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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CARL KNIGHT,

11 Plaintiff,

12 v.

13 KATHY BROWN, et al.,

14 Defendants.

CASE NO. C10-0753JLR

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

15 This matter comes before the court on Defendants King County, Kathy Brown,
16 Ameer Faquir, Dave Stamper, and Dan Kenoyer's (collectively, the "King County
17 Defendants") amended motion for summary judgment (Dkt. # 66 ("KC Mot.)) and
18 Defendant Gene Willard's motion for summary judgment (Dkt. # 46 ("Willard Mot.")).
19 Plaintiff Carl Knight opposes both motions. (Dkt. ## 68 ("KC Resp."), 71 ("Willard
20 Resp.")). Having considered the submissions of the parties, the record, and the governing
21 law, and having heard oral argument, the court GRANTS in part and DENIES in part the
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1 King County Defendants’ motion for summary judgment (Dkt. # 66) and GRANTS in
2 part and DENIES in part Mr. Willard’s motion for summary judgment (Dkt. # 46).

3 **I. BACKGROUND:**

4 **A. Mr. Knight’s Employment and Promotion**

5 King County security officers, dispatchers, and security sergeants are employees
6 of King County’s Facilities Management Division (“FMD”), and work within the
7 Security Unit of FMD’s Building Services Section. The Security Unit is responsible for
8 security in King County governmental buildings, including the King County Courthouse
9 and the King County Youth Services Center (“YSC”) in Seattle, Washington and the
10 Maleng Regional Justice Center (“RJC”) in Kent, Washington.

11 Mr. Knight, an African-American man, began working in FMD as a part-time
12 security officer in 1990. (1/24/11 Knight Dep. 68.¹) In 1997, Mr. Knight injured his
13 back in a car accident and was limited for medical reasons to work assignments that did
14 not involve a risk that he could re-injure himself during a hostile encounter with the
15 public. (Stamper Decl. (Dkt. # 56) ¶ 6.) Accordingly, Mr. Knight was reassigned to
16 work as a part-time dispatcher in the Security Unit. (Stamper Decl. ¶ 8 & Ex. B; 1/25/11
17 Knight Dep. 119.)

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19
20 ¹ The parties have submitted multiple excerpts of Mr. Knight’s depositions. (Stockdale
21 Decl. (Dkt. # 64) Ex. B (1/25/2011 Knight Dep., 2/18/2011 Knight Dep. & 3/7/2011 Knight
22 Dep.); *id.* Ex. C (1/24/2011 Knight Dep.); Scully Decl. (Dkt. # 69) Ex. G (1/24/2011 Knight
Dep.); *id.* Ex. H (1/25/2011 Knight Dep.); *id.* Ex. I (2/18/2011 Knight Dep.); *id.* Ex. J (3/7/2011
Knight Dep.) The court cites to the date of Mr. Knight’s depositions rather than to counsel’s
declarations.

1 In 2007, Mr. Knight asked the Chief of the Security Unit, Defendant Dave
2 Stamper, if he could serve as acting sergeant when security sergeants were absent.
3 (Stamper Decl. ¶ 5.) Mr. Stamper told Mr. Knight that he could not, because he lacked
4 the necessary training, was not on the acting sergeant's list because he had not applied to
5 be a sergeant, and his medical restrictions prevented him from performing the full duties
6 of a security officer. (1/24/11 Knight Dep. 100, 109; Stamper Decl. ¶¶ 5-6.) Mr. Knight
7 did not apply for an acting sergeant position at that time.² (See Stamper Decl. ¶¶ 4, 11 &
8 Ex. A.)

9 In March 2007, King County posted a job announcement for a new third-shift
10 security sergeant position. (See 2d Faquir Decl. (Dkt. # 76) Ex. A.) The announcement
11 stated that King County would also use the recruitment process to identify candidates to
12 "fill similar vacancies" as they became available. (*Id.*) Until this time, there were only
13 two security sergeants: Defendant Gene Willard, who worked at the King County
14 Courthouse, and Sergeant Greg Meyer, who worked at the RJC. (Kenoyer Decl. (Dkt. #
15 55) ¶ 12.) Mr. Knight obtained a medical release that would allow him to work the full
16 duties of a sergeant, and applied for the sergeant position. (Stamper Decl. ¶ 12 & Ex. C.)

17 Mr. Knight was the highest ranking candidate for the sergeant position. (Faquir
18 Decl. (Dkt. # 51) ¶ 16.) Mr. Stamper and Defendant Ameer Faquir, the manager of the
19 Building Services Section, were members of the panel that recommended Mr. Knight's
20 promotion. (*Id.*) Mr. Faquir forwarded their recommendation to Defendant Kathy

21
22 ² Mr. Knight stated at oral argument that he does not bring any claims based on his
experiences before he was a security sergeant.

1 Brown, director of FMD, who approved Mr. Knight's promotion. (*Id.*) Mr. Knight's
2 promotion to sergeant became effective in February 2008. (*Id.* ¶ 15.) Larry Martin, a
3 Caucasian security officer, who had also applied for the sergeant position, was placed on
4 a list of candidates to serve as acting sergeant when other sergeants were sick or on
5 vacation. (Kenoyer Decl. ¶ 8.)

6 According to King County's Classification Specification ("Specification") for the
7 Security Sergeant position, the responsibilities of a security sergeant "include
8 supervising, training and evaluating security staff," as well as "assign[ing] and
9 schedule[ing] work and implement[ing] security programs, policies and procedures."
10 (Scully Decl. (Dkt. # 69) Ex. C ("Willard Dep."), Ex. 1.) The Specification also states,
11 "The Security Sergeant is the first line supervisory level responsible for supervising,
12 scheduling, training, reviewing and disciplining subordinate security staff and making
13 recommendations to the Security Chief for hiring, discipline and performance
14 improvement and termination." (*Id.*) The Specification includes, as examples of duties
15 that "may vary by position," the following:

16 1. Supervise assigned staff by performing or participating in the following
17 personnel responsibilities: training, staff selection, recommending and/or
18 implementing disciplinary actions, responding to grievances,
19 recommending termination, attending unemployment hearings and assisting
20 with labor relations issues. Evaluate and document work performance
21 formally and informally; coach, counsel, monitor, and motivate assigned
22 staff. Establish and/or prepare staffing schedules. Collect and verify
employee timesheets.

2. Assign, schedule and deploy personnel; develop work schedules for
contract security; report needs for personnel.

(*Id.*)

1 FMD security sergeants, officers, and dispatchers belong to the same union—
2 International Brotherhood of Teamsters, Local 117—and are subject to the same
3 collective bargaining agreement (“CBA”). (Faquir Decl. ¶ 14 & Ex. B.) The CBA
4 provides a uniform process for discipline and appeals of disciplinary decisions. (*Id.*) The
5 CBA also covers employee working conditions and specifies that shift, furlough, and post
6 assignments are based on seniority. (*Id.*) Mr. Willard, the most senior sergeant, was the
7 first-shift sergeant and was assigned to King County Courthouse. (Kenoyer Decl. ¶ 12.)
8 Sergeant Meyer, the second-shift and second most senior sergeant, was assigned to the
9 RJC. (*Id.*) Mr. Knight was the least senior of the three sergeants, and worked the third
10 shift at the King County Courthouse. (Faquir Decl. ¶ 15.) Because Mr. Knight worked
11 the third shift, most King County facilities were closed to the public during his shift.
12 (Kenoyer Decl. ¶ 12.)

13
14 Mr. Knight was subject to a six-month probationary period after his promotion to
15 sergeant. Mr. Stamper directed Mr. Willard to train Mr. Knight in the duties of a security
16 sergeant during Mr. Knight’s probationary period. (Scully Decl. Ex. D (“Stamper Dep.”)
17 37-38, 53-54; Willard Decl. (Dkt. # 48) ¶ 8; Knight Decl. (Dkt. # 70) ¶ 6.) Mr. Stamper
18 gave Mr. Willard discretion to delegate some of the work that he was doing to Mr.
19 Knight. (Stamper Dep. 54.) Mr. Willard also provided feedback to management on Mr.
20 Knight’s progress. (Willard Dep. 19.) During his probationary period, Mr. Knight
21 received three positive performance evaluations from Mr. Stamper, Mr. Faquir, and
22

1 Defendant Dan Kenoyer. (Faquir Decl. ¶ 17 & Ex. C.) Mr. Knight successfully passed
2 his probationary period and became a career service security sergeant. (*Id.*)

3 **B. Data Unit/AFIS Incident**

4 On October 17, 2008, Mr. Knight used his access card to enter the King County
5 Sheriff’s Office Data Control Unit (“Data Unit”). (*See* Pompeo Decl. (Dkt. # 61) ¶ 12.)

6 The Data Unit is responsible for entering warrants, domestic violence protection orders,
7 and stolen vehicle information into the state and nationwide law enforcement databases.

8 (*Id.* ¶ 2.) Because the Data Unit receives and maintains sensitive criminal history
9 information, it is a secure area with restricted entry and is not open to the public. (*Id.* ¶

10 3.) Mr. Knight asked two Data Unit employees for help obtaining information about a
11 warrant for a fugitive named Allen Andre Williams on behalf of Seattle Bonding

12 Company, a private company. (Carumbana Decl. (Dkt. # 67) ¶¶ 2-6, Cook Decl. (Dkt. #
13 54) ¶¶ 5-6.) One of the Data Unit employees told Kathryn Pompeo, director of the Data

14 Unit, about Mr. Knight’s request for information about Mr. Williams. (Pompeo Decl. ¶
15 15.) Ms. Pompeo in turn reported Mr. Knight’s entry to Captain Kent Baxter of the King

16 County Sheriff’s Office Internal Investigations Unit. (*Id.*)

17 On October 20, 2008, Mr. Knight entered the Sheriff’s Office Automated
18 Fingerprint Identification System (“AFIS”) Unit to ask for a fingerprint comparison to
19 identify Mr. Williams. (1/25/11 Knight Dep. 78-79.) The AFIS technicians determined
20 that the request on behalf of the private bail bond company was not proper, and refused to
21 help Mr. Knight. (Sasse Decl. (Dkt. # 62) ¶ 8.)

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1 Ms. Pompeo and Captain Baxter were initially concerned that Mr. Knight's entry
2 into the Data Unit and AFIS ("the Data Unit/AFIS incident") and his requests for
3 information about Mr. Williams might have violated the law; they concluded, however,
4 that his requests were inappropriate but not unlawful. (Pompeo Decl. ¶¶ 15-16.) Ms.
5 Pompeo obtained statements from the people who interacted with Mr. Knight in the Data
6 and AFIS Units and sent them to Mr. Stamper. (*Id.* Ex. B.) In addition, Captain Baxter
7 sent an official complaint against Mr. Knight to Mr. Stamper, who forwarded the
8 complaint to Mr. Faquir. (Faquir Decl. ¶¶ 5-6, Stamper Decl. ¶ 13.) Ms. Brown and Mr.
9 Faquir hired an outside investigator, Patricia Eakes, to investigate the Sheriff's Office's
10 complaint.³ (Brown Decl. (Dkt. # 52) ¶¶ 8-9; Faquir Decl. ¶¶ 7, 10-11.)

