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

9 JOHN CAPADANNO,

10 Plaintiff,

11 v.

12 AT&T MOBILITY SERVICES LLC,

13 Defendant.

CASE NO. 2:20-CV-01690-MAT

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

14 THIS MATTER comes before the Court on Defendant's Motion for Summary Judgment
15 (Dkt. 40) (the Motion). Plaintiff John Capadanno brought suit against Defendant AT&T Mobility
16 Services LLC (AT&T) for age discrimination, negligence, and retaliation. Plaintiff proceeds *pro*
17 *se* and *in forma pauperis*. Dkt 1, 5. AT&T moves for summary judgment based on Plaintiff's
18 failure to produce competent evidence to support his claims. Plaintiff has filed no response to the
19 Motion. For the reasons stated below, the Motion is GRANTED.

20 **BACKGROUND**

21 Plaintiff worked for AT&T as a Business Customer Service Representative up until his
22 termination on May 28, 2020. Dkt. 31 (Am. Compl.), at 1; Motion at 7. On April 21, 2020, Plaintiff
23 and his supervisor, Laura Kunzl, were involved in an incident, during which Plaintiff left his work

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1 area and brought a building security guard to Ms. Kunzl’s office. Am. Compl. at 3; Motion at 6–
2 7. Following this incident, Plaintiff was suspended and ultimately terminated. Am. Compl. at 4;
3 Motion at 7.

4 Plaintiff thereafter filed a complaint with the Equal Employment Opportunity Commission
5 (EEOC) alleging age discrimination and retaliation. Dkt. 5 (Initial Compl.) at 11. Specifically,
6 Plaintiff alleged that Ms. Kunzl engaged in “hostile, abusive and threatening behavior” toward
7 Plaintiff “and another employee in [his] age group” and that, “[r]ather than take action to address
8 or stop Ms. Kunzl’s hostile conduct, [AT&T] terminated his employment.” *Id.* The EEOC issued
9 a determination indicating its inability to conclude the information obtained established a violation
10 and gave Plaintiff notice of his right to sue. *Id.* at 14.

11 Plaintiff subsequently filed the instant lawsuit. *See id.* at 1–7. Plaintiff amended his Initial
12 Complaint on February 21, 2021, and specifically alleges that Ms. Kunzl “practiced bullying,
13 intimidation, yelling, screaming, harassment, and other forms of degrading behavior, such as, fist
14 gestures made to [his] face from 6’ to 2’ distances.” Am. Compl. at 2. Plaintiff asserts that, due to
15 Ms. Kunzl’s discriminatory treatment, he suffered physical and mental injuries, including, among
16 others, fear for his safety, emotional distress, and hospitalization due to his inability to focus on
17 his treatment for diabetes and congestive heart failure. *Id.* at 4.

18 AT&T moves for summary judgment on Plaintiff’s discrimination claim arguing that
19 Plaintiff fails to demonstrate a prima facie case under Title VII of the Civil Rights Act of 1964, 42
20 U.S.C. § 2000e, *et seq.*, that there is a legitimate, non-discriminatory reason for the adverse action,
21 that Plaintiff does not claim that there was a pretext for his termination, and that Plaintiff cannot
22 show disparate treatment or impact. AT&T further moves for summary judgment on Plaintiff’s
23 retaliation and negligence claims because Plaintiff admits that he did not intend to bring a

1 retaliation claim and because Plaintiff produced no evidence to support a prima facie case for
2 negligence.

3 DISCUSSION

4 Summary judgment is appropriate where “the movant shows that there is no genuine
5 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
6 Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are those
7 which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248. In
8 ruling on summary judgment, “[t]he court must not weigh the evidence or determine the truth of
9 the matter but only determine whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41
10 F.3d 547, 549 (9th Cir. 1994)). The court views the evidence and draws inferences in the light
11 most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S. Dep’t of the*
12 *Navy*, 365 F.3d 827, 832 (9th Cir. 2004). However, the nonmoving party must make a “sufficient
13 showing on an essential element of [his] case with respect to which [he] has the burden of proof”
14 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

15 **1. Discrimination Claim**

16 AT&T moves for summary judgment arguing that Plaintiff fails to establish a prima facie
17 case for discrimination. The Age Discrimination in Employment Act (ADEA) makes it unlawful
18 “to discharge any individual or otherwise discriminate against any individual” over the age of 40
19 “because of such individual’s age.”¹ 29 U.S.C. § 623(a)(1), 631(a). “A plaintiff alleging
20 discrimination under the ADEA may proceed under either of two theories: disparate treatment or
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22 ¹ Courts apply the same standards and burdens under the Washington Law Against Discrimination (WLAD)
23 as under the ADEA. *See Weil v. Citizens Telecom Servs. Co.*, 922 F.3d 993, 1002 (9th Cir. 2019). Therefore,
to the extent that Plaintiff’s allegations can be inferred to raise state law claims under WLAD, the analysis
herein applies equally to any state law claims.

1 disparate impact.” *Palmer v. United States*, 794 F.2d 534, 536 (9th Cir. 1986). Plaintiff alleges age
2 discrimination under a theory of disparate treatment.² See Am. Compl. at 2 (alleging that he was
3 “harassed and treated discriminatively” because of his age). “To show a prima facie case of
4 disparate treatment, a plaintiff must offer evidence that ‘give[s] rise to an inference of unlawful
5 discrimination.’” *Reynaga v. Roseburg Forest Prods.*, 847 F.3d 678, 690 (9th Cir. 2017)

6 A plaintiff can demonstrate an inference of discrimination by meeting the burden shifting
7 framework described in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–05 (1973). See
8 *Reynaga*, 847 F.3d at 290. In order to establish a prima facie case for age discrimination under
9 *McDonnell Douglas*, the plaintiff must show that “(1) the plaintiff belongs to a protected class, (2)
10 he was performing according to his employer’s legitimate expectations, (3) he suffered an adverse
11 employment action, and (4) similarly situated employees were treated more favorably, or other
12 circumstances surrounding the adverse employment action give rise to an inference of
13 discrimination.”³ *Id.* at 691; see also *Douglas v. Anderson*, 656 F.2d 528, 533 (9th Cir. 1981).
14 Once a plaintiff has established a prima facie case for age discrimination, “the burden shifts to the
15 employer ‘to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.’”
16 *Palmer*, 794 F.2d at 537 (quoting *McDonnell Douglas*, 411 U.S. at 802–05). If the employer carries
17 this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the
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19 ² Plaintiff has not identified any specific employment practices that are alleged to have created statistical
20 disparities based on age to support a disparate impact theory of discrimination. See *Smith v. City of Jackson*,
21 544 U.S. 228, 241 (2005) (when alleging a disparate impact on workers, the plaintiff is “responsible for
isolating and identifying the *specific* employment practices that are allegedly responsible for any observed
statistical disparities”) (emphasis in original) (internal citations and quotation marks omitted)).

22 ³ A prima facie case for discrimination may also be established by producing direct evidence showing a
23 discriminatory animus for an adverse employment action. See *Reynaga*, 547 F.3d at 691. “Direct evidence
of discriminatory intent consists of ‘evidence which, if believed, proves the fact [of discriminatory animus]
without inference or presumption.’” *Mayes v. WinCo Holdings, Inc.*, 846 F.3d 1274, 1280 (9th Cir. 2017)
(alterations in original) (internal citation omitted). Plaintiff has produced no direct evidence of age
discrimination in this matter.

1 employer's stated reason for plaintiff's rejection was in fact a pretext for discrimination, and not
2 the true reason for his discharge." *Id.* "The plaintiff has the ultimate burden of proving that age
3 was a 'determining factor' in the employer's allegedly unlawful conduct." *Douglas*, 656 F.2d at
4 531 (citation omitted).

5 AT&T concedes that Plaintiff is a member of a protected class and suffered from an adverse
6 employment action. Motion at 10. However, AT&T disputes that Plaintiff's termination was a
7 result of discrimination. *Id.* Plaintiff alleges that his supervisor, Ms. Kunzl, engaged in
8 discriminatory treatment toward him by, among others, yelling, badgering, harassing, and making
9 hand gestures. Am. Compl. at 2. However, Plaintiff fails to produce any admissible evidence
10 showing that Ms. Kunzl's alleged behavior toward him and AT&T's termination of Plaintiff's
11 employment had a discriminatory motive. Rather, Plaintiff testified that he does not know the
12 reason behind Ms. Kunzl's alleged actions:

13 "I explained in my initial submittal to the Court that – and to the
14 EEOC, that I don't – you know, the person harassed me, badgered
me, et cetera, but I don't know why."

15 "I couldn't figure out at first why I was always being yelled at"

16 "I wasn't sure why, excuse me, she was treating me like this."

17 Capadanno Decl. at 39:10–13, 40:21–22, 41:3-4. Although Plaintiff testified that another older,
18 more senior employee, identified as Tracy Gillette-Counter, was treated the same way and that "it
19 looked like the both of us were being treated in a discriminative way" (*id.* at 41:19–20), Plaintiff
20 does not produce testimony from Ms. Gillette-Counter or other evidence to support this contention.
21 Further, Plaintiff has not produced any evidence that younger, similarly situated employees
22 received better treatment. Accordingly, Plaintiff's testimony does not support an inference, beyond
23 mere speculation, of age discrimination.

1 Further, Plaintiff has not produced evidence that he was performing his job in a satisfactory
2 manner prior to his termination. Plaintiff testified that AT&T's metrics "were very difficult to
3 meet," that, although he met his metrics earlier in his employment, "[a]s time went on and people
4 needed more time to resolve their issues . . . the metrics to be adhered to were almost impossible."
5 Capadanno Decl. at 22:14–25. Plaintiff further admitted that he "wasn't always meeting the
6 metrics the way the company had scheduled the protocols or metric." *Id.* at 22:25–23:2.
7 Conversely, AT&T has produced copies of its business records showing that Plaintiff was written
8 up for disciplinary action on November 6, 2017, related to attendance; on March 31, 2020, for
9 creating a hostile work environment for another employee; and on April 22, 2020, related to the
10 incident with Ms. Kunzl. Motion, Ex. 2–4; Motion, Att. 13 (Phillips Decl.) at ¶¶ 2–4. Because the
11 admissible evidence produced by AT&T shows that Plaintiff had been subject to disciplinary
12 action prior to his termination and Plaintiff does not dispute this evidence, Plaintiff has failed to
13 establish another essential element of a prima facie age discrimination claim.

14 Even if Plaintiff had sufficiently established a prima facie case for age discrimination—
15 which the Court finds that he did not—AT&T has articulated a legitimate, non-discriminatory
16 basis for Plaintiff's termination. AT&T asserts that Plaintiff's termination was the result of
17 Plaintiff's disruptive behavior on the incident of April 21, 2020. Motion at 13. AT&T has produced
18 copies of its human resources records investigating the April 2020 incident, in which it was
19 reported/alleged that Plaintiff had engaged in workplace violence, hostile work environment, and
20 misuse of company resources. Motion, Ex. 4 (HR Event Record) at 1; Phillips Decl. at ¶¶ 2–4.
21 AT&T's human resources/legal investigation found as follows:

22 An Asset Protection investigation found that Mr. Capadanno after
23 being coached by his supervisor stated that he would get security to
which the supervisor responded she would have him removed. Mr.
Capadanno later retrieved a security guard and brought them to the

1 floor. He was observed by others yelling and pounding on the
2 supervisor's office window. The yelling and disruption to the office
3 has created a hostile work environment in that employees are afraid
4 of him. Mr. Capadanno misused company resources in that of
5 building security, to retaliate against his supervisor. Mr.
6 Capadanno's actions in this instance of calling security on his
7 supervisor without a valid reason and in apparent retaliation against
8 his supervisor are more egregious than other cases where employees
9 have yelled and caused disruption in the work environment. He is
10 currently on a Written Warning for Workplace Violence. HR and
11 Legal support the client's recommendation to terminate this
12 employee for Misconduct – Workplace Violence, Hostile Work
13 Environment and Misuse of Company Resources.

14 HR Event Record at 7; Phillips Decl. at ¶¶ 2–4. AT&T's investigation found that the "allegations
15 were substantiated" and, as a result, Plaintiff was terminated. HR Event Record at 2; Phillips Decl.
16 at ¶¶ 2–4. Plaintiff does not dispute that, during the April 2020 incident, he left his work area,
17 brought a building security officer to Ms. Kunzl's office, and began knocking on Ms. Kunzl's
18 office and pointing through her window. Capadanno Decl. at 33:10–34:11. Plaintiff further
19 testified that he was talking to the security guard during the incident and that, because of the
20 acoustics in the building, his "voice seemed to be quite more so than moderate sounding." *Id.* at
21 33:21–34:3. Plaintiff further has neither argued nor produced evidence that the reasons offered for
22 his dismissal were a pretext for discrimination. Because AT&T has produced undisputed and
23 admissible evidence of a legitimate, non-discriminatory reason for Plaintiff's termination, Plaintiff
has failed to meet his burden to show an inference of discrimination in this matter.

19 For the reasons discussed above, Plaintiff has failed to meet his burden to establish a prima
20 facie case of age discrimination against AT&T. Further, AT&T has offered undisputed and
21 admissible evidence showing a legitimate, non-discriminatory reason for Plaintiff's termination.
22 Therefore, the Court grants AT&T's motion for summary judgment with respect to Plaintiff's age
23 discrimination claim.

2. Retaliation Claim

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2 Plaintiff's Initial Complaint to the Court and complaint filed with the EEOC allege a claim
3 for retaliation. Initial Compl. at 4, 11. To establish a prima facie case for retaliation, the plaintiff
4 must establish (1) that he acted to protect his Title VII rights, (2) that an adverse employment
5 action was thereafter taken against him, and (3) that a causal link exists between these two events.
6 *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994). Once the plaintiff has
7 established a prima facie case for retaliation, "[t]he burden of production then shifts to [the
8 employer] to advance legitimate, non-retaliatory reasons for any adverse actions taken against [the
9 plaintiff]." *Id.* The plaintiff "has the ultimate burden of showing that [the employer's] proffered
10 reasons are pretextual." *Id.*

11 Plaintiff testified that he complained twice about Ms. Kunzl's alleged behavior to Ms.
12 Kunzl's supervisors, in August or September of 2019 and again in February or March of 2020.
13 Capadanno Decl. at 35:15–25, 37:3–7. Plaintiff testified that he did not receive any resolution
14 regarding his complaints. *Id.* Plaintiff testified that he also filed a complaint against Ms. Kunzl to
15 AT&T's human resource department harassment hotline on March 31, 2020, and that he similarly
16 did not receive a resolution from his complaints. *Id.* at 37:15–39:2. However, Plaintiff has failed
17 to show that there was a causal link between his complaints about Ms. Kunzl and his termination
18 from AT&T. Conversely, as discussed above, AT&T has produced undisputed and admissible
19 evidence of a legitimate, non-discriminatory reason for Plaintiff's termination. Indeed, Plaintiff
20 appears to have withdrawn his retaliation claim as alleged in his Initial Complaint, testifying in his
21 deposition that he did not intend to make a retaliation claim and that he made this amendment in
22 his Amended Complaint, which does not raise a retaliation claim. *Id.* at 39:3–40:5; *see* Am. Compl.
23 at 1–5. Because Plaintiff has failed to establish a prima facie claim for retaliation, and also appears

1 to have withdrawn such claim, the Court grants AT&T's motion for summary judgment with
2 respect to Plaintiff's retaliation claim.

3 **3. Negligence Claim**

4 Plaintiff alleges that Ms. Kunzl was negligent in her treatment of him as his manager, that,
5 as his manager, Ms. Kunzl had a legal duty to treat him fairly, courteously, and non-
6 discriminatively, and that Ms. Kunzl "breached that duty in her continuous practice of bullying,
7 intimidation, yelling, screaming, harassment, and other forms of degrading behavior, such as, fist
8 gestures made to [his] face from 6' to 2' distances." Am. Compl. 3-4.

9 Where a claim for negligent supervision or retention or a claim for negligent infliction of
10 emotional distress rely on the same facts to support a discrimination claim, Washington courts
11 have held that these claims are duplicative and, therefore, must be dismissed. *See Haubry v. Snow*,
12 31 P.3d 1186, 1193 (Wash. App. 2001); *Francom v. Costco Wholesale Corp.*, 991 P.2d 1182, 1193
13 (Wash App. 2000). Such claims can "only arise[] when the claim is based on a separate factual
14 basis" from the discrimination claim. *Haubry*, 31 P.3d at 1193. There is no dispute that Plaintiff's
15 negligence claims are based on the same factual allegations that underpin Plaintiff's age
16 discrimination claim. *See* Motion, Ex. 9 (Plaintiff's Discovery Answers) (applying the same
17 factual basis to Plaintiff's negligence claim as his discrimination claim); Motion, Att. 14 (Steele
18 Decl.) at ¶¶ 2-3. Therefore, the Court grants AT&T's motion for summary judgment with respect
19 to Plaintiff's negligence claim.

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CONCLUSION

For the reasons set forth above, the Court GRANTS Defendant's Motion for Summary Judgment (Dkt. 40). The case before this Court is DISMISSED WITH PREJUDICE.

DATED this 26th day of April, 2022.



MARY ALICE THEILER
United States Magistrate Judge

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