, and length
17 of service are the determining factors. Where skill and ability are approximately
18 equal, length of service governs. ECF No. 49, Ex. A. at 23.

19 First, the Court notes that this section states that “the employment relationship at the
20 District is considered to be ‘at-will,’ and thus subject to termination at any time for whatever
21 reason...” and that it creates an exception to its layoff policy when “business needs dictate
22 otherwise.” The contract then prioritizes “skill” and “ability” before “length of service.” The
23 Plaintiff has not raised a genuine issue of disputed fact as to how Plaintiff Pridgen’s termination
24 did not satisfy the business needs of the District to reduce its workforce.

25 Moreover, even assuming order of seniority was the only or primary mechanism for
26 determining termination, Plaintiff Pridgen has not offered any disputed facts regarding whether
27 Defendant violated its own stated layoff policies. Plaintiff Pridgen argues that this seniority policy
28 should be interpreted to mean that Defendant would lay off employees in order of seniority from

1 a pool of all affected departments, rather than in order of seniority from within each affected
2 department. The Court rejects this argument as illogical and instead reads this provision to mean
3 that employees will be laid off in order of seniority from within each affected department. The fact
4 that skill and ability are the initial points of comparison makes it clear that the order of seniority
5 is meant to apply to employees within the same departments. Plaintiff Pridgen argues that
6 Defendant violated this provision because, according to her declaration, “[e]mployees with less
7 seniority, less experience, and less education than I were retained after I was terminated in the
8 2014 RIF.” ECF No. 72, Ex. A, ¶ 21. As Plaintiff Pridgen does not provide any foundation for this
9 statement or specify whether these employees worked in the same department as her, the Court
10 finds that she has failed to raise a question of fact regarding her promissory estoppel claim.
11 Summary judgment is granted as to Plaintiff Pridgen.

12
13 *iii. Plaintiffs Halverson and Bordelois (ECF No. 50)*

14 Plaintiffs Halverson and Bordelois, on the other hand, have provided sufficiently specific
15 information to raise a factual dispute regarding whether the District violated its seniority policy
16 when it selected them for inclusion in the RIF. They allege, “In both of their respective
17 departments, the District retained several employees who were less qualified and who had less
18 seniority than Dr. Halverson and Ms. Bordelois.” ECF No. 71 at 13. In support of this, Plaintiff
19 Bordelios states in her declaration “I had more seniority than four of the Civil Engineers who were
20 not terminated in the reduction in force” and “[w]hen I was laid off, several of the employees that
21 I had trained remained at the Water District.” ECF No. 71, Ex. A at ¶¶ 11-12. Plaintiff Halverson
22 states in his declaration “The individual who was chosen to stay after my layoff, Mr. William
23 Muarry [sic], came to the Water District after I did, was younger than I, and did not have a Ph.D.”
24 ECF No. 71, Ex. B at ¶ 19. As questions of skill and ability are fact-intensive inquiries, the Court
25 finds that where these Plaintiffs have pointed to employees within their departments who were less
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1 senior than them and potentially less skilled, they have raised a factual dispute on this claim.
2 Summary judgment is denied as to Plaintiffs Halverson and Bordelois.

3
4 *iv. Plaintiffs Morgan and Jackson (ECF No. 51)*

5 Plaintiffs Morgan and Jackson have also pointed to specific employees in their departments
6 who were less senior and/or less qualified than them and were not selected for the RIF. In Plaintiff
7 Jackson's declaration he states that an employee named Jason Ghadery remained in the
8 Engineering Services Division while he was laid off. ECF No. 67, Ex. A at ¶ 18. He claims that
9 Ghadery had less and experience seniority than Jackson, had the same level of education, and had
10 been with the Engineering Services Division for about eight years, while Jackson had been there
11 for sixteen years. *Id.* at ¶ 18-19. Plaintiff Morgan similarly alleges in his declaration that an
12 employee named Michael Dishari was chosen to stay, who had significantly less experience in
13 certain job duties than Morgan did. ECF No. 67, Ex. B at ¶¶ 19-22. Although Dishari was hired at
14 the District before Morgan, Dishari had only been in the Engineering Services Division for one
15 year, whereas Morgan had been there for his entire tenure of eleven years at the District. The Court
16 finds that these specific allegations are sufficient to raise a factual dispute as to whether the District
17 violated its layoff policy when it included these Plaintiffs in the RIF. Summary judgment is denied
18 as to Plaintiffs Morgan and Jackson.