11 **C. Mr. Knight's October 2008 Grievance**

12 On October 29, 2008, after Ms. Pompeo initiated the investigation of Mr. Knight's
13 entry into the Data Unit and AFIS, Mr. Knight's union filed a grievance alleging that Mr.
14 Knight was being treated disparately as a security sergeant. (*See* Faquir Decl. Ex. D.)

15 The grievance alleged that Mr. Knight was:

16 not being provided the full breadth of responsibility inherent in his position
17 as a Security Sergeant. Mr. Knight was offered and accepted a position as
18 Sergeant earlier this year but has been given rather limited duties and
19 responsibilities as opposed to the other Sergeants. Additionally, duties
20 have been removed from Sergeant Knight and assigned to others outside
21 the bargaining unit.

21 ³ Ms. Eakes had earlier been retained by FMD to investigate Mr. Knight's complaint
22 about sexually inappropriate comments made to him by a female security officer. (Faquir Decl.
¶ 10.) As a result of Ms. Eakes's investigation, the female officer was discharged. (*Id.*)

1 (*Id.*) The grievance does not state any specific examples of conduct attributable to
2 discrimination. Mr. Faquir assigned Bob Doyle, FMD’s human resources analyst, to
3 investigate the grievance. (Faquir Decl. ¶ 20.)

4 **D. The “Sad Day” Comment**

5 In January 2009, Mr. Knight learned from security officer Jim Haynes that, when
6 Mr. Knight was promoted in February 2008, Mr. Willard said, “It is a sad day for King
7 County when a black man is promoted over a white man” (“the ‘sad day’ comment”).⁴
8 (2/18/11 Knight Dep. 206; Scully Decl. Ex. J (“Haynes Dep.”) 22, 24.) Mr. Knight did
9 not hear the “sad day” comment, it was not made in his presence, and he was not aware
10 of the comment until Mr. Hayes told him about it. (2/18/11 Knight Dep. 206.) Mr.
11 Knight did not report Mr. Willard’s comment to his managers when he learned about it
12 because he hoped his work environment would improve. (Knight Decl. ¶ 8.)

13 **E. Officer Lonnie Hampton Incident**

14 In late February or early March 2009, Mr. Knight wrote a memo to Officer Lonnie
15 Hampton because he saw Officer Hampton improperly using a security camera to zoom
16 in on women’s body parts. (2/18/2011 Knight Dep. 272, 288-91.) Officer Hampton, who
17 is African-American, complained to Mr. Kenoyer about the memo. Mr. Kenoyer
18 reviewed the video record for the security camera, interviewed other security officers and
19 concluded that there was no basis for Mr. Knight’s allegation that Officer Hampton had

21 ⁴ Mr. Willard denies that he ever made the “sad day” comment, but concedes that the
22 court must accept that he made it for the purposes of this motion. (Willard Decl. ¶ 5, Willard
Mot. at 3.)

1 used the camera inappropriately. (Kenoyer Decl. ¶¶ 20-22 & Ex. A.) Mr. Kenoyer told
2 Mr. Knight that sergeants did not have authority to issue a written memo or reprimand to
3 a security officer and were required to follow the chain of command. (*Id.* ¶ 22; 2/18/11
4 Knight Dep. 292.) Mr. Willard testified that he spoke to Officer Hampton about the
5 incident and told him not to do it again. (Willard Dep. 50-51.)

6 **F. King County's Investigations**

7 Beginning in October 2008, FMD conducted two parallel investigations involving
8 Mr. Knight: Ms. Eakes's investigation of the Data Unit and AFIS incidents, and Mr.
9 Doyle's investigation of Mr. Knight's grievance regarding disparate treatment.

10 1. Data Unit/AFIS Incident

11 Ms. Eakes completed her investigation of the Data Unit/AFIS incident in January
12 2009. (Faquir Decl. Ex. A ("Eakes Report").) Ms. Eakes found that Mr. Knight had
13 improperly attempted to use his Access card and his status as a security sergeant to obtain
14 information from King County on behalf of a private entity. (*Id.*) Ms. Eakes concluded
15 that Mr. Knight's efforts on behalf of Seattle Bonding Company violated the King
16 County Code of Ethics and the FMD Security Policy and Procedures. (*Id.*)

17 Based on the Eakes Report, and in consultation with Anita Whitfield, director of
18 King County's Human Resources Division, Ms. Brown and Mr. Faquir proposed that Mr.
19 Knight's employment with King County be terminated. (*See* Brown Decl. ¶¶ 17-18.) On
20 March 3, 2009, Ms. Brown sent a letter to Mr. Knight explaining the reasons for the
21 proposed termination. (Faquir Decl. Ex. I.) On March 24, 2009, King County conducted
22 a *Loudermill* hearing regarding Mr. Knight's proposed termination. (*Id.* ¶ 26.) During

1 | this hearing, Mr. Knight told Mr. Faquir that Seattle Bonding Company did not pay him
2 | to assist with the fugitive warrant, and that he did not know it was wrong to enter the
3 | Data Unit and AFIS. (*Id.*) Mr. Knight told Mr. Faquir that he would obtain a declaration
4 | from Lucille Fisher, the owner of Seattle Bonding Company, to clarify his relationship
5 | with Seattle Bonding Company. (*Id.* ¶ 27.) Mr. Faquir agreed to keep the hearing open
6 | to consider Ms. Fisher’s declaration. (*Id.*)

7 | Ultimately, Ms. Brown and Mr. Faquir, in consultation with Ms. Whitfield,
8 | decided to demote and suspend Mr. Knight rather than terminate his employment. (*See*
9 | *Faquir Decl. Ex. C.*) Ms. Brown and Mr. Faquir state that they decided on the lesser
10 | discipline based on Mr. Knight’s representation that he was not paid by Seattle Bonding
11 | Company and based on Mr. Knight’s many years of service to King County. (*See Brown*
12 | *Decl. ¶ 19; Faquir Decl. ¶ 26.*) Mr. Knight was demoted to dispatcher effective June 5,
13 | 2009, and was suspended without pay for 20 days. (*See Faquir Decl. Ex. I.*)

14 | After Mr. Knight was demoted to dispatcher, Ms. Brown and Mr. Faquir appointed
15 | Alphonso “Al” Hampton, an African-American security officer, as acting security
16 | sergeant to cover Mr. Knight’s duties. (*Id.* ¶ 31.) Ms. Brown and Mr. Faquir later
17 | promoted Al Hampton to full-time sergeant to replace Mr. Knight. (*Id.*)

18 | 2. Mr. Knight’s Union Grievance

19 | Concurrently with Ms. Eakes’s investigation of the Data Unit/AFIS incident, Mr.
20 | Doyle investigated Mr. Knight’s union grievance. In March 2009, at a meeting regarding
21 | Mr. Knight’s grievance, Mr. Knight told Mr. Faquir and Mr. Doyle about the “sad day”
22 | comment. (*See Faquir Decl. ¶ 20.*) Mr. Faquir and Ms. Brown hired an outside

1 | investigator, Beth Dolliver, to investigate Mr. Knight's complaint about the "sad day"
2 | comment and to assume the investigation of Mr. Knight's grievance. (Faquir Decl. ¶ 23.)

3 | At some point, Ms. Dolliver reported to FMD the results of her interviews with
4 | Officer Haynes and a second officer who allegedly was present when Mr. Willard made
5 | the "sad day" comment. (*See id.* Ex. G ("Dolliver Report").) FMD managers
6 | interviewed Mr. Willard and determined that he had made the "sad day" comment. (*See*
7 | *id.*; *see also* 2d Brown Decl. (Dkt. # 78) Ex. A.) On May 19, 2009, based on this finding,
8 | and in consultation with Ms. Whitfield, Ms. Brown and Mr. Faquir proposed demoting
9 | and suspending Mr. Willard for making the "sad day" comment. (Brown Decl. ¶¶ 14-15;
10 | 2d Brown Decl. Ex. A.) On May 25, 2009, Mr. Willard elected to retire rather than take
11 | the demotion. (Willard Decl. ¶¶ 5-6.) Mr. Willard later attempted to clear his record of
12 | the comment, but his request was denied. (Faquir Decl. Ex. H.)

13 | In September 2009, Ms. Dolliver completed her investigation of Mr. Knight's
14 | disparate treatment grievance. (*See* Dolliver Report.) Ms. Dolliver concluded that Mr.
15 | Knight had not been subjected to disparate treatment as a security sergeant. (*See id.*)

16 | 3. Mr. Knight's EEOC Charge

17 | On May 22, 2009, Mr. Knight filed a charge of discrimination with the Equal
18 | Employment Opportunity Commission ("EEOC"). (Knight Decl. Attach. A.) Mr. Knight
19 | alleged in his charge that he believed he had been subjected to disparate terms and
20 | conditions of employment based on his race and his age. (*Id.*)

21 | On June 5, 2009, Mr. Knight filed another charge of discrimination with the
22 | EEOC, alleging retaliation for his May 22, 2009 filing with the EEOC. (*See* Am. Compl.

1 (Dkt. # 27) ¶ 55.) In addition, Mr. Knight’s union filed grievances regarding Mr.
2 Knight’s demotion and suspension and alleging the untimely payment of overtime to Mr.
3 Knight. (See 2d Faquir Decl. ¶ 4.) Mr. Knight’s union later withdrew both of these
4 grievances, along with Mr. Knight’s October 2008 grievance. (*Id.*)

5 The EEOC issued a right-to-sue letter in January 2010. (Am. Compl. ¶ 55.) On
6 April 6, 2010, Mr. Knight filed the instant lawsuit in King County Superior Court. (*See*
7 Not. of Removal (Dkt. # 1).) On May 4, 2010, Defendants removed Mr. Knight’s lawsuit
8 to this court. (*Id.*)

9 **G. Facts Regarding Discrimination**

10 Mr. Knight describes a number of actions by each of the Defendants which he
11 alleges contributed to disparate treatment on the basis of race, a racially hostile work
12 environment, or retaliation for filing his union grievance and his EEOC charges. At oral
13 argument, Mr. Knight clarified that his claims are based solely on the discrimination he
14 allegedly experienced during his employment as a sergeant.

15 1. Mr. Willard

16 Mr. Willard, who is Caucasian, was the most senior of the three security sergeants,
17 having been promoted from security officer to sergeant in 2005, and worked the first shift
18 at the King County Courthouse. (Willard Decl. ¶ 1-2.) King County determined that Mr.
19 Willard made the “sad day” comment when Mr. Knight was promoted to sergeant. (*See*
20 2d Brown Decl. Ex. A.) Mr. Knight also states that Mr. Willard expressed displeasure
21 when King County was renamed in honor of Martin Luther King, Jr. in 2005. (1/24/11
22 Knight Dep. 145-46.) Although Mr. Knight testified that Mr. Willard did not indicate

1 | that he was displeased because Dr. King was a black man, Mr. Willard's comment led
2 | Mr. Knight to believe that Mr. Willard was racist. (*Id.*)

3 | Mr. Knight's primary allegations against Mr. Willard are that he either removed or
4 | never gave him responsibility for scheduling security officers and for managing security
5 | officers' timesheets, which he contends were "key responsibilities" of a security sergeant.
6 | (Willard Resp. at 7 (citing Willard Dep. Ex. 1).) With respect to scheduling, only Mr.
7 | Willard ever managed the master schedule for the security officers. Mr. Knight
8 | acknowledges that Mr. Willard was responsible for the master schedule before Mr.
9 | Knight was hired, and that historically there was only one scheduling sergeant. (3/7/11
10 | Knight Dep. 342-43.) Mr. Knight, meanwhile, was responsible for making adjustments
11 | within his shift. (*Id.* at 344.) With respect to security officers' timesheets, Mr. Willard
12 | assumed Mr. Knight's responsibility for managing the timesheets for two of the officers
13 | who worked on his shift. (Willard Dep. 46-48.) Mr. Willard testified that the two
14 | officers, both of whom are African-American, asked him to take over their time sheets
15 | because Mr. Knight did not review the sheets accurately and approve them on time, and
16 | that he took over the timesheets for the two officers "for the purpose of keeping morale in
17 | the organization." (*Id.*)

18 | Mr. Knight also alleges that Mr. Willard countermanded his authority to discipline
19 | security officers on two separate occasions. First, Mr. Knight cites the Lonnie Hampton
20 | incident described above. (2/18/2011 Knight Dep. 272, 288-91.) Second, Mr. Knight
21 | points to an incident in which he asked that one of the day-shift officers be formally
22 | disciplined for putting too much detail in the logbook. (Willard Dep. 48-49; 2/18/11

1 Knight Dep. 246-47.) Rather than formally discipline the officer as Mr. Knight
2 requested, however, Mr. Willard spoke to the officer and told him to “grow up and make
3 a decent log.” (Willard Dep. 50; *see* Knight Decl. ¶ 15.)

4 Mr. Knight also states that Mr. Willard, along with Mr. Stamper and Mr. Kenoyer,
5 excluded him from informal meetings in which they made management decisions that
6 affected the security officers. Mr. Willard and Mr. Stamper testified that they would on
7 occasion “have a five-minute meeting or go down and grab a cup of coffee.” (Stamper
8 Dep. 50; *see also* Willard Dep. 44-45.) Both testified that they were able to meet
9 informally or get coffee because they both worked the day shift, while Mr. Knight did not
10 have that opportunity because he worked the night shift. (Stamper Dep. 50; Willard Dep.
11 45-46.) Mr. Knight does not identify which management decisions were made in these
12 meetings.

13 Finally, Mr. Knight testified that Mr. Willard controlled the shared sergeants’
14 office and occasionally took the only key to the shared desk home with him, thus
15 depriving him of access to materials he needed for work. (Knight Decl. ¶ 6; *see* Stamper
16 Dep. 61 (agreeing that Mr. Willard had primary responsibility for the office).)⁵

17
18 ⁵ Mr. Knight discusses two additional events in his brief, but the evidence does not
19 support the brief’s characterization of the events. First, Mr. Knight states that Mr. Willard and
20 Mr. Kenoyer “allowed Knight to perform overtime work, then denied him pay, asserting falsely
21 that the overtime had not been approved.” (KC Resp. at 6; Willard Resp. at 4.) In support of this
22 statement, however, Mr. Knight cites pages of his depositions that are either not in the record
before the court or that do not discuss overtime. (*See* KC Resp. at 6 (citing 1/25/11 Knight Dep.
155-57 (discussing Mr. Knight’s relationship with Ms. Fisher of Seattle Bonding Company));
KC Resp. at 19 (citing 1/26/11 Knight Dep. 155-57 (not in the record)); Willard Resp. at 4
(citing 1/24/11 Knight Dep. 155-57 (not in the record)).) In addition, Mr. Knight states that Mr.
Willard falsely reported that he had left work early when he knew that it was not true. KC Resp.

1 2. Mr. Stamper

2 Mr. Stamper, who is Caucasian, was Security Chief when Mr. Knight applied for
3 his promotion and during his probationary period. As Security Chief, Mr. Stamper
4 supervised the security sergeants. (Stamper Dep. 7.) Mr. Stamper retired from King
5 County in November 2008. (*Id.* at 5.)

6 Mr. Knight asserts that several of Mr. Stamper's management practices were
7 discriminatory. First, Mr. Knight points to evidence that, after he was hired, Mr. Stamper
8 continued to hold the weekly mandatory sergeants' meetings at noon on Wednesdays, as
9 he had done before Mr. Knight was hired. (*Id.* at 13.) Because Mr. Knight worked the
10 night shift, this effectively meant that Mr. Knight had to attend meetings during his sleep
11 time. (*See* 2/18/11 Knight Dep. 323 (stating his work hours).) Mr. Knight has not cited
12 any evidence that he complained about the noon meetings. Second, Mr. Knight points to
13 evidence that only Mr. Willard served as acting chief when Mr. Stamper or Mr. Kenoyer
14 was not available. (*Id.* at 63.) Mr. Stamper testified that Mr. Willard served as acting
15 chief because he was the most senior of the three sergeants. (*Id.*) Third, Mr. Stamper did
16 not give Mr. Knight his own office, desk, and computer.⁶ (*Id.* at 62.) Fourth, Mr. Knight

17 _____
18 at 6. The cited pages of Mr. Knight's deposition do not state that Mr. Willard knew why Mr.
19 Knight left early that day. (*See* 1/24/11 Knight Dep. 158-59.) In any event, King County has
20 offered evidence that Mr. Knight worked far more overtime than the other two sergeants.
(Hairston Decl. (Dkt. # 60 ¶ 3.)

21 ⁶ Mr. Knight states in his brief that he was forced to share an email address with Mr.
22 Willard and that his requests for his own email were denied. (KC Resp. at 8, 19.) The court has
not found evidence of the shared email address in the record; the evidence cited by Mr. Knight
does not support this contention. (*See* Stamper Dep. 61-62 (discussing shared office); 1/24/11
Knight Dep. 226-27 (stating he was locked out of Outlook); 2/18/11 Knight Dep. 222-23

1 again points to evidence that Mr. Stamper, along with Mr. Willard and Mr. Kenoyer,
2 excluded him from informal meetings on the basis of Mr. Knight's race (see above).

3 In addition, Mr. Knight contends that Mr. Stamper had direct or indirect
4 supervisory responsibility over Mr. Willard and failed to exercise that authority to stop
5 Mr. Willard's discriminatory conduct. (KC Resp. at 22-23 (citing Stamper Dep. 5-7).)
6 Mr. Knight states that he complained to Mr. Stamper during his tenure as a sergeant
7 about Mr. Willard "removing work responsibilities and countermanding [his] attempts to
8 correct the behavior of officers."⁷ (Knight Decl. ¶ 7.) He does not point to an instance in
9 which he told Mr. Stamper that he was concerned that Mr. Willard was discriminating
10 against him. Mr. Stamper testified that he knew that Mr. Knight and Mr. Willard did not
11 get along, but that Mr. Knight did not say that he thought Mr. Willard was racist.⁸
12 (Stamper Dep. 27.)

13
14 (discussing counseling); *id.* at 281 (discussing shared office); *id.* at 282 (not in the record);
15 Willard Dep. 46 (discussing shared desk); *see also* Hairston Decl. (Dkt. # 75) ¶ 4 & Ex. C (Mr.
Knight had his own email address as early as 2001).

16 ⁷ In his response, Mr. Knight discusses an incident in which Mr. Stamper did not select
17 him as acting sergeant. The court does not belabor this incident here. First, the acting sergeant
18 incident occurred before Mr. Knight's appointment to sergeant. Mr. Knight's counsel clarified at
19 oral argument, however, that Mr. Knight's claims are based only on Mr. Knight's treatment as a
security sergeant. Second, King County has presented evidence that Mr. Knight was not
appointed acting sergeant because his medical restrictions at the time prohibited him from being
an acting sergeant and because he did not apply to be on the acting sergeant list.

20 ⁸ Mr. Knight points to an incident in 2007 in which Mr. Stamper became angry during a
21 meeting regarding a complaint of discrimination by Mr. Knight, apparently with respect to
22 overtime and acting sergeant assignments. The meeting involved Mr. Stamper and Will Kinne,
who was acting Business Services Section director at the time. Mr. Stamper admits that he
became angry and probably made a statement in the meeting about "playing the race card"
because he was irritated that Mr. Knight continually accused him of discriminatory conduct.

1 3. Mr. Kenoyer

2 Mr. Kenoyer, who is Caucasian, is a Supervisor II in FMD, where his primary
3 responsibility is managing King County's electronic building security systems and
4 supervising the security program and staff. (Kenoyer Decl. ¶ 3.) Mr. Kenoyer reported
5 to Mr. Stamper through October 2008; when Mr. Stamper retired, Mr. Kenoyer served as
6 acting security chief, reporting to Mr. Faquir and Ms. Brown. (*Id.* ¶¶ 4-5.)

7 Mr. Knight points to four instances in which he claims that Mr. Kenoyer
8 discriminated against him on the basis of his race. First, Mr. Knight testified that he had
9 heard that Mr. Kenoyer allowed Officer Martin, the Caucasian officer who was the
10 runner-up for Mr. Knight's sergeant position, to attend meetings at the YSC. (2/18/2011
11 Knight Dep. 250-51.) Second, Mr. Knight points to that Mr. Kenoyer's role in the
12 Lonnie Hampton incident. (*See id.* at 291-92.) Third, Mr. Knight testified about an
13 incident in which management did not follow up with him regarding the outcome of a
14 disciplinary issue he had reported. (*See id.* at 246-49.) Finally, Mr. Knight testified that
15 Mr. Kenoyer directed him to go to King County facilities Federal Way during his shift
16 rather than remain at the King County Courthouse. (*See id.* at 257.)

17 Mr. Knight also alleges that Mr. Kenoyer discriminated against him by continuing
18 some of the practices initiated by Mr. Stamper. Specifically, Mr. Knight points to the
19 practice of holding weekly sergeant's meetings at noon on Wednesdays rather than

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(Stamper Dep. 22-23, 26-27, 46.) In any event, Mr. Knight conceded in his brief and at oral argument that his claims of discriminatory treatment are based on his treatment as a sergeant and not on conduct that occurred before his promotion.

1 during or close to Mr. Knight's shift. (*See* Stamper Dep. 13.) Mr. Knight also testified
2 that Mr. Kenoyer did not give him an opportunity to provide input or participate in
3 projects that were assigned at the sergeants' meetings. (*See* 2/18/11 Knight Dep. 238.)
4 Specifically, Mr. Knight testified (1) that Mr. Kenoyer told him he could manage the
5 testing of duress alarms at the King County Courthouse, but later decided to have two
6 security officers manage the process during a weekend when Mr. Knight was not working
7 (*id.* at 239-41); (2) that he was not told about a bomb threat at the YSC that had occurred
8 during the day (*id.* at 242-43); and (3) that when he entered a sergeant's meeting he saw
9 Mr. Kenoyer, Mr. Willard, and Mr. Kenoyer's "electrical protege" Mark Murphy
10 discussing security alarms and access units, and that he was not involved in conducting
11 the project (*id.* at 244).

12 Finally, Mr. Knight alleges in his response that Mr. Kenoyer had direct or indirect
13 supervisory authority over Mr. Willard, knew of Mr. Knight's complaints, and failed to
14 stop Mr. Willard's discriminatory conduct. (KC Resp. at 23 (citing Scully Decl. Ex. B
15 ("Kenoyer Dep.") 4-6).) The cited pages of Mr. Kenoyer's deposition, however, show
16 only that Mr. Kenoyer supervised Mr. Willard while he was acting chief. Mr. Knight has
17 not directed the court to evidence that Mr. Kenoyer was aware that Mr. Knight thought
18 Mr. Willard was racist.

19 4. Mr. Faquir

20 Mr. Faquir, who is African-American, was Building Services Section Manager
21 during the time period relevant to this motion. He has since been promoted to Deputy
22 Director of FMD. (Brown Decl. ¶ 7.) Mr. Faquir was on the panel that recommended

1 Mr. Knight be promoted to sergeant; he also participated in the process of disciplining
2 Mr. Knight for the Data Unit/AFIS incident. (*See generally* Faquir Decl.)

3 Mr. Knight testified that Mr. Faquir discriminated against him by forcing him to
4 share an office, desk, and computer with Mr. Willard and denying his requests for his
5 own office. (2/18/11 Knight Dep. 281.) Mr. Knight also argues in his brief that Mr.
6 Faquir discriminated against him on the basis of his race because he had supervisory
7 authority over Mr. Willard, knew of Mr. Knight's complaints, and did nothing to
8 intervene. (KC Resp. at 23.) Mr. Knight, however, points to no evidence that Mr. Faquir
9 was aware that Mr. Knight thought Mr. Willard's actions were racially motivated before
10 Mr. Knight reported the "sad day" comment.⁹ Finally, Mr. Knight alleges that Mr.
11 Faquir's involvement in his demotion constituted retaliation for filing the union grievance
12 and EEOC charge.

13 5. Ms. Brown

14 Ms. Brown, who is Caucasian, is the director of FMD. (Brown Decl. ¶ 2.) She is
15 responsible for making hiring and firing decisions for FMD, in consultation with King
16 County's Human Resources Division and constrained by the King County Code, King
17 County's personnel guidelines, and the applicable collective bargaining agreements. (*Id.*
18 ¶¶ 4, 17.) As director of FMD, Ms. Brown approved Mr. Stamper and Mr. Faquir's

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20 ⁹ The evidence Mr. Knight cites in support of his assertion that Mr. Faquir knew of Mr.
21 Willard's discriminatory acts states only that Mr. Knight had complained to Mr. Faquir about
22 Mr. Willard correcting his officer reports and timesheets and countermanding his authority; had
asked to conduct scheduling, and had asked for his own office; the pages do not indicate that Mr.
Knight had complained to Mr. Faquir about discrimination. (*See* Knight Decl. ¶ 7; Scully Decl.
Ex. F ("Faquir Dep.") 29-32, 34-35; *see also* 2d Faquir Decl. (Dkt. # 76) ¶ 3.)

1 recommendation that Mr. Knight be promoted to sergeant, recommended Mr. Knight be
2 terminated, and ultimately determined that he should be demoted and suspended. (*Id.* ¶¶
3 17-19, 23-24.) Although she had some contact with Mr. Knight when he served on an
4 equal opportunity committee several years ago and when Mr. Knight reported
5 emergencies that had occurred during his shift, she has rarely interacted directly with Mr.
6 Knight. (*Id.* ¶ 23; Brown Dep. 27.)

7 Mr. Knight contends that Ms. Brown discriminated against him on the basis of his
8 race because she had authority over Mr. Willard, knew of Mr. Knight’s complaints, and
9 did nothing to intervene. (KC Resp. at 23.) Mr. Knight does not point to evidence that
10 Ms. Brown knew that Mr. Knight had concerns that Mr. Willard was discriminating
11 against him before March 2009. Mr. Knight also contends that Ms. Brown’s involvement
12 in his demotion constituted retaliation for his filing of the union grievance and EEOC
13 charge. (*Id.*)

14 II. ANALYSIS:

15 A. Summary Judgment Standard

16 Summary judgment is appropriate if the pleadings, the discovery and disclosure
17 materials on file, and any affidavits, when viewed in the light most favorable to the non-
18 moving party, “show that there is no genuine dispute as to any material fact and the
19 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex*
20 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d
21 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is
22 no genuine issue of material fact and that he or she is entitled to prevail as a matter of

1 law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden, the
2 nonmoving party must go beyond the pleadings and identify facts which show a genuine
3 issue for trial. *Cline v. Indus. Maint. Eng’g. & Contracting Co.*, 200 F.3d 1223, 1229
4 (9th Cir. 2000). The non-moving party “must make a showing sufficient to establish a
5 genuine dispute of material fact regarding the existence of the essential elements of his
6 case that he must prove at trial.” *Galen*, 477 F.3d at 658. A summary judgment motion
7 cannot be defeated by relying solely on conclusory allegations unsupported by factual
8 data. *Hernandez v. Spacelabs Medical Inc.*, 343 F.3d 1107, 1116 (9th Cir. 2003) (citing
9 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)).

10 **B. Disparate Treatment**

11 Mr. Knight alleges claims for disparate treatment on the basis of race in violation
12 of Title VII, 42 U.S.C. § 2000e-2(a), against King County, and disparate treatment in
13 violation of 42 U.S.C. § 1981 against King County, Ms. Brown, Mr. Faquir, Mr. Stamper,
14 Mr. Kenoyer, and Mr. Willard.¹⁰ “Analysis of an employment discrimination claim
15 under § 1981 follows the same legal principles as those applicable in a Title VII disparate
16 treatment case. . . . Both require proof of discriminatory treatment and the same set of
17 facts can give rise to both claims.” *Fonseca v. Sysco Food Servs. of Ariz.*, 374 F.3d 840,
18 850 (9th Cir. 2004).

19 When responding to a motion for summary judgment on claims under Title VII or
20 § 1981, a plaintiff may proceed by using the burden-shifting framework of *McDonnell*

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22 ¹⁰ Mr. Knight does not bring a claim for disparate treatment under the Washington Law
Against Discrimination (“WLAD”), chapter 49.60 RCW.

1 *Douglas Corp. v. Green*, 411 U.S. 792 (1973), or by “simply produc[ing] direct or
2 circumstantial evidence demonstrating that a discriminatory reason more likely than not
3 motivated the employer.” *Metoyer v. Chassman*, 504 F.3d 919, 931 (9th Cir. 2007).
4 Here, Mr. Knight has chosen to proceed under the *McDonnell Douglas* framework. (KC
5 Resp. at 12; Willard Resp. at 6.) Under this analysis, a plaintiff must first establish a
6 prima facie case of employment discrimination. *Noyes v. Kelly Servs.*, 488 F.3d 1163,
7 1168 (9th Cir. 2007). If the plaintiff establishes a prima facie case, “the burden of
8 production, but not persuasion, then shifts to the employer to articulate some legitimate,
9 nondiscriminatory reason for the challenged action.” *Chuang v. Univ. of Cal. Davis, Bd.*
10 *of Trs.*, 225 F.3d 1115, 1123-24 (9th Cir. 2000). If the defendant meets this burden, the
11 plaintiff must then raise a triable issue of material fact as to whether the defendant’s
12 proffered reasons for its action are mere pretext for unlawful discrimination. *Noyes*, 488
13 F.3d at 1168.

14 1. Ms. Brown, Mr. Faquir, Mr. Stamper, and Mr. Kenoyer

15 The court first addresses Mr. Knight’s disparate treatment claim against Ms.
16 Brown, Mr. Faquir, Mr. Stamper, and Mr. Kenoyer, the senior managers at FMD.

17 a. *Prima Facie Case*

18 A plaintiff may establish a prima facie case of disparate treatment by showing (1)
19 that he is a member of a protected class; (2) that he was qualified for his position and
20 performing his job satisfactorily; (3) that he experienced an adverse employment action;
21 and (4) that “similarly situated individuals outside [his] protected class were treated more
22 favorably, or other circumstances surrounding the adverse employment action give rise to

1 an inference of discrimination.” *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603
2 (9th Cir. 2004). The first two elements of the prima facie case are not at issue here. The
3 parties, however, are in dispute regarding whether Mr. Knight can establish the third and
4 fourth elements of the prima facie case.

5 i. Adverse Employment Action

6 “An adverse employment action is one that ‘materially affect[s] the
7 compensation, terms, conditions, or privileges of . . . employment.’” *Davis v. Team Elec.*
8 *Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008) (quoting *Chuang*, 225 F.3d at 1126). The Ninth
9 Circuit has recognized that only “non-trivial” employment actions, such as “termination,
10 dissemination of a negative employment reference, issuance of an undeserved negative
11 performance review and refusal to consider for promotion” qualify as adverse
12 employment actions. *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000).
13 “[A]ssigning more, or more burdensome, work responsibilities is an adverse employment
14 action.” *Davis*, 520 F.3d at 1089, 1090. Transfers of job duties and undeserved low
15 performance evaluations may also constitute adverse employment actions. *See Yartzoff v.*
16 *Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987). The relocation of one’s working space
17 may constitute an adverse employment action where it materially affects the terms,
18 conditions, or privileges of employment. *See Chuang*, 225 F.3d at 1125-26.

19 Mr. Knight does not point to a specific adverse employment action that he
20 attributes to racial discrimination; notably, he does not contend that this demotion and
21 suspension constituted adverse employment actions in the context of his disparate
22 treatment claims. (*See KC Resp.* at 13.) Rather, Mr. Knight argues that he suffered an

1 | adverse employment action because he was “denied opportunities to exercise the full
2 | responsibilities of his position” through a series of actions by Defendants. (*Id.*) Mr.
3 | Knight cites the following as evidence of adverse employment actions: (1) Mr. Kenoyer
4 | denied him the opportunity to provide input in sergeants’ meetings (2/18/11 Knight Dep.
5 | 238); (2) Mr. Kenoyer assigned security officers to test the duress alarms (*id.* at 239-41);
6 | (3) Mr. Kenoyer and Mr. Faquir did not follow up with him after he reported a
7 | disciplinary issue (*id.* at 246-49); (5) Mr. Kenoyer met with Officer Martin regarding
8 | security at the YSC (*id.* at 250-51); (6) Mr. Kenoyer told Mr. Knight to go to Federal
9 | Way during his shift (*id.* at 257); (7) revisions to the master schedule made Mr. Knight’s
10 | shift start an hour earlier (*id.* at 323); (8) Mr. Stamper and later Mr. Kenoyer conducted
11 | the weekly sergeants’ meeting at noon on Wednesdays (Stamper Dep. 13); (9) Mr.
12 | Stamper promoted Officer Martin to acting sergeant (*id.* at 39-40); (10) Mr. Stamper, Mr.
13 | Kenoyer, and Mr. Willard met informally or “grab[bed] a cup of coffee” outside of Mr.
14 | Knight’s presence (*id.* at 50; Willard Dep. 44-46); and (11) only Mr. Willard was allowed
15 | to serve as acting chief (Stamper Dep. 63.) Elsewhere in his response, Mr. Knight
16 | attributes acts such as Mr. Kenoyer’s disapproval of his memorandum to Officer
17 | Hampton, being denied overtime pay, and being forced to share an office with the other
18 | two sergeants to discriminatory motives. Mr. Knight does not list in his response any
19 | incidents of adverse employment actions involving Ms. Brown or Mr. Faquir.

20 | As a threshold matter, the court finds that a number of the incidents that Mr.
21 | Knight lists are not “adverse employment actions” within the meaning of Title VII
22 | because Mr. Knight has not shown how they “materially affect[ed] the compensation,

1 terms, conditions, or privileges of employment.” *Davis*, 520 F.3d at 1089. For example,
2 Mr. Knight’s allegations that Mr. Kenoyer directed him to go to a King County facility in
3 Federal Way during his work hours,¹¹ that Mr. Kenoyer had security officers conduct
4 duress alarm testing over a weekend when Mr. Knight was not on duty, and that
5 managers did not follow up with him about a disciplinary report are not adverse
6 employment actions within the meaning of Title VII. In addition, Mr. Knight does not
7 explain how Officer Martin’s appointment as acting sergeant after Mr. Knight had
8 already been promoted to sergeant affected Mr. Knight’s compensation, terms,
9 conditions, or privileges of employment. Although Mr. Knight may have felt slighted by
10 these actions, none can be said to have materially affected his compensation or the terms,
11 conditions, or privileges of his employment. *See, e.g., Chuang*, 225 F.3d at 1126
12 (university’s failure to inform plaintiffs of the results of an investigation did not
13 materially affect the compensation, terms, conditions, or privileges of plaintiffs’ of
14 employment).

15 With respect to Mr. Knight’s allegations regarding the shared office space, it is
16 undisputed that all three sergeants shared a single office space, and all three sergeants
17 complained about the shared office to no avail. Mr. Knight’s reliance on *Chuang* for his
18 contention that the shared office constituted an adverse employment action is, therefore,
19 misplaced. In *Chuang*, the relocation of plaintiffs’ laboratory was an adverse

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21 ¹¹ In any event, Mr. Kenoyer explains that he sent Mr. Knight to Federal Way to work
22 with the custodial staff at Seattle-King County Public Health Clinic because the staff repeatedly
tripped security alarms at night. (2d Kenoyer Decl. ¶ 3.) Mr. Kenoyer asked Mr. Knight to
come up with a solution to prevent the false alarms from occurring. (*Id.*)

1 employment action where it disrupted important, ongoing research projects, resulting in
2 delay, loss of experimental subjects, denial of research grants, and damage to fragile,
3 expensive research equipment. *Chuang*, 225 F.3d at 1125-26. Here, by contrast, Mr.
4 Knight has not explained how the shared office materially affected the terms or
5 conditions of his employment.

6 The court agrees, however, viewing the evidence in the light most favorable to Mr.
7 Knight, that Mr. Knight's testimony that he was denied an opportunity to provide input at
8 meetings; that Mr. Stamper, Mr. Kenoyer, and Mr. Willard met outside his presence; that
9 adjustments to the master calendar changed his shift in ways that inconvenienced him;
10 that he was not offered an opportunity to serve as acting chief; and that he was denied
11 overtime constitutes evidence of actions that materially affected the terms, conditions, or
12 privileges of employment.

13 ii. Similarly Situated Individuals / Other Circumstances

14 Under the fourth prong of the *McDonnell Douglas* prima facie case, the plaintiff
15 must show either that "similarly situated individuals outside [his] protected class were
16 treated more favorably, or [that] other circumstances surrounding the adverse
17 employment action give rise to an inference of discrimination." *Peterson*, 358 F.3d at
18 603. "Whether two employees are similarly situated is ordinarily a question of fact."
19 *Beck v. United Food & Commercial Workers Union Local 99*, 506 F.3d 874, 885 n. 5
20 (9th Cir. 2007). In general, "individuals are similarly situated when they have similar
21 jobs and display similar conduct." *Vasquez v. County of Los Angeles*, 349 F.3d 634, 641
22 (9th Cir. 2003). The employees' roles need not be identical, but they must be similar "in

1 all material respects.” *Moran v. Selig*, 447 F.3d 748, 755 (9th Cir. 2006); *see also*
2 *Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 660 (9th Cir. 2002).

3 Mr. Knight argues that Mr. Willard was a similarly situated employee who was
4 more favorably treated by more senior management “by inclusion in management
5 decisions, meetings, and access to the full opportunities afforded to a sergeant.” (KC
6 Resp. at 14.) The court concludes, however, that Mr. Willard was not similarly situated
7 to Mr. Knight “in all material respects” in the context of Mr. Knight’s allegations of
8 disparate treatment by the King County Defendants. *See Moran*, 447 F.3d at 755. First,
9 Mr. Willard was the most senior of the three security sergeants, and Mr. Knight was the
10 most junior. As the most senior sergeant, Mr. Willard had certain privileges under the
11 CBA, including first choice of shift and work assignments, such as the opportunity to
12 serve as acting chief. Mr. Knight, by contrast, was the last of three sergeants to enjoy
13 those privileges. Second, Mr. Willard worked the day shift, while Mr. Knight worked
14 during the night when the courthouse was closed. Because Mr. Willard worked the same
15 hours as the FMD managers, he had opportunities for informal contact with management
16 and other staff that Mr. Knight did not have. Thus, because Mr. Willard was the senior
17 sergeant and worked the day shift, his role was materially different in two important
18 respects from Mr. Knight’s, and therefore was not similarly situated to Mr. Knight with
19 respect to Mr. Knight’s allegations regarding exclusion from informal meetings.¹²

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21 ¹² Although Sergeant Meyer is Caucasian, Mr. Knight does not point to him as a similarly
22 situated individual. To the contrary, Mr. Knight contends that Sergeant Meyer is not similarly
situated because he was based at the RJC and not at the downtown courthouse. (*See Willard*

1 Mr. Knight has not presented evidence supporting a conclusion that he was treated
2 worse than similarly situated Caucasian employees with respect to his other allegations of
3 disparate treatment by the King County Defendants. Mr. Knight testified that he had no
4 idea how his overtime pay compared to any other sergeant or officer. (*See* 2/18/11
5 Knight Dep. 307.) In addition, the evidence is undisputed that all three sergeants shared
6 the same office, desk, and computer; thus, if Mr. Willard took the only desk key home
7 with him, both Mr. Knight and Sergeant Meyer would have been locked out of the shared
8 desk. With respect to scheduling authority, Mr. Knight does not point to any evidence
9 that Sergeant Meyer was allowed to assign shifts in the master schedule. Mr. Knight also
10 does not point to any evidence regarding Sergeant Meyer's input in weekly sergeants'
11 meetings, that Sergeant Meyer was allowed to serve as acting chief, or that Mr. Kenoyer
12 treated the disciplinary decisions of Caucasian sergeants differently. Finally, Mr. Knight
13 testified that the changes to shift times in the master calendar "constituted discrimination
14 to everybody." (2/18/2011 Knight Dep. 323-34.) For these reasons, the court concludes
15 that Mr. Knight has not met his burden to establish that the King County Defendants
16 treated similarly situated sergeants outside of his protected class more favorably. The
17 court concludes, therefore, that Mr. Knight has not met his burden to establish a prima

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20 Resp. at 8.) Sergeant Meyer appears, however, to be a more apt comparator in material respects
21 because he, like Mr. Knight, was junior to Mr. Willard and did not work the day shift at the King
22 County Courthouse, and thus, like Mr. Knight, did not have the same access to opportunities and
to informal contact with management that Mr. Willard enjoyed. *See Moran*, 447 F.3d at 756
n.14 (observing that another group of African-American baseball players would have been
similarly situated to plaintiffs, and that plaintiffs' Title VII claim failed because it rested on a
comparison to players whose situation differed from plaintiffs' in two material respects).

1 facie case of disparate treatment by Ms. Brown, Mr. Faquir, Mr. Stamper, or Mr.
2 Kenoyer.

3 *b. Legitimate nondiscriminatory reason*

4 If a plaintiff produces evidence sufficient to establish a prima facie case under
5 *McDonnell Douglas*, “[t]he burden of production, but not persuasion, . . . shifts to [the
6 defendant] to articulate some legitimate, nondiscriminatory reason for the challenged
7 action.” *Chuang*, 225 F.3d at 1123-24. Although the court concludes above that Mr.
8 Knight did not satisfy his initial burden to demonstrate a prima facie case of disparate
9 treatment by Ms. Brown, Mr. Faquir, Mr. Stamper, or Mr. Kenoyer, the court
10 nevertheless briefly addresses these defendants’ legitimate nondiscriminatory reasons for
11 their actions.

12 First, Mr. Kenoyer explains that the weekly sergeant’s meeting was scheduled at
13 noon for budgetary reasons. By scheduling the meeting at noon, King County needed to
14 pay only one employee, Mr. Knight for working overtime, and did not need to pay
15 overtime to the other attendees. (Kenoyer Decl. ¶ 13; 2d Kenoyer Decl. (Dkt. # 77) ¶ 6.)
16 Mr. Kenoyer and Mr. Stamper explain that the reason Mr. Willard, Mr. Stamper, and Mr.
17 Kenoyer could meet informally or “grab a cup of coffee” was because they all worked the
18 day shift. As a night-shift worker whose hours did not overlap with those of Mr. Stamper
19 or Mr. Kenoyer, Mr. Knight did not have this opportunity. (*See* Stamper Dep. 50;
20 Kenoyer Decl. ¶ 13.)

21 Second, with respect to the denial of overtime, Mr. Faquir states that he required
22 that all overtime be preapproved, and that he was responsible for authorizing overtime

1 requests. (Faquir Decl. ¶ 32.) Judy Hairston, FMD Secretary, reviewed the sergeants’
2 overtime requests and found that Mr. Knight received more than twice as many hours of
3 overtime as his fellow sergeants. (Hairston Decl. ¶¶ 2-3.)

4 Third, with respect to scheduling, Mr. Willard was the sole sergeant responsible
5 for scheduling before Mr. Knight became a sergeant, and continued to manage the master
6 schedule afterward. Thus, no scheduling responsibilities were “taken away” from Mr.
7 Knight. (2d Kenoyer Decl. ¶ 7; see 3/7/2011 Knight Dep. 342-43.)

8 Fourth, with respect to acting chief assignments, Mr. Stamper testified that Mr.
9 Willard “might have filled in one day or something” because Mr. Willard was the senior
10 sergeant, while Mr. Knight would not have had that opportunity because he was the most
11 junior of the three sergeants. (Stamper Dep. 63.)

12 Fifth, with respect to input at meetings and exclusion from projects, Mr. Kenoyer
13 explains that the project Mr. Knight testified about (2/18/11 Knight Dep. 244) was a
14 large-scale electrical project, and that he assigned electrician Mark Murphy, who is
15 African-American, to the project based on his electrical expertise and experience. (2d
16 Kenoyer Decl. ¶ 2.) Mr. Kenoyer explains that he did not exclude Mr. Knight from the
17 project on the basis of his race, and that Mr. Knight was assigned other significant
18 projects. (*Id.* ¶¶ 2, 10.)

19 Finally, with respect to Mr. Kenoyer reprimanding Mr. Knight about his memo
20 memo to Officer Hampton, Mr. Kenoyer explained (1) that security sergeants are not
21 allowed to unilaterally discipline security officers because they are part of the same
22 bargaining unit; (2) that he reviewed the security camera records and concluded that Mr.

1 Knight's allegations were unfounded; and (3) although Mr. Knight was told to use the
2 chain of command for discipline, he was not reprimanded for writing the memo. (*See*
3 Kenoyer Decl. ¶¶ 20-23.)

4 *c. Pretext*

5 Under the *McDonnell Douglas* framework, the plaintiff bears the ultimate burden
6 of showing defendant's stated reasons to be merely pretextual, once defendant has given
7 legitimate, nondiscriminatory grounds for its actions. *McDonnell Douglas*, 411 U.S. at
8 802-04. A plaintiff may defeat summary judgment by offering direct or circumstantial
9 evidence "that a discriminatory reason more likely motivated the employer," or "that the
10 employer's proffered explanation is 'unworthy of credence' because it is internally
11 inconsistent or otherwise not believable." *Anthoine v. North Central Counties*
12 *Consortium*, 605 F.3d 740, 753 (9th Cir. 2010) (quoting *Chuang*, 225 F.3d at 1127).

13 Direct evidence includes "clearly sexist, racist, or similarly discriminatory statements or
14 actions by the employer." *Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir.
15 2005). Only a small amount of direct evidence is necessary in order to create a genuine
16 issue of material fact as to pretext. *Id.* By contrast, circumstantial evidence is evidence
17 "that tends to show that the employer's proffered motives were not the actual motives
18 because they are inconsistent or otherwise not believable." *Godwin v. Hunt Wesson, Inc.*,
19 150 F.3d 1217, 1222 (9th Cir. 1998). "Circumstantial evidence of pretext must be
20 specific and substantial in order to survive summary judgment." *Bergene v. Salt River*
21 *Project Agric. Improvement & Power Dist.*, 272 F.3d 1136, 1142 (9th Cir. 2001). Merely
22

1 denying the credibility of the employer's proffered reasons is insufficient to withstand
2 summary judgment. *Lindsey v. Shalmy*, 29 F.3d 1382, 1385 (9th Cir. 1994).

3 Mr. Knight does not address the issue of pretext in his response to the King
4 County Defendants' motion for summary judgment on his disparate treatment claims.
5 (See Resp. (Dkt. # 68) at 13-14.) In response to the court's questions at oral argument,
6 Mr. Knight's counsel relied on Mr. Willard's "sad day" comment as evidence that the
7 actions of Ms. Brown, Mr. Faquir, Mr. Stamper, and Mr. Kenoyer were motivated by
8 discriminatory reasons or that their explanations for their actions are inconsistent or
9 otherwise unbelievable. Mr. Knight does not explain how Mr. Willard's January 2008
10 "sad day" comment, which was not disclosed to Mr. Knight or any of the King County
11 Defendants until March 2009, constitutes "specific and substantial" evidence of
12 discriminatory intent, inconsistency, or lack of credibility on the part of any defendant
13 other than Mr. Willard. See *Anthoine*, 605 F.3d at 753; *Bergene*, 272 F.3d at 1142. Thus,
14 even if Mr. Knight had met his initial burden to establish a prima facie case of disparate
15 treatment, he has not met his burden under Step 3 of the *McDonnell Douglas* framework
16 to show that the King County Defendants' reasons for their actions were pretextual.

17 The court concludes, therefore, that Mr. Knight has not met his burden under the
18 *McDonnell Douglas* framework to demonstrate that there exists a genuine dispute of
19 material fact that Ms. Brown, Mr. Faquir, Mr. Stamper, or Mr. Kenoyer subjected him to
20 disparate treatment on the basis of race in violation of Title VII and § 1981. Accordingly,
21 the court grants the Ms. Brown, Mr. Faquir, Mr. Stamper, and Mr. Kenoyer's motion for
22 summary judgment on these claims.

1 2. Mr. Willard

2 The court turns now to Mr. Knight's claim that Mr. Willard subjected him to
3 disparate treatment on the basis of race in violation of Title VII and § 1981.

4 *a. Prima Facie Case*

5 Mr. Knight alleges that Mr. Willard subjected him to an adverse employment
6 action by (1) taking away authority for timesheets (Willard Dep. 46-48); (2) refusing to
7 allow Mr. Knight to schedule officers (Willard Dep. 20-21); (3) depriving Mr. Knight of
8 a viable workspace by taking home the key to a drawer in the sergeants' shared desk
9 (Willard Dep. 46; Knight Decl. ¶ 6); and (4) making the "sad day" comment. (*See*
10 Willard Resp. at 7-8.)

11 The court concludes, viewing the evidence in the light most favorable to Mr.
12 Knight, that only Mr. Willard's assumption of Mr. Knight's authority for timesheets rises
13 to an adverse employment action within the meaning of Title VII. Mr. Knight was
14 responsible for managing timesheets for the officers on his shift, but Mr. Willard
15 assumed responsibility for managing the timesheets for two officers. A jury could
16 reasonably conclude that this action "materially affected" the terms, conditions, or
17 privileges of Mr. Knight's employment as a security sergeant. Mr. Knight's three
18 remaining allegations, however, are not sufficient to establish an adverse employment
19 action. First, Mr. Knight has not shown that Mr. Willard's retention of scheduling
20 responsibilities that he already possessed before Mr. Knight became a sergeant affected
21 Mr. Knight's terms, conditions, or privileges of employment. Second, Mr. Knight does
22 not explain how a comment that he did not hear and was not aware of materially affected

1 the terms or conditions of his employment. Finally, the evidence Mr. Knight cites in
2 support of his contention that Mr. Willard denied him his workspace states only that Mr.
3 Willard took the shared key home with him on occasion. An occasional lack of access to
4 a desk drawer cannot be said to “materially affect” the compensation, terms, conditions,
5 or privileges of employment. Further, as discussed above, Sergeant Meyer was also
6 affected when Mr. Willard took the key home with him. *See Davis*, 520 F.3d at 1089.

7 With respect to the fourth prong of his prima facie case against Mr. Willard, Mr.
8 Knight relies on the circumstances surrounding the adverse employment action rather
9 than a comparison to a similarly situated Caucasian individual. *See Peterson*, 358 F.3d at
10 603. Specifically, Mr. Knight argues that because Mr. Willard made the “sad day”
11 comment when Mr. Knight was promoted, it is reasonable to infer that any adverse
12 employment actions taken by Mr. Willard were taken on account of Mr. Knight’s race.
13 The court agrees. Accordingly, the court concludes that Mr. Knight has met his burden to
14 establish a prima facie case of disparate treatment by Mr. Willard. Because the evidence
15 supports a finding that Mr. Willard supervised Mr. Knight,¹³ at least during his
16 probationary period, Mr. Knight has also met his burden to establish a prima facie case of
17 disparate treatment against King County.

18
19 ¹³ Under Title VII, “[a]n employer is vicariously liable for actions by a supervisor who
20 has ‘immediate (or successively higher) authority over the employee.’” *Dawson*, 630 F.3d at
21 940 (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998)). “This distinction ‘is not
22 dependent upon job titles or formal structures within the workplace, but rather upon whether a
supervisor has the authority to demand obedience from an employee.’” *Id.* (quoting *McGinest*,
360 F.3d at 1119 n.13). At oral argument, Mr. Willard’s counsel and the King County
Defendants’ counsel conceded that, in light of the evidence that Mr. Willard was responsible for
training Mr. Knight during his probationary period (*see Knight Decl.* ¶ 6), a genuine dispute of
material fact exists regarding whether Mr. Willard was Mr. Knight’s supervisor.

1 *b. Legitimate Nondiscriminatory Reason*

2 Because Mr. Knight has met his burden to establish a prima facie case of disparate
3 treatment against Mr. Willard, the burden shifts to Mr. Willard to offer a legitimate
4 nondiscriminatory reason for removing Mr. Knight’s responsibility for managing the
5 officers’ timesheets. *Chuang*, 225 F.3d at 1123-24. Mr. Willard explains that the
6 officers—both of whom are African-American—were unhappy with how Mr. Knight
7 processed their time sheets, and that he assumed responsibility for the officers’
8 timesheets to improve morale. (Willard Dep. 46-48.) In support of this contention, Mr.
9 Willard offers the declaration of one of the officers, Ted Griffin, who states that he asked
10 Mr. Willard to take over management of his time sheets because Mr. Knight repeatedly
11 made errors on his time sheets and took too long to approve them. (Griffin Decl. (Dkt. #
12 82) ¶¶ 2-5.) Because the burden at step two of the *McDonnell Douglas* framework is one
13 of production, and not persuasion, the court concludes that Mr. Willard has satisfied his
14 burden to produce a legitimate nondiscriminatory reason for his action.

15 *c. Pretext*

16 As explained above, a plaintiff may defeat summary judgment by offering direct
17 or circumstantial evidence that a discriminatory reason more likely motivated the
18 employer. *Anthoine*, 605 F.3d at 753. Direct evidence includes clearly racist statements
19 or actions by the employer, and only a small amount of direct evidence is necessary to
20 defeat summary judgment. *Coghlan*, 413 F.3d at 1095.

21 Here, Mr. Knight argues that Mr. Willard’s “sad day” comment is direct evidence
22 of Mr. Willard’s discriminatory animus. (Willard Resp. at 8.) The court agrees. The

1 court therefore denies Mr. Willard's motion for summary judgment with respect to Mr.
2 Knight's § 1981 disparate treatment claim. In addition, because, viewing the facts in the
3 light most favorable to Mr. Knight, Mr. Willard was Mr. Knight's supervisor, at least
4 during his probationary period, the court denies King County's motion for summary
5 judgment on Mr. Knight's Title VII and § 1981 disparate treatment claims to the extent
6 they are premised on vicarious liability for Mr. Willard's discriminatory actions.

7 **C. Hostile Work Environment Claims**

8 Mr. Knight alleges a claim for hostile work environment in violation of Title VII
9 against King County and claims for hostile work environment in violation of § 1981 and
10 the Washington Law Against Discrimination ("WLAD"), ch. 49.60 RCW, against King
11 County, Ms. Brown, Mr. Faquir, Mr. Stamper, Mr. Kenoyer, and Mr. Willard.

12 To prevail on a hostile workplace claim premised on race, a plaintiff must show:
13 (1) that he was subjected to verbal or physical conduct of a racial nature; (2) that the
14 conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to
15 alter the conditions of the plaintiff's employment and create an abusive work
16 environment. *Vasquez*, 349 F.3d at 642. To determine whether conduct was sufficiently
17 severe or pervasive to violate Title VII, courts look at all the circumstances, including
18 "the frequency of the discriminatory conduct; its severity; whether it is physically
19 threatening or humiliating, or a mere offensive utterance; and whether it unreasonably
20 interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S.
21 17, 23 (1993). In addition, "[t]he working environment must both subjectively and
22 objectively be perceived as abusive." *Vasquez*, 349 F.3d at 642 (quoting *Brooks*, 229

1 F.3d at 923). Conduct that is not severe or pervasive enough to create an objectively
2 hostile or abusive work environment is beyond Title VII's purview. *Harris*, 510 U.S. at
3 21-22. A § 1981 hostile work environment claim has the same elements as a claim under
4 Title VII. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1122 n.3 (9th Cir. 2008).
5 Similarly, a hostile work environment claim under the WLAD has substantially the same
6 elements as a claim under Title VII. *See Davis v. W. One Auto Group*, 166 P.3d 807, 811
7 (Wash. Ct. App. 2007).

8 There is no dispute that Mr. Knight found Defendants' conduct unwelcome. The
9 parties dispute, however, whether Mr. Knight can satisfy the first and third elements of
10 the prima facie case in light of Mr. Knight's testimony that no one at King County ever
11 made a racial comment to him or in his presence. (2/18/2011 Knight Dep. 206.)

12 Mr. Knight relies primarily on *Raniola v. Bratton*, 243 F.3d 610, 621 (2d Cir.
13 2001). In *Raniola*, a female police officer's supervisor repeatedly made overt sex-based
14 comments to the officer; the officer saw a sexual slur written over her name in an official
15 police ledger; and her name and sexually offensive language appeared next to her name
16 and the name of the other female officer in the precinct on a poster advertising a police
17 event. *Id.* at 618. In addition, the two female officers were given exceptionally
18 demanding workloads and assigned work that was normally assigned to much less senior
19 officers. *Id.* at 619. The Second Circuit held that, by virtue of the open sex-based
20 comments made by the female officer's supervisor and co-workers, a reasonable jury
21 could infer that the other abuse Ms. Raniola suffered was also on account of sex. *Id.* at
22 621; *see also Davis*, 166 P.3d at 809, 812 (inference that acts of supervisor were racially

1 motivated was appropriate where plaintiff’s supervisor made multiple racially charged
2 comments in plaintiff’s presence).

3 Mr. Knight contends that Mr. Willard’s “sad day” statement is akin to the open
4 sex-based comments in *Raniola*, and that, as a result, a jury can infer that other negative
5 events Mr. Knight experienced were on account of race. Mr. Knight lists the following
6 conduct as harassing and race-based: (1) Mr. Willard took over the management of
7 schedule and timesheets for the security officers; (2) Mr. Willard “countermanded” Mr.
8 Knight’s attempts to correct and/or discipline officer misbehavior; (3) Mr. Stamper, Mr.
9 Kenoyer, and Mr. Willard excluded Mr. Knight from meetings; (4) Mr. Kenoyer once
10 directed Mr. Knight to travel to King County facilities in Federal Way during his shift;
11 and (5) Mr. Willard on occasion, locked Mr. Knight out of the sergeants’ shared desk.¹⁴
12 (KC Resp. at 17-19; Willard Resp. at 11.)

13 The court concludes, viewing the evidence in the light most favorable to Mr.
14 Knight, that Mr. Knight has not presented evidence sufficient to satisfy the elements of a
15 prima facie case of hostile work environment against any of the Defendants. First, the
16 sole alleged incident of “verbal or physical conduct of a racial nature” is Mr. Willard’s
17 “sad day” comment, which Mr. Knight did not hear and did not know about until a year
18 after the comment was made. Mr. Knight’s case is thus unlike *Raniola*, in which
19 comments and insults of an overtly sexual nature had been made in the plaintiff’s

20
21 ¹⁴ As discussed above, Mr. Knight’s allegations that Mr. Knight was forced to share an
22 email address with Mr. Willard, that Mr. Willard reported that Mr. Knight had left work early,
and that Mr. Knight was not paid for approved overtime are not supported by the cited evidence.
(See *supra* n.5 & n.6.)

1 presence on multiple occasions, giving rise to an inference that other abusive conduct was
2 sexually-based. *Raniola*, 243 F.3d at 621; *see also Davis*, 166 P.3d at 812.¹⁵ Second,
3 under the *Harris* factors of frequency, severity, degree of threat or humiliation, and
4 interference with work performance, the cited conduct was not objectively abusive such
5 that it would alter the conditions of Mr. Knight’s employment. *Harris*, 510 U.S. at 23.
6 The court notes that the Ninth Circuit has affirmed grants of summary judgment to
7 defendants where the plaintiffs were subjected to conduct that was much more overtly
8 racially related, severe, and pervasive than the conduct alleged here. *See Vasquez*, 349
9 F.3d at 643 (comparing cases); *Manatt v. Bank of Am., NA*, 339 F.3d 792, 799 (9th Cir.
10 2003) (same). Because Mr. Knight has not met his burden to establish a prima facie case
11 that he was subjected to verbal or physical conduct of a racial nature that was severe or
12 pervasive enough to create an objectively hostile or abusive work environment, the court
13 grants Defendants’ motions for summary judgment on Mr. Knight’s hostile work
14 environment claims.

15 **D. Retaliation Claims**

16 Mr. Knight alleges a claim for retaliation in violation of Title VII against King
17 County. Mr. Knight also alleges claims for retaliation in violation of § 1981 and the
18 WLAD against King County, Ms. Brown, and Mr. Faquir (collectively, for purposes of
19 the court’s discussion of retaliation, “King County”).

21 ¹⁵ At oral argument, Mr. Knight’s counsel conceded that he was not aware of any cases
22 finding a hostile work environment where no racial or sexual comments were made in the
plaintiff’s presence.

1 Title VII prohibits employers from discriminating against an employee because that
2 employee “has opposed any practice made an unlawful employment practice by [Title
3 VII], or because he has made a charge, testified, assisted, or participated in any manner in
4 an investigation, proceeding, or hearing under [Title VII].” 42 U.S.C. § 2000e-3(a).
5 Courts apply the three-step *McDonnell Douglas* burden-shifting analysis to retaliation
6 claims. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1088-89 (9th Cir. 2008). Under this
7 analysis, the employee must first establish a prima facie case of retaliation. *Id.* at 1089.
8 If he or she does so, the employer must articulate a legitimate, nonretaliatory reason for
9 the challenged action. *Id.* If the employer satisfies this burden, the employee must show
10 that the proffered reason is merely a pretext for retaliation. *Id.* In the Ninth Circuit, the
11 Title VII framework is used when analyzing a retaliation claim under § 1981. *Manatt*,
12 339 F.3d at 800-01. Similarly, Washington courts rely on federal decisions interpreting
13 Title VII to decide issues under WLAD. *See Glasgow v. Georgia-Pacific Corp.*, 693
14 P.2d 708, 711 n.2 (Wash. 1985).

15 1. Prima Facie Case

16 “To make out a prima facie case of retaliation, an employee must show that (1) he
17 engaged in a protected activity; (2) his employer subjected him to an adverse
18 employment action; and (3) a causal link exists between the protected activity and the
19 adverse action.” *Davis*, 520 F.3d at 1093-94.

20 Mr. Knight has met his burden to establish the first two elements. Mr. Knight
21 engaged in protected activities when he complained about racial discrimination to his
22 supervisors, submitted a grievance to his union, and filed an EEOC charge. *See Ray v.*

1 | *Henderson*, 217 F.3d 1234, 1241 n.3 (9th Cir. 2000). Mr. Knight was subjected to an
2 | adverse employment action when he was demoted from sergeant to dispatcher and
3 | suspended for 20 days. *See id.* at 1243 (holding that an action is cognizable as an adverse
4 | employment action in the context of a retaliation claim if it is reasonably likely to deter
5 | employees from engaging in protected activity).

6 | The element of causation presents a closer question. The Ninth Circuit has
7 | recognized that in some cases “causation can be inferred from timing alone where an
8 | adverse employment action follows on the heels of protected activity.” *Villiarimo v.*
9 | *Aloha Island Air., Inc.*, 281 F.3d 1054, 1064-65 (9th Cir. 2002). Nevertheless, “timing
10 | alone will not show causation in all cases[.]” *Id.* at 1065. Instead, a plaintiff must show
11 | that the adverse employment action “occurred fairly soon after the employee’s protected
12 | expression.” *Id.* (quoting *Paluck v. Gooding Rubber Co.*, 221 F.3d 1003, 1009-10 (7th
13 | Cir. 2000)); *see also Clark Cnty. School Dist. v. Breeden*, 532 U.S. 268, 273 (2001).

14 | Here, the proximity in time between Mr. Knight’s complaints and King County’s
15 | adverse employment actions presents sufficient evidence that a jury could infer causation.
16 | As discussed above, the timeline in this case is as follows: (1) The King County Sheriff’s
17 | Office initiated an investigation of Mr. Knight by October 20, 2008. (2) Shortly thereafter,
18 | the Sheriff’s Office reported the Data Unit/AFIS incident to FMD. (3) On October 29,
19 | 2008, Mr. Knight filed his union grievance alleging disparate treatment. (4) In January
20 | 2009, Ms. Eakes presented her report finding Mr. Knight’s actions had violated the King
21 | County Code and FMD policies. (5) In early March 2009, Mr. Knight reported Mr.
22 | Willard’s “sad day” comment to Mr. Faquir. Defendants hired outside investigator Ms.

1 Dolliver to investigate the “sad day” comment and Mr. Knight’s union grievance. (6) On
2 March 3, 2009, Ms. Brown and Mr. Faquir proposed Mr. Knight’s termination. (7) On
3 March 24, 2009, Mr. Faquir conducted Mr. Knight’s *Loudermill* hearing. (8) On May 19,
4 2009, FMD concluded that Mr. Willard had made the “sad day” comment, and proposed
5 Mr. Willard’s demotion and suspension. (9) On May 22, 2009, Mr. Knight filed his
6 EEOC charge. (10) On May 25, 2009, Mr. Willard retired rather than accept discipline.
7 (11) On June 5, 2009, Mr. Faquir informed Mr. Knight that he would not be terminated,
8 but rather would be demoted and suspended. Because this timeline demonstrates that an
9 adverse employment action occurred “fairly soon” after a protected activity, *Villairimo*,
10 281 F.3d at 1064-65, the court concludes that Mr. Knight has met his burden to establish
11 causation and a prima facie case of retaliation.

12 2. Legitimate, Nonretaliatory Reason

13 Next, the burden shifts to King County to produce evidence that it demoted and
14 suspended Mr. Knight for a legitimate, nonretaliatory reason. *Davis*, 520 F.3d at 1094.
15 King County has met this burden by presenting evidence to support its stated reason for
16 demoting and suspending Mr. Knight: namely, that Mr. Knight’s entry into the Data Unit
17 and AFIS Unit and requests for information to assist Seattle Bonding violated the King
18 County Code and King County’s Code of Ethics. (*See generally* Brown Decl.; Faquir
19 Decl.) Ms. Brown explains that the punishment was severe because Mr. Knight’s
20 conduct seriously undermined the critical working relationship between the King County
21 Sheriff’s Office and FMD. (Brown Decl. ¶ 18.) Further, Ms. Brown has offered King
22 County’s Personnel Guidelines, which set forth the procedure for disciplining career

1 service employees, the causes for which a career service employee may be disciplined,
2 and the types of disciplinary actions available. (Brown Decl. Ex. B.) King County’s
3 Personnel Guidelines do not require progressive discipline before terminating,
4 suspending, or demoting a career service employee. (*Id.*; *see also* 2d Faquir Decl. ¶ 7 &
5 Ex. B.) The court concludes that King County has met its burden to produce a legitimate,
6 nonretaliatory reason for Mr. Knight’s demotion and suspension.

7 3. *Pretext*

8 Finally, the burden returns to Mr. Knight to show that King County’s proffered
9 reason for his demotion and suspension was a pretext for retaliation. *Davis*, 520 F.3d at
10 1094. “The plaintiff may show pretext either (1) by showing that unlawful discrimination
11 more likely motivated the employer, or (2) by showing that the employer’s proffered
12 explanation is unworthy of credence because it is inconsistent or otherwise not
13 believable.” *Dominguez-Curry v. Nev. Transp. Dep’t*, 424 F.3d 1027, 1037 (9th Cir.
14 2005). “An employer may be held liable under Title VII even if it had a legitimate reason
15 for its employment decision, as long as an illegitimate reason was a motivating factor in
16 the decision.” *Id.* at 1040. “Circumstantial evidence of pretext must be specific and
17 substantial in order to survive summary judgment.” *Bergene*, 272 F.3d at 1142. Merely
18 denying the credibility of the employer’s proffered reasons is insufficient to withstand
19 summary judgment. *Lindsey*, 29 F.3d at 1385. The court concludes that Mr. Knight has
20 not met his burden to demonstrate that King County’s reasons for his demotion and
21 suspension were pretext for retaliation.

1 Mr. Knight contends, first, that the temporal proximity between his protected
2 activity and his demotion and suspension, alone, is sufficient evidence that the King
3 County Defendants' reason for their action was pretextual. (KC Resp. at 15.) Mr. Knight
4 relies on *Dawson v. Entek Intern.*, 630 F.3d 928, 936 (9th Cir. 2011). In *Dawson*, the
5 plaintiff called in sick, but did not follow the employer's procedure for taking a one-day
6 unscheduled absence. *Id.* at 933. The next day, he told a person in human resources that
7 he wanted to file a complaint because his supervisor and coworkers had been calling him
8 names based on his sexual orientation. *Id.* Two days after that, the employer fired the
9 plaintiff, ostensibly for not following the proper procedure to report his day off. *Id.* at
10 933-34. The Ninth Circuit held that "the gravity of Dawson's complaints coupled with
11 the time frame are such that a reasonable trier of fact could find in favor of Dawson on
12 his retaliation claim." *Id.* at 937. *See also Bell v. Clackamas Cnty.*, 341 F.3d 858, 862-
13 864, 866 (9th Cir. 2003) (temporal proximity sufficient where plaintiff had positive
14 training scores prior to complaint of racial harassment, but poor reviews, suspension, and
15 termination closely followed plaintiff's complaint). Mr. Knight points out that his EEOC
16 charge immediately preceded the decision to suspend and demote him. (KC Resp. at 15
17 (citing Knight Decl., Attachs. A, B at 3).) Mr. Knight, however, filed his May 2009
18 EEOC charge after Ms. Brown and Mr. Faquir had already proposed his termination, and,
19 Ms. Brown and Mr. Faquir decided to impose *less* severe discipline after he filed the
20 charge. The court therefore concludes that temporal proximity, alone, does not permit an
21 inference of pretext in this case.

1 Second, Mr. Knight argues that King County’s proffered explanation is
2 “incredible” because the punishment he received was more severe than was justified for
3 “walking into a Sheriff’s Office unit and asking questions to try and straighten out
4 whether a person in jail in California should be held in custody and extradited to
5 Washington because the felon had a warrant in a different name,” particularly in light of
6 his previous good record. (KC Resp. at 15-16; *see id.* at 9-11.) Mr. Knight has not,
7 however, offered evidence, aside from his own speculation, that he was subjected to
8 disproportionately severe discipline in light of his violations of the King County Code of
9 Ethics and the FMD Security Policy and Procedures. As the Ninth Circuit has made
10 clear, “merely denying the credibility of the employer’s proffered reasons is insufficient
11 to withstand summary judgment.” *Lindsey*, 29 F.3d at 1385.

12 Finally, Mr. Knight suggests that King County’s reason for his demotion and
13 suspension is pretextual because “Defendants considered Knight’s grievance and EEOC
14 charge at the same time as they considered how to discipline Knight for his entry into the
15 Data/AFIS unit, discussing both matters during meetings.” (KC Resp. at 14 (citing Brown
16 Dep. 70:7-10).) Mr. Knight, however, mischaracterizes Ms. Brown’s testimony. Ms.
17 Brown testified that Ms. Whitfield, King County’s human resources director, reminded
18 the group of managers who were considering Mr. Knight’s discipline that Mr. Knight’s
19 grievance and any potential discipline were two separate issues, and that the “purpose [of
20 the meetings] was to discuss the discipline and not the grievance.” (Brown Dep. 70:7-
21 21.)

1 Because Mr. Knight has not met his burden under the *McDonnell Douglas*
2 framework to demonstrate that he was demoted and suspended in retaliation for filing his
3 2008 union grievance and 2009 EEOC charge, the court grants King County, Ms. Brown,
4 and Mr. Faquir’s motion for summary judgment on Mr. Knight’s claims for retaliation
5 under Title VII, § 1981, and the WLAD.

6 **E. § 1983 Unlawful Employment Practices**

7 Mr. Knight alleges claims for unlawful employment practices in violation of 42
8 U.S.C. § 1983 against King County, Ms. Brown, Mr. Faquir, Mr. Stamper, Mr. Kenoyer,
9 and Mr. Willard. To state a claim under § 1983, a plaintiff must prove that a defendant,
10 while acting under the color of law, deprived him or her of the rights secured by the
11 Constitution or laws of the United States. *West v. Atkins*, 487 U.S. 42, 48 (1988). For
12 individual liability, the defendant must have played an “integral” role in and been
13 personally responsible for the deprivation. *Jones v. Williams*, 297 F.3d 930, 934-35 (9th
14 Cir. 2002). Because § 1983 suits do not allow for the imposition of vicarious liability, a
15 plaintiff making a claim against a government official in his or her individual capacity
16 requires a showing that each government official defendant, through his or her own
17 individual actions, has violated the Constitution. *See Starr v. Baca*, 633 F.3d 1191, 1195
18 (9th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. at 1948).

19 As a threshold matter, Mr. Knight’s counsel stated at oral argument that Mr.
20 Knight makes no claims under § 1983 that are distinct from his claims under Title VII, §
21 1981, and WLAD. Thus, because the court has determined that summary judgment is
22 appropriate (1) on Mr. Knight’s Title VII, § 1981, and WLAD claims for hostile work

1 environment and retaliation against all Defendants, and (2) on Mr. Knight's Title VII and
2 § 1981 claims for disparate treatment against Mr. Stamper, Mr. Kenoyer, Ms. Brown, and
3 Mr. Faquir, the court grants those Defendants' motion for summary judgment on Mr.
4 Knight's corresponding claims under § 1983. The court turns, therefore, to whether Mr.
5 Knight's claims for violations of § 1983 against Mr. Willard and King County survive
6 summary judgment.

7 1. Mr. Willard

8 Mr. Knight states that the elements of his § 1983 claim against Mr. Willard mirror
9 his Title VII claim for disparate treatment. (Willard Resp. at 12; *see also* Willard Reply
10 (Dkt. #73) at 8 n.1.) Because the court denied Mr. Willard's motion for summary
11 judgment on Mr. Knight's disparate treatment claim under Title VII, the court also denies
12 Mr. Willard's motion for summary judgment on Mr. Knight's disparate treatment claim
13 under § 1983.

14 2. King County

15 Mr. Knight contends that King County is liable for unlawful employment practices
16 under § 1983 because an employee with final policymaking authority, Ms. Brown,
17 committed or ratified the discriminatory acts. A municipal entity may be held liable
18 under § 1983 for its employees' actions where one of its customs or policies caused a
19 violation of the plaintiff's constitutional rights. *Delia v. City of Rialto*, 621 F.3d 1069,
20 1081 (9th Cir. 2010). Even in the absence of an official policy or custom, "an
21 unconstitutional government policy [can] be inferred from a single decision taken by the
22 highest officials responsible for setting policy in that area of the government's business."

1 | *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988). “Under this paradigm,
2 | however, ‘municipal liability attaches only where the decisionmaker possesses final
3 | authority to establish municipal policy with respect to the action ordered.’” *Delia*, 621
4 | F.3d at 1081 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986)). With
5 | respect to the “final policymaker” prong, the Supreme Court has made clear that the “fact
6 | that a particular official—even a policymaking official—has discretion in the exercise of
7 | particular functions does not, without more, give rise to municipal liability based on an
8 | exercise of that discretion. The official must also be responsible for establishing final
9 | government policy respecting such activity before the municipality can be held liable.”
10 | *Pembaur*, 475 U.S. at 481-83 (citations and footnote omitted).

11 | Mr. Knight asserts that Ms. Brown was acting as a final policymaker when she
12 | committed, participated in or ratified discriminatory acts. (KC Resp. at 23.) Mr. Knight,
13 | however, does not identify which of Mr. Willard’s discriminatory acts Ms. Brown
14 | committed, participated in, or ratified. (*See id.*) In any event, even if Ms. Brown did
15 | commit, participate in, or ratify discriminatory acts, she is not an official with “final
16 | policymaking authority” for King County.

17 | Mr. Knight relies on King County Code section 2.16.020(D) for the proposition
18 | that Ms. Brown, as director of FMD, had final policymaking authority. This section,
19 | however, states that “[t]he director of each executive department, chief officer of each
20 | administrative office, and manager of each division may exercise the powers vested in
21 | that department, administrative office, or division.” KCC 2.16.020(D). Thus, section
22 | 2.16.020(D), by its terms, limits the director of the FMD to the powers vested in that

1 division. Moreover, as the King County Defendants point out, King County Charter
2 section 520 provides that only the King County Executive and the County Council can set
3 King County’s employment policies regarding personnel rules. (*See* KC Reply at 15;
4 Brown Decl. Ex. C.) Thus, although Ms. Brown may exercise discretion in hiring, firing,
5 and managing employees within FMD, the King County Code and King County Charter
6 do not vest final policymaking authority with respect to employment practices in Ms.
7 Brown. The court therefore grants King County’s motion for summary judgment on Mr.
8 Knight’s § 1983 claims.

9 **F. Failure to Pay Wages**

10 Mr. Knight alleges a claim for failure to pay wages against King County. Under
11 RCW 49.52.050(2), an employer who “[w]ilfully and with intent to deprive the employee
12 of any part of his wages, shall pay any employee a lower wage than the wage such
13 employer is obligated to pay such employee by any statute, ordinance, or contract” may
14 be liable to the employee “for twice the amount of the wages unlawfully rebated or
15 withheld” along with costs and reasonable attorney’s fees. RCW 49.52.050(2),
16 49.52.070.

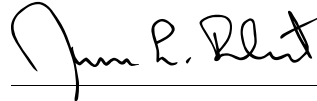
17 Mr. Knight claims that he was entitled to be paid wages at the pay rate for a
18 sergeant, but that King County willfully and with the intent to deprive him of the pay he
19 was entitled to, paid him a lower rate than he was entitled to when he was unlawfully
20 demoted. (Am. Compl. ¶¶ 102-105.) Mr. Knight conceded at oral argument that if the
21 court determines that summary judgment is appropriate on his retaliation claims, then his
22

1 failure to pay wages claim also falls. The court therefore grants King County's motion
2 for summary judgment on Mr. Knight's claim under RCW 49.52.050(2).

3 **III. CONCLUSION:**

4 For the foregoing reasons, the court GRANTS in part and DENIES in part the
5 King County Defendants' motion for summary judgment (Dkt. # 66) and GRANTS in
6 part and DENIES in part Mr. Willard's motion for summary judgment (Dkt. # 46).

7 Dated this 27th day of June, 2011.

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10 JAMES L. ROBART
11 United States District Judge
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