

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SHAW RAHMAN,

11 Plaintiff,

12 v.

13 CRYSTAL EQUATION, et. al.

14 Defendants.

CASE NO. C13-218-MJP

ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT

15  
16 This matter comes before the Court on Defendants' motion for summary judgment. (Dkt.  
17 No. 105.) Having reviewed the motion, the response (Dkt. No. 124), the replies (Dkt. Nos. 126,  
18 127), the Court GRANTS the motion and DISMISSES Plaintiff's claims.

19 **Background**

20 This is an employment discrimination case. Plaintiff was a software architect hired by  
21 Crystal Equation, a staffing company. (Dkt. Nos. 98 at 2, 106-1 at 131, 169.) Plaintiff signed  
22 his employment agreement with Crystal Equation on June 10, 2011. (Dkt. No. 107-1 at 45.)  
23 That agreement set out certain aspects of the relationship, including that it was "Employment At-  
24 Will." (Id. at 171.) He also signed a separate document, entitled "At Will Relationship." By

1 signing the document, Plaintiff acknowledged that his employment was “not for a specified  
2 period of time and can be terminated at any time for any reason, with or without cause, by me or  
3 the Company. I acknowledge that no statements or representations regarding my employment  
4 can alter the foregoing.” (Id. at 46.)

5         Crystal Equation assigned Plaintiff to work for its client, AT&T, as a software architect.  
6 (Dkt. No. 106-1 at 178.) Shortly after beginning this assignment, AT&T requested Plaintiff  
7 travel to Atlanta, Georgia, in order to attend a presentation. (Id. at 165.) Plaintiff did not believe  
8 travel was part of his job description and protested the request to his superiors. (Id. at 127.)  
9 Nonetheless, he traveled to Atlanta. (Id.) His travel arrangements were arranged by Miles Muslin, a  
10 recruiter with Crystal Equation. (Id. at 181.) The hotel reservation email receipt shows Plaintiff was  
11 booked for two nights at the Courtyard Marriott in Atlanta, Georgia. It does not show what room  
12 Plaintiff would stay in. (Id.) When Plaintiff arrived at the hotel, he was assigned to room 911. (Id.  
13 at 105.) Plaintiff requested hotel staff find another room, but none was available. (Id.) Plaintiff  
14 claims his is stay in room 911 was religious discrimination by his employer, because his former first  
15 name is Mohammad and, as a Muslim, his room placement was intended to humiliate and remind  
16 him of the events on September 11, 2001. In his deposition though, Plaintiff explained that he  
17 “cannot say for sure whether [Mr. Muslin] deliberately asked for room 911.” (Id. at 104.)

18         Plaintiff appears to have worked his assignment at AT&T for several months without  
19 incident. In late fall of 2011, AT&T requested Plaintiff generate security certificates, apparently  
20 after a former staff member who handled the task left AT&T. (Dkt. Nos. 124-1 at 25-32, 106-1 at  
21 52.) Plaintiff in turn, “repeatedly told him [his supervisor Ron Barchi] I do not want to do that.  
22 That’s too much responsibility.” (Id. at 51.) AT&T sought to have Plaintiff instructed on the task, to  
23 increase his comfort level. (Id. at 54.) Nonetheless, Plaintiff refused to generate the security  
24 certificates. (Id. at 58.)

1 In January 2012, AT&T notified Plaintiff that his position had been eliminated:

2 Shaw

3 Looks like I am losing your position on the team. I am going to have to end your  
4 con[r]tact by the end of next week. Let your contracting firm know. . . .

5 It's been quite an interesting ride with all this, and [I] am glad you were on my  
6 team.

7 Ron

8 (Id. at 107-1 at 37.)

9 Eight months after the termination of his employment with AT&T and Crystal Equation,  
10 Plaintiff filed discrimination charges with the United States Equal Employment Opportunity  
11 Commission. (Dkt. No. 19.) Plaintiff's charge alleged "Respondent discriminated against me by  
12 booking me into room #9-11 at the Marriot [sic] hotel in Atlanta, as they were aware that my first  
13 name is Mohammad." (Id.) The charge also stated, without specification, "I was also given more  
14 responsibilities and subjected to different terms and conditions of employment." (Id.) Plaintiff  
15 received his right to sue letter in November 2012. (Dkt. No. 106-1 at 201.)

16 He filed this suit in February 2013, initially as two separate actions. (Dkt. No. 29.) He  
17 asserted claims for discrimination based on religion and nation origin, as well as hostile workplace,  
18 retaliation, and breach of contract claims. (Id.) The Court consolidated the cases. (Id.)

19 Defendants move for summary judgment on all claims.

## 20 Discussion

### 21 A. Legal Standard

22 Summary judgment is not warranted if a material issue of fact exists for trial. Warren v.  
23 City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995). The underlying facts are viewed in the light  
24 most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio  
Corp., 475 U.S. 574, 587 (1986). "Summary judgment will not lie if . . . the evidence is such  
that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty

1 Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment has the burden  
2 to show initially the absence of a genuine issue concerning any material fact. Adickes v. S.H.  
3 Kress & Co., 398 U.S. 144, 159 (1970). However, once the moving party has met its initial  
4 burden, the burden shifts to the nonmoving party to establish the existence of an issue of fact  
5 regarding an element essential to that party’s case, and on which that party will bear the burden  
6 of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). To discharge this  
7 burden, the nonmoving party cannot rely on its pleadings, but instead must have evidence  
8 showing that there is a genuine issue for trial. Id. at 324.

9 B. Discrimination Claims

10 Title VII makes it unlawful for an employer to “discriminate against any individual with  
11 respect to his compensation, terms, conditions, or privileges of employment, because of such  
12 individual’s race, color, religion, or national origin.” 42 U.S.C. § 2000e-2(a)(1).

13 To make out a claim for discrimination under a disparate treatment theory, the plaintiff  
14 must show: (1) he belongs to a protected class; (2) he was performing according to his  
15 employer’s legitimate expectations; (3) he was subject to an adverse employment action; and (4)  
16 similarly situated individuals outside his protected class were treated more favorably. Cornwell  
17 v. Electra Cent. Credit Union, 439 F.3d 1018, 1028 (9th Cir. 2006). If the plaintiff meets these  
18 marks, the burden shifts to the defendant to establish a “legitimate, nondiscriminatory reason”  
19 for the alleged action. Id. If the defendant is successful, the presumption of discrimination  
20 disappears and burden shifts back to the plaintiff to establish discrimination or a dispute of fact  
21 related thereto.

22 Plaintiff can meet the standard of proof required by Fed. R. Civ. P. 56(c) for a disparate  
23 treatment claim in two ways. First, a plaintiff may offer evidence, direct or circumstantial, “that  
24

1 a discriminatory reason more likely motivated the employer” to make the challenged  
2 employment decision. Texas Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981).  
3 Second, a disparate treatment plaintiff may alternatively offer evidence “that the employer’s  
4 proffered explanation is unworthy of credence.” Id. This method often allows a plaintiff to  
5 defeat a defendant’s motion for summary judgment by offering proof that the employer’s  
6 legitimate, nondiscriminatory reason is actually a pretext for racial discrimination. Cornwell, 439  
7 F.3d at 1028.

8 Plaintiff fails to establish a prima facie case that Defendants discriminated against him  
9 based on his religion or national origin under either method.

10 Mr. Rahman fails to demonstrate any triable issues of fact on his religious discrimination  
11 claim. Two fundamental flaws exist. First, nothing in the record supports the notion that Crystal  
12 Equation and Miles Muslin, who booked the travel arrangements, knew of Plaintiff’s former  
13 name. All Plaintiff offers is conjecture: “it is prior to the job agreement conversation, that was  
14 disclosed to Miles [Muslin] that plaintiff, changed his name and a copy of passport showing  
15 national origin was provided to him as identification.” (Dkt. No. 124 at 9.) Plaintiff fails to  
16 offer his passport evidencing his former name, nor does he offer any admissible evidence of this  
17 alleged event.<sup>1</sup> Even if the Court ignores those problems with Plaintiff’s claim, nothing in the  
18 record shows Crystal Equation or Miles Muslin actually booked him into room 911. Plaintiff

---

19  
20 <sup>1</sup> Plaintiff fails to meet the evidentiary standards for summary judgment. Federal Rule of Civil  
21 Procedure 56(c) requires that factual propositions be supported by “affidavits or declarations,” and  
22 further provides clear requirements for such testimonial support. See Fed. R. Civ. P. 56(c)(4); see  
23 also Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1181 (9th Cir. 1988) (trial court may only  
24 consider admissible evidence in ruling on a motion for summary judgment). Plaintiff attaches  
several emails and other documents to his opposition to the motion for summary judgment, but no  
foundation or authenticity is offered. In other instances, Plaintiff makes assertions in his opposition  
motion wholly unsupported by the record.

1 offers the initial email confirmation from Mr. Muslin showing a general room reservation.  
2 Plaintiff also points to what appears to be a final receipt from the Marriott. But, the receipt only  
3 shows he stayed in room 911, not that Crystal Equation or Miles Muslin placed him there.  
4 Without proof of a predicate discriminatory act, the Court GRANTS summary judgment to  
5 Defendants on this claim.

6 Plaintiff's claim for discrimination based on national origin also lacks genuine issues of  
7 material fact for trial. Plaintiff claims he was terminated from employment because of his  
8 national origin. The record does not support his claim. First, Plaintiff fails to show that his  
9 supervisor at AT&T knew of his national origin. Indeed, the speculative nature of Plaintiff's  
10 contention is apparent from his deposition testimony: "if Ron Barchi disclose it [Plaintiff's  
11 name] to him [another AT&T employee and supervisor] then he would instantly know that I  
12 would be from Bangladesh because Mohammad Rahman is a very common name in Bangladesh  
13 and not too common in India." (Dkt. No. 106-1 at 102.) Other than his conjecture, nothing  
14 suggests AT&T knew or perceived him to be a member of a protected class. Second, even if the  
15 Court were to accept Plaintiff's contention as true, nothing in the record suggests he was  
16 terminated due to his national origin. Consequently, he fails to make a prima facie claim for  
17 employment discrimination based on national origin.

18 Plaintiff suggests his employer's allegedly non-discriminatory reason for his termination,  
19 downsizing of the department, was pretext. (Dkt. No. 124 at 12-13.) He claims to have been  
20 performing his job adequately. (Id.) But, Plaintiff refused to perform certain tasks requested of  
21 him, even after AT&T sought to provide training. While Plaintiff may believe he was justified in  
22 refusing to perform certain tasks, Plaintiff was an at will employee and his refusal to perform  
23 worked needed by AT&T does not constitute discrimination or retaliation. This is especially true  
24

1 | when the record fails to show Defendants knew the facts giving rise to his discrimination claims  
2 | – that his former name was Mohammad or that he is from Bangladesh.

3 |         The Court GRANTS summary judgment to Defendants on the discrimination claims.

4 |         C. Hostile Work Environment

5 |         Plaintiff also fails to offer evidence for trial that he was subject to a hostile work  
6 | environment. His claim of a hostile work environment centers around his supervisor’s requests  
7 | that he generate security certificates. (Dkt. No. 124 at 17.)

8 |         To establish a prima facie case for a hostile-work environment claim, Plaintiff must raise a  
9 | triable issue of fact as to whether (1) the defendants subjected him to verbal or physical conduct  
10 | based on his national origin or religion; (2) the conduct was unwelcome; and (3) the conduct was  
11 | sufficiently severe or pervasive to alter the conditions of his employment and create an abusive  
12 | working environment. Surrell v. California Water Serv., 518 F.3d 1097, 1108 (9th Cir. 2008).  
13 | Plaintiff cannot make it past the first step: he presents no evidence suggesting AT&T’s request  
14 | he perform certain job functions were based on national origin, or religion. Rahman admitted  
15 | this in his deposition, explain: “the harassment is within the contractual obligation, not on the  
16 | discrimination based on national origin, race, or religion.” (Dkt. No. 106-1 at 119).

17 |         Plaintiff’s claim for hostile work environment fails, and summary judgment is awarded to  
18 | Defendants.

19 |         D. Retaliation claim

20 |         To prevail on a retaliation claim, a plaintiff must show: (1) that he engaged in a protected  
21 | activity; (2) that he suffered an adverse employment action; and (3) that there is a causal  
22 | connection between the protected activity and the adverse employment action. Elvig v. Calvin  
23 | Presbyterian Church, 375 F.3d 951, 965 (9th Cir. 2004). A Plaintiff must prove that his  
24 |

1 | protected activity was the “but-for” cause of the adverse employment action. Univ. of Tex. Sw.  
2 | Med. Ctr. v. Nassar, — U.S. —, 133 S.Ct. 2517, 2521 (2013) (holding that “Title VII  
3 | retaliation claims require proof that the [employer's] desire to retaliate was the but-for cause of  
4 | the challenged employment action”). Under the Washington’s Law Against Discrimination, a  
5 | plaintiff must merely demonstrate that the protected activity was a “substantial factor” in the  
6 | employer’s decision to take the adverse employment action. Allison v. Hous. Auth. of City of  
7 | Seattle, 118 Wn.2d 79 (1991).

8 | Plaintiff’s retaliation claim fails as a matter of law, under either Title VII or WLAD, because  
9 | he fails to show he engaged in a protected activity. Plaintiff never made a complaint of  
10 | discrimination or otherwise opposed, in some way, conduct made unlawful by those statutes.  
11 | Elvig, 375 F.3d at 965. Therefore, he cannot establish a prima facie case for retaliation. The  
12 | Court DISMISSES this claim.

13 | E. Breach of Contract Claim

14 | Plaintiff’s breach of contract claim presents no triable issues because he fails to show Crystal  
15 | Equation breached their agreement with him. Plaintiff appears to claim the agreement was  
16 | breached when Crystal Equation failed to provide two weeks’ notice before terminating his  
17 | employment. (Dkt. No. 127 at 12.) He also claims AT&T’s requests to generate security  
18 | certificates also breached a contract, because those tasks were not included in his job description.  
19 | (Id.)

20 | “The touchstone of contract interpretation is the parties’ intent.” Tanner Elec. Coop. v. Puget  
21 | Sound Power & Light Co., 128 Wn .2d 656, 674 (1996). Washington courts follow the  
22 | “objective manifestation” theory of contracts. Hearst Commc’ns, Inc. v. Seattle Times Co., 154  
23 | Wn.2d 493, 503 (2005). A valid contract requires an objective manifestation of mutual assent to  
24 |



1 its terms, rather than any unexpressed subjective intent of the parties. Hearst, 154 Wn.2d at 503.  
2 Courts will not impose obligations that the parties did not assume for themselves. Condon v.  
3 Condon, 177 Wn.2d 150, 162–63 (2013). A formation of a contract requires that there be an  
4 objective manifestation of mutual assent of both parties. P.E. Sys., LLC v. CPI Corp., 176  
5 Wn.2d 198, 207 (2012). Words in a contract are given their ordinary, usual, and popular  
6 meaning unless the entirety of the agreement clearly demonstrates a contrary intent. Hearst, 154  
7 Wn.2d at 504.

8 Plaintiff fails to show the first element of a contract claim, breach. As to the assertion he was  
9 entitled to two weeks’ notice, the plain language of the Agreement between the Parties forecloses  
10 the claim:

11 Employment at-will may be terminated at the will of either the employer or the  
12 Employee. Employment and compensation may be terminated with or without  
cause and with or without notice at any time by you or Crystal.

13 (Dkt. No. 107-1 at 45.) Likewise, Plaintiff’s claim regarding a subsequent oral agreement  
14 altering that term of his employment, is also precluded by the Agreement. (Id. at 46.) (“I  
15 acknowledge that no statements or representations regarding my employment can alter the  
16 foregoing [at will status].”) Plaintiff cannot make a claim for breach of contract.

17 Nor does Plaintiff show the job advertisement was itself an enforceable contract, which  
18 limited the tasks AT&T could request he perform. (Dkt. No. 106-1 at 166.) The job  
19 advertisement was sent to Plaintiff in an email with the explanation: “Shaw, Ronald Barchi  
20 would like to interview Shaw Rahman for service request 52308 (View Reply). The Vendor is  
21 Crystal Equation Corporation....” (Id.) The job advertisement provided a list of minimum  
22 requirements and contained a resume submittal deadline. (Id.) The record before this Court  
23 contains no evidence of mutual assent that the job advertisement constituted a contract or that the  
24

1 parties intended to limit the scope of Plaintiff's job responsibilities to that document. See Hearst,  
2 154 Wn.2d at 504.

3 The Court GRANTS the motion as to the breach of contract claim.  
4

5 **Conclusion**

6 Because there are no genuine issues of material fact on any of Plaintiff's claims, the  
7 Court GRANTS summary judgment in favor of Defendants. The clerk is ordered to provide  
8 copies of this order to all counsel.

9 Dated this 5th day of March, 2014.  
10

11 

12 Marsha J. Pechman  
13 Chief United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24