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20
21 *v. Plaintiff Russo (ECF No. 52)*

22 Plaintiff Russo has not provided sufficiently specific information to raise a question of fact
23 as to whether the District violated its layoff policy when it included him in the RIF. In his
24 declaration, he simply states, "There were many people who were less senior than I who would
25 have been laid off if the Water District had followed their written lay off producers [sic]." ECF
26 No. 66, Ex. A at ¶ 19. Plaintiff Russo provides no foundation and no basis for personal knowledge
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1 of this statement. Summary judgment is granted as to Plaintiff Russo.

2 *vi. Plaintiff Wilson (ECF No. 53)*

3 Plaintiff Wilson similarly argues vaguely that Defendant violated its seniority policy
4 because “[e]mployees with less seniority and less experience were retained after I was terminated
5 in the 2014 RIF.” ECF No. 73, Ex. A at ¶ 30. As Plaintiff Wilson has not provided any foundation
6 or specifics regarding this statement, including whether these employees were retained in the same
7 department as Plaintiff Wilson, the Court finds this insufficient to raise a factual dispute for this
8 claim. Summary judgment is granted as to Plaintiff Wilson.
9

10 **C. Title VII Retaliation Claim**

11 ***1. Legal Standard***

12 Title VII prohibits an employer from discriminating against an employee for opposing an
13 unlawful employment practice. Nevada law also prohibits retaliation for protected activity and
14 follows federal caselaw in interpreting its statutes. See N.R.S. § 613.340; Pope v. Motel 6, 114
15 P.3d 277, 311 (Nev. 2005). Retaliatory discharge claims follow the burden-shifting framework
16 established in McDonnell Douglas, Dawson v. Entek Int'l, 630 F.3d 928, 936 (9th Cir. 2011). To
17 establish a prima facie case, the employee must show that she engaged in a protected activity, was
18 subsequently subjected to an adverse employment action, and that a causal link exists between the
19 two. See Jordan v. Clark, 847 F.2d 1368, 1376 (9th Cir. 1988). The causal link can be inferred
20 from circumstantial evidence such as the employer's knowledge of the protected activities and the
21 proximity in time between the protected activity and the adverse action. Id. If an employee
22 communicates to her employer a reasonable belief that the employer has engaged in a form of
23 employment discrimination, that communication constitutes opposition to the activity. Crawford
24 v. Metro. Gov't of Nashville & Davidson Cnty., Tenn., 555 U.S. 271, 276 (2009). If a plaintiff
25 establishes a prima facie case of unlawful retaliation, the burden shifts to the employer to offer
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1 evidence that the challenged action was taken for legitimate, non-discriminatory
2 reasons. See Nidds v. Schindler Elevator Corp., 113 F.3d 912, 917 (9th Cir. 1996). If the employer
3 provides a legitimate explanation for the challenged decision, the plaintiff must show that the
4 defendant's explanation is merely pretext for impermissible discrimination. See Ray v. Henderson,
5 217 F.3d 1234, 1240 (9th Cir. 2000).
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7 **2. Discussion**

8 Plaintiff Bordelois is the only Plaintiff who maintains a claim for Title VII retaliatory
9 discrimination at this point. She also maintains this claim under Nevada law. She argues that that
10 there are material questions of fact precluding summary judgment on this claim because: 1) she
11 and her same-sex partner spoke with Pat Maxwell in human resources regarding the mishandling
12 of insurance and tax issues related to their status as a same-sex couple and filed a complaint with
13 the District regarding these issues and 2) she was laid off 15 months later. The Court finds these
14 facts to be undisputed. The Court further finds that Plaintiff Bordelois has failed to provide
15 sufficient circumstantial evidence of the causal link between these two events to raise a genuine
16 factual dispute. She has not provided any evidence, disputed or otherwise, that the individual who
17 selected her to be included in the RIF, her manager Laura Jacobsen, had any knowledge of these
18 complaints. Without further circumstantial evidence, 15 months is not a close enough temporal
19 proximity to raise an inference of retaliation in this case. See Manatt v. Bank of Am., 339 F.3d
20 792, 802 (9th Cir. 2003)(holding that nine months between protected activity and alleged
21 retaliation does not support inference of retaliation) The Court grants summary judgment against
22 Plaintiff Bordelois on the federal and state law retaliation claims.
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VI. CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendant’s Motions for Summary Judgment (ECF Nos. 49, 50, 51, 52, and 53) are GRANTED IN PART and DENIED IN PART as follows:

- Summary judgment is denied as to Plaintiffs Pridgen, Halverson, Jackson, Morgan, and Wilson’s ADEA disparate treatment claims.
- Summary judgment is denied as to Plaintiffs Halverson, Jackson, Morgan, and Bordelois’ promissory estoppel claims.
- Summary judgment is granted as to every other claim.

IT IS FURTHER ORDERED that Defendant’s Motions for Summary Judgment (ECF Nos. 46 and 48) are GRANTED.

DATED: March 30, 2018.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE