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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NANCY STERRETT, a single woman,)	No. 4:09-CV-531-TUC-CKJ
Plaintiff,)	
vs.)	ORDER
SIERRA SOUTHWEST COOPERATIVE))	
SERVICES, INC., an Arizona corporation,)	
Defendant.)	

Currently pending before the Court is Defendant’s Motion for Summary Judgment [Doc. 69].

I. FACTUAL BACKGROUND

Plaintiff brings this case of action based on allegations of both sexual harassment and discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), as well as harassment and discrimination based on a disability pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“ADA”). The Court views the facts, as it must, in the light most favorable to Plaintiff.

A. History Prior to Plaintiff’s Employment at Defendant Corporation.

Prior to working for Defendant, Plaintiff was employed at the Pima County Superior Court. *See* Pl.’s Depo.10/27/10, Exh. A to Pl.’s SSOF [Doc. 99] at 37:12-38:3. While working at Pima County Superior Court, Plaintiff worked with an individual named Julian Garcia. *Id.* at 27:9-28:10. Although Plaintiff initially believed there to be only one co-worker named Julian Garcia, she later came to believe that there were two different

1 individuals. *Id.*

2 While Plaintiff worked with Julian Garcia at Pima County Superior Court, they had
3 friendly, flirtatious interactions and conversations. Julian Garcia never said anything
4 threatening to Plaintiff or asked her out on a date. Plaintiff does not recall Julian Garcia ever
5 making any comments about her appearance.

6 Plaintiff believes that the person she refers to as Julian Garcia 1 was following her for
7 an illegitimate purpose and was trying to upset her by doing so. Plaintiff became concerned
8 about some perceived hostility that Julian Garcia 1 allegedly exhibited toward her in the Fall
9 of 2006 while they worked together at the Pima County Superior Court. Specifically,
10 Plaintiff testified that he was giving her angry looks, but does not recall that he was doing
11 anything else. Plaintiff testified that Julian Garcia gave her three or four angry looks
12 between October 2006 and June 2007. Plaintiff does not recall if she was concerned with
13 Julian Garcia following her or observing her away from work while she was working at the
14 superior court.

15 In April 2009, Plaintiff testified that she realized that Julian Garcia 1 and Julian
16 Garcia 2 were not the same person and that they did not look exactly alike. Plaintiff further
17 testified that Julian Garcia 2 is a little bit shorter and looks a little different from the side.
18 Plaintiff testified that both Julian Garcia 1 and Julian Garcia 2 looked approximately the
19 same age when she worked with them; however, upon realizing that they were two separate
20 individuals, one of them seemed more youthful.

21 Plaintiff alleges that Julian Garcia 2 stared at her in “kind of a semi-angry, intense
22 fashion” on two or three occasions. Pl.’s Dep. Exh. A at 38:23:39:8. Plaintiff considered
23 these looks to be sexually motivated. Julian Garcia 2 never made any threatening comments
24 to Plaintiff or asked her out on a date. During the two years that Plaintiff was employed at
25 Pima County Superior Court, Julian Garcia 2 made what Plaintiff considered to be a
26 flirtatious comment about a movie, put his arm around her, and allegedly watched her on the
27 security cameras. Plaintiff further alleges that Julian Garcia 2 acted uncomfortable around
28 her by shifting in his seat, and on one occasion sweating. Plaintiff testified that the flirtatious

1 behavior did not make her feel wholly uncomfortable; however, the glaring and moving
2 security cameras did. Plaintiff did not make a sexual harassment claim against either Julian
3 Garcia while employed at Pima County Superior Court, because she did not feel that it was
4 a problem at that time.

5 Plaintiff obtained Julian Garcia's telephone number from a sticky note with the name
6 "Julian" on it that had been left on her desk. Plaintiff testified that in June 2007 she called
7 the number after she quit working at the court to say good-bye. Plaintiff and Julian Garcia
8 chatted in a friendly manner for approximately fifteen (15) to twenty (20) minutes. Plaintiff
9 testified that she called the telephone number from the sticky note three times, and spoke
10 with Julian Garcia 1 on two (2) occasions and Julian Garcia 2 on one (1) occasion. Plaintiff
11 believes that both Julian Garcia 1 and Julian Garcia 2 have been stalking her since she left
12 the Pima County Superior Court. The records produced from the Pima County Sheriff's
13 Department contain only one Julian Garcia in the pictures, and no one who Plaintiff
14 recognizes as Julian Garcia 2.

15 *B. Plaintiff's Employment at Defendant Corporation.*

16 Plaintiff began working for Defendant on June 18, 2007. Compl. ¶ 12. Plaintiff never
17 saw Julian Garcia 1 at Defendant's property; however, Plaintiff testified that she saw Julian
18 Garcia 2 on three different occasions. Other than Julian Garcia 1 and Julian Garcia 2,
19 Plaintiff testified that there was no one outside of Defendant corporation who participated
20 in any stalking related activities toward her. In addition to the Julian Garcias, Plaintiff
21 testified that Patrick Ledger, Emery Silvester and Don Kimball sexually harassed her while
22 she was working for Defendant. Plaintiff's claims that Julian Garcia 1 and Julian Garcia 2
23 engaged in behavior that constitutes sexual harassment. Her claims against Patrick Ledger,
24 Emery Silvester and Don Kimball arise from their alleged awareness of the harassment by
25 the Julian Garcias, failed to correct it, and essentially made it a condition of her employment
26 that she submit to it. Neither Patrick Ledger, Emery Silvester, or Don Kimball ever made
27 any comments to Plaintiff of a sexual nature or touched her inappropriately.

28 Plaintiff testified that she had two direct contacts with Julian Garcia 1 during her

1 employment at Defendant. Plaintiff further testified that both contacts allegedly occurred
2 when she called the after-hours hotline, and after someone else initially answered the phone,
3 Julian Garcia 1 took the phone and disguised his presence while purportedly speaking to her.
4 Plaintiff believes that these alleged actions constitute sexual harassment because the behavior
5 was designed to break her down emotionally.

6 The first of these alleged telephone calls with Julian Garcia 1 occurred in
7 approximately March 2008 when Plaintiff called the after-hours line to let them know that
8 she was going to be working late. Approximately an hour later, she called back to tell them
9 that she was leaving, someone answered the phone and identified themselves, but Plaintiff
10 does not recall the individual's name. Plaintiff was on her cellular telephone walking
11 through the parking lot, and commented that it was really windy outside. After Plaintiff hung
12 up the telephone, she testified that she had a sinking feeling that she recognized the voice as
13 Julian Garcia 1, who was disguising his voice from her as part of the sexual harassment. All
14 that Julian Garcia 1 said to Plaintiff during this call was that he could barely hear her because
15 it was really windy. This conversation lasted approximately fifteen (15) seconds.

16 Plaintiff's second conversation with Julian Garcia 1 allegedly occurred in April 2008
17 when she again called the after-hours line to let them know that she would be working late.
18 Someone answered the phone and identified himself, and Plaintiff said that she would be
19 leaving in about an hour. Julian Garcia 1 then allegedly got on the phone and said, in an
20 angry voice, "I'm going to hold you to that." Pl.'s Dep. Ex. A [Doc.70] at 96:14-97:4.
21 Plaintiff responded jokingly, and did not immediately realize that she had spoken to Julian
22 Garcia 1. This conversation lasted approximately five (5) seconds. An hour later, when
23 Plaintiff called back to say that she was leaving, someone answered the phone and identified
24 himself, but Plaintiff did not remember his name. Plaintiff said that she was leaving, and a
25 second voice said "Yeah, get out of here. It's the weekend." *Id.* at 97:5-15. This
26 conversation also lasted approximately five (5) seconds. Plaintiff testified that Julian Garcia
27 2 was the person who made this last comment.

28 Plaintiff did not make any complaints to anyone at Defendant corporation about these

1 two alleged telephone calls involving Julian Garcia 1 and Julian Garcia 2. Plaintiff testified
2 that she saw Julian Garcia 2 in approximately September 2007, sitting alone in a white truck
3 in Defendant's parking lot. Plaintiff was walking to the parking lot, and while approximately
4 fifteen (15) to twenty (20) feet from the truck looked at Julian Garcia 2 for four (4) or five
5 (5) seconds. Julian Garcia looked up at her, but Plaintiff does not recall whether or not they
6 made eye contact. Plaintiff did not report this incident to Defendant.

7 In approximately March or April 2008, Plaintiff testified that she saw Julian Garcia
8 2 at Defendant's property in another employee's office. Plaintiff walked by, and saw him
9 in her peripheral vision for maybe two (2) seconds. He did not say anything to her and she
10 never asked Defendant's employee who the person was. Plaintiff did not tell Defendant or
11 any of Defendant's employees that she saw Julian Garcia 2 in another employee's office.

12 On or about April 30, 2008, Plaintiff saw Julian Garcia 2 for a third time at
13 Defendant's offices. At that time, he left a room immediately across from the conference
14 room where she was seated. Plaintiff testified that she saw the person she initially believed
15 was Julian Garcia 1, but who she now believes was Julian Garcia 2 with Stuart Washburn for
16 approximately four (4) seconds. Julian Garcia 2 did not say anything to Plaintiff; he
17 allegedly looked at her and then moved behind Mr. Washburn.

18 Additionally, Plaintiff claims that other employees also made comments to her. One
19 day, when it was cold outside, Plaintiff was wearing a t-shirt and her nipples were showing.
20 Jeremy Rutherford allegedly made a smirking remark to her about how cold it was outside.
21 Plaintiff believes that Julian Garcia 2 may have told Rutherford to make a comment to
22 Plaintiff about it being cold outside. Plaintiff did not complain to anyone about Rutherford's
23 comment.

24 *C. Harassment Complaints*

25 In October 2007, Plaintiff discussed the alleged stalking for the first time with
26 someone at Defendant corporation. This discussion was with her supervisor, Corporate
27 Counsel Patrick Ledger, in his office. Plaintiff testified that she generally told Ledger that
28 she was concerned with things that were happening at her apartment and that she was

1 considering breaking her lease and moving because of it. Plaintiff also asked if Julian Garcia
2 was on the premises at Defendant corporation, because she was concerned that it might be
3 happening at work. Ledger allegedly said that he had never heard of Julian Garcia, asked
4 Plaintiff if she was being stalked, and asked if they should move her to Sierra Vista. Plaintiff
5 alleged that Ledger asked what happened and she said that she was concerned that her
6 privacy was being violated. Plaintiff testified that at the end of the day Ledger came to her
7 office and asked if she was going to be okay. He also allegedly said that there were worse
8 things that could happen like being homeless. This exchange made Plaintiff think that he
9 knew her stalker and was concealing it from her. Plaintiff does not recall going into any
10 details with Ledger at that time, because she did not want to appear to be complaining about
11 nothing. Furthermore, she did not want Ledger to think that he was responsible for
12 something that was happening at her apartment.

13 Plaintiff did not tell Ledger about allegedly seeing Julian Garcia in Defendant's
14 parking lot. Plaintiff did tell Ledger that people were making comments to her at Defendant
15 corporation that made her wonder if Julian Garcia was there. She was not specific about
16 these comments. Plaintiff did not ask Ledger to do anything during this conversation.
17 Moreover, she considered it notification that she was having her privacy invaded in her
18 personal life and was concerned that it was happening at work. Plaintiff testified that she
19 was not trying to raise a complaint at this time, nor did she consider her conversation with
20 Ledger to have been a complaint.

21 After the conversation with Ledger, Plaintiff's next conversation with someone at
22 Defendant corporation about any alleged stalking was a discussion with Human Resources
23 Director Emery Silvester in February 2008. The conversation with Silvester occurred after
24 the February 2008 telephone conversation with Julian Garcia in which he allegedly yelled
25 at her. Plaintiff testified that she let Silvester know that she had a hostile interaction with a
26 former co-worker outside of work and asked to be notified if anything related occurred at
27 Defendant corporation. Silvester allegedly asked Plaintiff if her former co-worker worked
28 at Defendant corporation, and she responded that she did not know, but that it would be a

1 problem if he did. Plaintiff did not give Silvester her former co-worker's name because she
2 did not want to come on too strong. Plaintiff testified that she wanted Silvester to let her
3 know if anyone did anything strange or unprofessional like spying on her, asking people
4 about her, making threats towards her, or intentionally keeping his presence hidden from her.

5 Also in February 2008, Plaintiff had a second conversation with Ledger in which she
6 told him that she saw Julian Garcia at her apartment and was concerned for her safety. She
7 testified that she wasn't asking him to do anything because it involved something that
8 allegedly happened away from work. Plaintiff did not tell Ledger that anything specific was
9 happening at work at this time. Again, Plaintiff did not consider the conversation with
10 Ledger to be a complaint.

11 On or about April 30, 2008, when Plaintiff allegedly saw Julian Garcia 2 with Stuart
12 Washburn, another employee, she asked employee Shane Sanders what Julian Garcia was
13 doing there. Sanders responded that he only knew a Dave Garcia, and did not know any
14 Julian Garcia. Plaintiff asked Sanders about Julian Garcia because she allegedly saw Julian
15 Garcia in his area. Plaintiff did not speak with Ledger about Julian Garcia. Additionally,
16 Plaintiff believed that Ledger was not being forthright about Julian Garcia because of
17 Ledger's previous denials about knowing Julian Garcia. Plaintiff also thought Ledger was
18 acting nervously and strange. Despite Ledger checking in with Plaintiff, asking how she was
19 doing and telling her to report anything that happened, Plaintiff believed that he was being
20 insincere and that he was torturing her into leaving the company. Plaintiff does not know
21 why Defendant would have any interest in torturing her into leaving.

22 On May 15, 2008, Plaintiff made a written complaint about Julian Garcia to Human
23 Resources Director Emery Silvester. Plaintiff believed that a person was being allowed to
24 spy on her and her purpose in writing the letter to Silvester was for Defendant to investigate
25 her claims and get the harassment to stop. Plaintiff testified that she was making a sexual
26 harassment complaint. Plaintiff's letter states that she observed a former co-worker, Julian
27 Garcia, exiting the system control area on April 30, 2008, and that she had some concerns
28 about him being present at Defendant corporation. Further, she asked Silvester to inform her,

1 in writing, whether Julian Garcia had worked there in any capacity in the last six months.
2 She specifically told Silvester exactly what information she wanted and attached a
3 photograph of Julian Garcia 1 to her letter. Plaintiff's letter states that she was certain that
4 it was her former co-worker that she saw; however, she now states that the person in the
5 photograph that she provided to Silvester was not the person whom she allegedly saw at
6 Defendant corporation. Plaintiff concluded her letter by informing Silvester that she would
7 be requesting a meeting to apprise him of some issues regarding her "previous working
8 relationship with Mr. Garcia, which potentially could become presently relevant if he has
9 since obtained reason to be routinely present here at the Cooperatives." Pl.'s Ltr. to Silvester
10 5/15/08 Ex. C [Doc. 70]. Plaintiff's letter did not mention her alleged sighting of Julian
11 Garcia at Defendant corporation on two previous occasions or her alleged two previous
12 telephone conversations with him. Plaintiff courtesy copied CEO Don Kimball on her May
13 15, 2008 letter in order to alert upper management to her concern. Plaintiff avers that she
14 wrote the letter in accordance with Defendant's Harassment in the Workplace policy. This
15 policy directs employees to "promptly notify an HR representative, his or her immediate
16 manager, the next higher management official or an executive manager." Pl.'s SSOF, Exh.
17 L § 3-14 at 2. Then "[u]pon receiving a complaint or being advised by a manager that
18 violations of this policy may be occurring an HR representative will notify the President and
19 Chief executive Officer (CEO) and the Senior Vice President and Chief Operating Officer
20 (COO) of Sierra that such complaint has been received." *Id.* Plaintiff never spoke with Don
21 Kimball about any alleged harassment issues, but Plaintiff believed that everyone already
22 knew what was going on, but were acting like they did not know.

23 *D. Defendant's Investigation of Plaintiff's Complaint*

24 On May 16, 2008, Plaintiff met with Silvester to discuss her letter. She did not tell
25 Silvester that the letter concerned the same individual that they had discussed in February
26 2008, because in Plaintiff's mind Silvester already knew. During that meeting, Silvester
27 informed Plaintiff that there was no record of a Julian Garcia being recently employed by
28 Defendant. On May 19, 2008, Plaintiff wrote a second letter to Silvester, attaching a clearer

1 photograph of Garcia and letting him know that she had delivered a printed copy of the
2 photograph to Mary Mattson in the Human Resources Department. Plaintiff has
3 subsequently testified that the person in the photograph that Plaintiff provided to Mattson and
4 Silvester was not the person that she allegedly saw at Defendant corporation.

5 Plaintiff requested that Defendant's Human Resources Department check with Shane
6 Sanders and Stuart Washburn to see if they recognized the individual in the clearer
7 photograph. On May 22, 2008, Plaintiff forwarded a letter to Ledger via e-mail, and he
8 responded by telling her that he would be happy to discuss it with her at any time. The letter
9 to Ledger also included a color photograph of Julian Garcia and reiterated that she had seen
10 him at Defendant corporation on April 30, 2008. Plaintiff did not mention that she had
11 previously spoken to Ledger about Julian Garcia. Plaintiff explained to Ledger that she
12 wanted to give Silvester a "heads-up" about potential issues. Plaintiff concluded her letter
13 by asking if he had time to discuss a personal matter, as opposed to a work-related matter,
14 with her in the event that Silvester and his staff still did not recognize Julian Garcia.

15 On May 23, 2008, Silvester delivered a letter to Plaintiff in her office. Silvester's
16 letter outlined the steps that Defendant took to investigate Plaintiff's allegations as follows:

- 17 1. I talked to my staff, Lauri Martin, Lanel Gamez and Mary Mattson and
18 showed them the initial picture you had provided and a few days later
19 the additional picture and each responded that they had never seen the
20 person, in the picture or on the premises.
- 21 2. We checked on the SAP System to see if a person by the name of Julian
22 Garcia was or had been employed by the Cooperatives and we found no
23 such employee listed.
- 24 3. I had Lauri Martin contact Supplemental Solutions, a provider of
25 temporary services for the Cooperatives, and asked them if they had a
26 Julian Garcia employed by them. They checked and they responded
27 they did not.
- 28 4. I talked to Shane Sanders initially and then provided him the enhanced
picture you had provided. He had Ernie Dunivan check with those on
duty at the time of the reported sighting and no one knew the
individual, or saw him, but would had [sic] if he had been there.
5. Fifth I talked to Stuart Washburn and Jay Strickling in the Graphic
Services area, who had both been in the dispatch area just prior to your
reported sighting of Julian Garcia and both had not seen the individual
in the picture or knew of the individual.

1 Silvester Ltr. to Pl. 5/23/08, Ex. "I" [Doc. 70]. In the letter, Silvester also reminded Plaintiff
2 that the area where she allegedly saw Garcia was a secure area and that any non-employees
3 would have to sign in and be accompanied by an employee to enter the area.

4 Plaintiff believes that the steps enumerated in Silvester's May 23, 2008 letter could
5 have been taken, she also believes that Silvester was lying about the investigation that he
6 conducted and its results. Based upon the information received from Plaintiff, Defendant
7 only knew that Plaintiff was claiming that someone named Julian Garcia worked there and
8 had been on the premises. Plaintiff now believes, however, that this individual was not the
9 person in the pictures that she provided. Plaintiff admits that Defendant's response to her
10 inquiries regarding Julian Garcia answered the literal requests of her correspondence;
11 however, she maintains that Defendant did not address the larger issue of who this individual
12 she saw was.

13 On May 23, 2008, Ledger invited Plaintiff to his office. Ledger told Plaintiff that no
14 one knew Julian Garcia and that she should not have written her letter, that it was impossible
15 for her to have seen him where she said that she saw him, that maybe something was wrong
16 with her, and said that she needed the employee assistance program. They also discussed
17 Plaintiff's previous concern that her phone and the computer in her apartment had been
18 tampered with. Ledger told Plaintiff that she should not have copied the CEO on her letter,
19 and that the matter appeared to suggest a lack of judgment and affected her credibility.
20 Ledger told Plaintiff that the impact on her credibility would affect her ability to do her job.
21 Plaintiff testified that she told Ledger that the person who she saw was either Julian Garcia
22 or someone who looked just like him. Plaintiff further testified that she told Ledger that she
23 copied the CEO on her complaint in accordance with the company's harassment policy.

24 Plaintiff does not recall if anyone suggested that she take any personal action against
25 Garcia such as filing an injunction against harassment. Moreover, Plaintiff did not want to
26 seek an injunction against Julian Garcia because she was concerned about retaliation and she
27 did not have any witnesses to back her up. Plaintiff did not believe that Defendant was
28 forthright in its response regarding her inquiry about Julian Garcia; however, she would not

1 have considered any response to have been forthright unless Defendant acknowledged that
2 Garcia had been on the premises.

3 *E. Plaintiff's Termination*

4 On May 27, 2008, Ledger informed Plaintiff of her termination. Plaintiff sent Ledger
5 an e-mail regarding her termination, requesting a written explanation for her termination. On
6 June 19, 2008, Plaintiff received a response from Ledger. In his e-mail to Plaintiff, Ledger
7 explained that the memorandum that she had written regarding Julian Garcia was “in form,
8 substance, and in the manner in which it was distributed demonstrated poor judgment. The
9 claims raised in your memo were thoroughly investigated and were not corroborated by
10 anyone present during the alleged events. These conclusions were discussed with you by the
11 Human Resources Manager, who asked you for further substantiation, which you failed to
12 provide. You were strident and generally uncooperative during this conversation and refused
13 to accept his recommendation to avail yourself of the employee assistance program.” Ledger
14 E-mail to Pl. 6/19/08, Ex. “K” [Doc. 70]. Ledger went on to state that Plaintiff:

15 [F]ailed to provide a satisfactory explanation of why you issued the memo,
16 why you raised your concerns in the manner that you did, and why you did not
17 cooperative [sic] with the investigation. You indicated little or no willingness
18 to modify your conduct or practice in this regard. I expressed to you that in
19 my view, as your manager, these actions did not appear to conform with
20 established policy and procedures, were imprudent, and demonstrated poor
21 judgment. I noted that it was my opinion, and the opinion of the CEO and
22 other managers involved in the investigation of your claims, that your actions
23 suggest that you do not possess the judgment and credibility necessary to
24 perform in-house staff attorney duties.

21 *Id.* Plaintiff admits that the quoted section accurately reflects the contents of the letter
22 provided to her; however, she disputes the accuracy of the contents of Ledger’s e-mail
23 because she believes that she complied with Defendant’s Harassment in the Workplace
24 Policy and reacted calmly and reasonably when questioned by Defendant’s HR Director and
25 her supervisor.¹ Plaintiff testified that she was reluctant to give the company more

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27 ¹The Court notes that it was not Plaintiff’s responsibility to forward her complaint to
28 the CEO. This initiative violated the Harassment in the Workplace Policy as described
supra.

1 information because she believed that they already knew enough. Further, Plaintiff felt that
2 she had provided Silvester with enough detail to conduct an investigation and did not need
3 to tell him everything that she knew. Plaintiff also testified that when Silvester pressed her
4 for more information, she felt that he was going to use it to further exploit her, so she refused
5 to give it to him.

6 *F. Defendant's Employment Policies*

7 Plaintiff received a copy of all Defendant's policies, kept them in a binder in the
8 office, and referred back to them throughout her employment. Prior to making her complaint
9 in this case, Plaintiff reviewed Defendant's sexual harassment policy. Plaintiff understood
10 that the purpose of the Employee Complaint Resolution Policy was to provide an orderly
11 method to process employee complaints at Defendant corporation.² The Employee
12 Complaint Resolution Policy provides that all problems or complaints raised by employees
13 "will be handled in accordance with an established step-by-step procedure whereby such
14 employees may bring complaints to succeeding levels of management until the problem has
15 been resolved or until the problem or complaint has passed through the levels of
16 management." Def.'s Security Procedure, Ex. "L" [Doc. 70] at 3-12. The Employee
17 Complaint Resolution Policy states that the CEO is the court of last resort in the complaint
18 resolution policy. Plaintiff asserts that her complaint was brought under the Harassment in
19 the Workplace Policy which sets forth a different procedure.

20 Defendant's Harassment in the Workplace Policy generally defines sexual harassment
21 to include unwelcome sexual advances, requests for sexual favors, and other verbal or
22 physical conduct of a sexual nature. Defendant's Harassment in the Workplace Policy gives
23 various examples of prohibited harassment, makes clear that no harassment will be tolerated,
24

25 ²Plaintiff disputes this statement. She asserts that she was promoted from paralegal
26 to staff attorney in January 2008, she had not received any reprimands and that she continued
27 to perform her job duties without incident until she received the verbal warning from her
28 supervisor on May 28, 2008. These facts, however, have nothing to do with the complaint
resolution policy.

1 specifically details what employees are to do if they believe that they are being harassed,
2 discusses the complaint procedures, explains that anyone who has engaged in any harassment
3 will be subject to disciplinary action, which may include termination, and expressly prohibits
4 any retaliation against any employee who makes a harassment complaint.

5 Plaintiff admitted that she copied the CEO on her complaint in May 2008 prior to
6 speaking with either Silvester or Ledger about it. Plaintiff maintains that there is nothing
7 wrong with the way she handled her complaint. Plaintiff agrees that as an employee and in-
8 house attorney at Defendant that she would be subject to disciplinary action if she violated
9 company policy.

10 Plaintiff testified that she considers the stalking she was allegedly subjected to at
11 Defendant corporation to have been sexually motivated. Further, Plaintiff testified that she
12 considers Julian Garcia 2's mere presence at Defendant corporation, and the fact that it was
13 allegedly being hidden from her, to constitute sexual harassment. Plaintiff believes that all
14 the innuendo listed in her corporate deposition notice was suggested to Defendant's
15 employees by someone else because it would be fun to do to her. Plaintiff did not complain
16 to Silvester or Ledger about any of the comments listed as innuendo in her corporate
17 deposition notice because she was still trying to get them past the first step of admitting that
18 something was going on. Plaintiff believes that Ledger was already aware of all the
19 innuendo because she believes that he knows Julian Garcia 1 and/or Julian Garcia 2 because
20 she heard him call someone Julie on the phone once and she once heard him talking about
21 someone with short black hair. Plaintiff does not have any evidence that Silvester knew
22 about any of the innuendo listed in her corporate disclosure statement.

23 *G. Alleged Retaliation by Defendant*

24 Plaintiff testified that she believes that she was terminated for complaining about
25 sexual harassment because she was terminated eight or nine days after making her complaint.
26 No one told Plaintiff that she was being terminated for making a complaint, but rather told
27 her she was being terminated for the way she handled the complaint process. Plaintiff has
28

1 not offered any evidence that she was terminated for making a harassment complaint.³ None
2 of Defendant’s employees have told her that she was fired for making a harassment
3 complaint and she has not seen any documents indicating this reasoning.⁴

4 *H. Alleged Disability Discrimination*

5 Plaintiff does not consider herself to have a disability. She believes that she was fired
6 because Defendant perceived her as disabled because, in May 2008, Ledger allegedly made
7 a comment to her about schizophrenia and called her paranoid. Silvester also allegedly called
8 her paranoid and they mentioned the employee assistance program. Plaintiff does consider
9 herself to be a little paranoid. Plaintiff continues to believe that Ledger knows more than he
10 has told her regarding the reasons for her termination, but has yet to obtain that evidence.
11 Plaintiff further believes that Ledger was not being honest with her about the reasons for her
12 termination because she disagrees with them and believes that she did not do anything
13 unreasonable.

14
15 **II. STANDARD OF REVIEW**

16 Summary judgment is appropriate when, viewing the facts in the light most favorable
17 to the nonmoving party, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), “there
18 is no genuine issue as to any material fact and [] the moving party is entitled to a judgment
19 as a matter of law.” Fed. R. Civ. P. 56(c). A fact is “material” if it “might affect the outcome
20 of the suit under the governing law,” and a dispute is “genuine” if “the evidence is such that

21 _____
22 ³Plaintiff disputes this statement, arguing that she made the complaint in accordance
23 with Defendant’s Harassment in the Workplace Policy. Moreover, she urges that she
24 remained calm during the meeting with Defendant’s management, but was berated by her
25 supervisor. Plaintiff’s subjective intent to complain pursuant to Defendant’s Harassment in
the Workplace Policy and her demeanor during subsequent meetings fail to rebut
Defendant’s reasons for firing her.

26 ⁴Plaintiff disputes this statement because Ledger’s May 23, 2008 e-mail acknowledges
27 that Plaintiff was referring to her May 15, 2008 letter as a harassment complaint made under
28 Defendant’s Harassment in the Workplace Policy. This, however, does not controvert the
statement that the complaint was not why she was fired.

1 a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at
2 248. Thus, factual disputes that have no bearing on the outcome of a suit are irrelevant to the
3 consideration of a motion for summary judgment. *Id.* In order to withstand a motion for
4 summary judgment, the nonmoving party must show “specific facts showing that there is a
5 genuine issue for trial,” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Moreover, a
6 “mere scintilla of evidence” does not preclude the entry of summary judgment. *Anderson*,
7 477 U.S. at 252. The United States Supreme Court also recognized that “[w]hen opposing
8 parties tell two different stories, one of which is blatantly contradicted by the record, so that
9 no reasonable jury could believe it, a court should not adopt that version of the facts for
10 purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380,
11 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007).

13 **III. ANALYSIS**

14 Plaintiff’s Third Amended Complaint alleges six (6) separate causes of action as
15 follows: (1) Sexual Harassment in Violation of Section 703(a) of Title VII, 42 U.S.C. 2000e-
16 2(a); (2) Retaliation in Violation of Section 704(a) of Title VII, 42 U.S.C. 2000e-3(a); (3)
17 Discrimination/Harassment Based on Disability in Violation of the ADA, 42 U.S.C. 12102,
18 12111, and 12112; (4) Discrimination/Adverse Employment Actions Based on Disability in
19 Violation of the ADA, 42 U.S.C. 12102, 12111, and 12112; (5) Threats, Coercion, and/or
20 Intimidation in Violation of the ADA, 42 U.S.C. § 12203(b); and (6) Retaliation in Violation
21 of the ADA, 42 U.S.C. § 12203(a). Defendant has filed its summary judgment motion on all
22 claims.

23 *A. Count One Hostile Work Environment*

24 Plaintiff’s first claim alleges discrimination by Defendant based on sex, in which she
25 was “subjected to physical and/or verbal conduct of a sexual nature at her workplace.” Pl.’s
26 3d Amended Compl. [Doc. 29] at ¶ 65. Title VII of the Civil Rights Act of 1964 provides
27 that:

28 It shall be an unlawful employment practice for an employer –

1 (1) to fail or refuse to hire or to discharge any individual, or otherwise to
2 discriminate against any individual with respect to his compensation, terms,
3 conditions, or privileges of employment, because of such individual's race,
4 color, religion, sex, or national origin; or

5 (2) to limit, segregate, or classify his employees or applicants for employment
6 in any way which would deprive or tend to deprive any individual of
7 employment opportunities or otherwise adversely affect his status as an
8 employee, because of such individual's race, color, religion, sex, or national
9 origin.

10 42 U.S.C. § 2000e-2(a). "Sexual harassment falls into two major categories: hostile work
11 environment and quid pro quo." *Brooks v. City of San Mateo*, 229 F.3d 917, 923 (9th Cir.
12 2000) (citations omitted). "A hostile work environment claim involves a workplace
13 atmosphere so discriminatory and abusive that it unreasonably interferes with the job
14 performance of those harassed." *Id.* A quid pro quo claim occurs "where a supervisor
15 demands sexual favors in return for a job benefit." *Id.*

16 In order to prevail on a hostile work environment claim, Plaintiff must show that her
17 "workplace [was] permeated with 'discriminatory intimidation, ridicule, and insult . . . that
18 is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and
19 create and abusive working environment.'" *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21,
20 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993). The conduct must create an objectively hostile
21 or abusive work environment, and the victim must subjectively perceive the environment to
22 be abusive in order to implicate Title VII. *Id.* at 21-2, 114 S.Ct. at 370. The Ninth Circuit
23 recognizes that "an employer may be held liable for sexual harassment on the part of a
24 private individual . . . where the employer either ratifies or acquiesces in the harassment by
25 not taking immediate and/or corrective actions when it knew or should have known of the
26 conduct." *Folkerson v. Circus Circus Enterprises, Inc.*, 107 F.3d 754, 756 (9th Cir. 1997);
27 *See also Little v. Windermere Relocation, Inc.*, 301 F.3d 958 (9th Cir. 2002).

28 There is no doubt that Plaintiff subjectively perceived a hostile or abusive work
environment. The objective component is assessed using a totality of the circumstances test.
See Brooks, 229 F.3d at 923. Plaintiff maintains that several events constituted harassment
while employed at Defendant. First, she had a telephone encounter with Julian Garcia 1 in

1 March 2008 when she called Defendant's after-hours line. Julian Garcia 1 got on the line
2 and stated that he could barely hear her because it was windy outside. This conversation
3 lasted approximately fifteen (15) seconds. Second, in April 2008, Plaintiff had another
4 telephone encounter with Julian Garcia 1, again when she called Defendant's after-hours line.
5 When Plaintiff stated that she would be leaving in about an hour, Julian Garcia 1 got on the
6 line and stated angrily, "I'm going to hold you to that." Plaintiff responded jokingly, and did
7 not immediately realize that she had spoken to Julian Garcia 1. This conversation lasted
8 approximately five (5) seconds. An hour later, when Plaintiff called back to say that she was
9 leaving, a second voice said, "Yeah, get out of here. It's the weekend." Plaintiff testified
10 that Julian Garcia 2 made this last comment. Plaintiff did not complain to Defendant about
11 any of these telephone conversations.

12 In approximately September 2007, Plaintiff testified that she saw Julian Garcia 2
13 sitting alone in a white truck in Defendant's parking lot. Plaintiff was walking to the parking
14 lot and while approximately fifteen (15) to twenty (20) feet from the truck, she looked at
15 Julian Garcia 2 for approximately five (5) seconds. Julian Garcia 2 looked up, but Plaintiff
16 does not recall if they made eye contact. Plaintiff did not report this incident to Defendant.

17 In approximately March or April 2008, Plaintiff testified that she saw Julian Garcia
18 2 at Defendant's property in another employee's office. Plaintiff walked by and saw Julian
19 Garcia 2 in her peripheral vision for approximately two (2) seconds. He did not speak to her,
20 nor did she ask Defendant's employee who he was. Plaintiff never reported this incident to
21 Defendant.

22 On or about April 30, 2008, Plaintiff saw Julian Garcia 2 leaving an office across from
23 a conference room where she was seated. Plaintiff saw the individual for approximately four
24 (4) seconds and initially believed that it was Julian Garcia 1, but now asserts that it was
25 Julian Garcia 2. Julian Garcia 2 did not speak to Plaintiff, and allegedly looked at her, then
26 moved behind Stuart Washburn, one of Defendant's employees.

27 Finally, Plaintiff states that a co-worker, Jeremy Rutherford, made a smirking remark
28

1 about the temperature, when Plaintiff was wearing a t-shirt.⁵ Plaintiff did not complain to
2 anyone about Rutherford's comment.

3 Plaintiff first notified Defendant about stalking in October 2007. At that time,
4 Plaintiff informed her supervisor, Patrick Ledger, about Julian Garcia. Ledger had never
5 heard of Julian Garcia and asked if Plaintiff was being stalked and if she needed to be moved
6 to a different office. Plaintiff responded that "things happen around my apartment complex
7 and that I was considering breaking my lease and moving from Tucson because of it." Pl.'s
8 Depo 10/27/10 at 119:20-120:6. Later in the day, Plaintiff avers that Ledger checked in with
9 her and commented that "there are worse things that someone could be, like homeless."
10 Plaintiff found the conversation strange and concludes from this that Ledger knew about
11 Julian Garcia and was hiding or withholding information.

12 In February 2008, Plaintiff spoke with Human Resources Director Emery Silvester.
13 Plaintiff informed Silvester that she had a hostile encounter with a former co-worker and that
14 she wanted to be notified if anything occurred related to the individual at Defendant
15 corporation.⁶ Silvester inquired if the person was employed at Defendant corporation, and
16 Plaintiff stated that she did not know, but that it would pose a problem for her if he was
17 employed there. Also in February 2008, Plaintiff spoke with Ledger for a second time and
18 reported seeing Julian Garcia at her apartment and expressing a concern for her safety.
19 Plaintiff did not give Ledger any details, nor did she ask him to do anything because the
20 issues were not occurring at the workplace. Subsequently, after Plaintiff's March/April 2008
21 encounter with Julian Garcia, she asked employee Shane Sanders about Julian Garcia.⁷
22 Sanders stated that he did not know a Julian Garcia, only a Dave Garcia. Plaintiff did not
23 speak with Ledger about this incident. Finally, on May 15, 2008, Plaintiff wrote to Silvester

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25 ⁵This comment was about Plaintiff's anatomy in light of the cold weather.

26 ⁶Prior to Plaintiff's meeting with Silvester, she had called Julian Garcia 1 to tell him
27 to leave her alone.

28 ⁷Plaintiff saw Julian Garcia 2 in Sanders's work area.

1 requesting an investigation regarding Julian Garcia spying on her.

2 In total, there were three telephone encounters with and three physical sightings of the
3 Julian Garcias, and one comment made by Rutherford that Plaintiff identifies as constituting
4 harassment. These seven individual incidents over a one year period cannot be said to create
5 a “workplace permeated with ‘discriminatory intimidation, ridicule, and insult . . . that is
6 ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create
7 and abusive working environment.” *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21, 114
8 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993). There were no physical threats or humiliation, the
9 conduct was infrequent and consisted of merely offensive utterances and random sightings.
10 *See id.* (based on the totality of the circumstances, environment must unreasonably interfere
11 with an employee’s performance). Title VII is not a “general civility code,” and therefore,
12 “simple teasing, off-hand comments, and isolated incidents (unless extremely serious) will
13 not amount to discriminatory changes in the ‘terms and conditions of employment.’”
14 *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S. Ct. 2275, 2283-84, 141 L.Ed.2d
15 662 (1998). As such, Plaintiff cannot meet her burden to sustain a *prima facie* case under
16 Title VII.

17 *B. Count Two Retaliation under Title VII*

18 Plaintiff’s second claim alleges that Defendant retaliated against her because of her
19 opposition to unlawful sexual harassment in the workplace. Pl.’s 3d Amended Compl. [Doc.
20 29] at ¶ 69. Section 2003e-3(a), 42 U.S.C., provides as follows:

21 It shall be an unlawful employment practice for an employer to discriminate
22 against any of his employees or applicants for employment, for an employment
23 agency, or joint labor-management committee controlling apprenticeship or
24 other training or retraining, including on-the-job training programs, to
25 discriminate against any individual, or for a labor organization to discriminate
26 against any member thereof or applicant for membership, because he has
27 opposed any practice made an unlawful employment practice by this
28 subchapter, or because he has made a charge, testified or assisted, or
participated in any manner in an investigation, proceeding, or other hearing
under this subchapter.

42 U.S.C. § 2000e-3(a). In order to maintain a retaliation claim under Title VII, Plaintiff
“must show (1) involvement in a protected activity, (2) an adverse employment action and

1 (3) a causal link between the two.” *Brooks*, 229 F.3d at 928. “Thereafter, the burden of
2 production shifts to the employer to present legitimate reasons for the adverse employment
3 action.” *Id.* “Once the employer carries this burden, plaintiff must demonstrate a genuine
4 issue of material fact as to whether the reason advanced by the employer was a pretext.” *Id.*
5 “[A]n employer may be held liable for sexual harassment on the part of a private individual,
6 . . . where the employer either ratifies or acquiesces in the harassment by not taking
7 immediate and/or corrective actions when it knew or should have known of the conduct.”
8 *Folkerson v. Circus Circus Enterprises, Inc.*, 107 F.3d 754, 756 (9th Cir. 1997); *see also* 29
9 C.F.R. § 1604.11(e) (EEOC regulations reflecting this standard).

10 Plaintiff maintains that the May 15, 2008 complaint/request to Defendant’s Human
11 Resources Director “in accordance with Defendant’s Harassment in the Workplace policy”
12 constituted a protected activity. Pl.’s Resp. to Def.’s Mot. for Summ. J. [Doc. 98] at 2.
13 Although, Plaintiff may have believed that her letter was a sexual harassment complaint a
14 review of this document indicates that she is requesting an investigation regarding her alleged
15 sighting of Julian Garcia on Defendant’s property. There is nothing to suggest that she was
16 alerting Defendant of a sexual harassment complaint, or indeed any sort of harassment at all.
17 As such, Defendant argues that this letter cannot represent a protected activity.

18 During oral argument, Plaintiff relied heavily on the Ninth Circuit Court of Appeals
19 opinion in *Little v. Windermere Relocation, Inc.*, 301 F.3d 958 (9th Cir. 2002). Although this
20 case recognizes that an employer may be held liable for the actions of a non-employee third
21 party, it is inapposite here. In *Little*, the Plaintiff was raped by a client. *See id.* Upon
22 reporting the rape to the corporate President, Plaintiff’s pay was immediately cut. As such,
23 Little’s “employer effectively condoned [the] rape by a business colleague and its effects.”
24 *Id.* at 968. Windermere offered a non-discriminatory reason for Little’s payout; however,
25 Little “tendered sufficient evidence, in addition to the proximity of events, to rebut this
26 alleged reason.” *Id.* at 970. The severity of the harassment coupled with Windermere’s
27 apparent failure to act are in stark contrasts to the facts in the present case.

28 Here, Plaintiff points to seven individual, innocuous incidents over a one year period.

1 When Plaintiff requested an investigation surrounding the presence of Julian Garcia on
2 Defendant's property, Defendant acted immediately. As outlined in Silvester's May 23, 2008
3 letter to Plaintiff, Defendant spoke with all of the people who may have had contact with
4 Julian Garcia, as well as showing those individuals the pictures provided by Plaintiff,
5 reviewed logs, and spoke to their temporary services provider, in an effort to determine
6 whether Julian Garcia had been on Defendant's property. Plaintiff contends that these items
7 "may have been done, but . . . contend[s] that it was disingenuous, that [Defendant] knew that
8 this Julian Garcia 2 was here." Pl.'s Depo. 10/27/10, Exh. A [Doc. 70] at 188:20-190:18.
9 Plaintiff has not produced any evidence, however, to support her contention. "In order to
10 prove that she engaged in protected opposition, 'the opposition must be directed at an
11 unlawful employment practice of an employer, not an act of discrimination by a private
12 individual.'" *Folkerson*, 107 F.3d at 755 (9th Cir. 1997) (quoting *Silver v. KCA, Inc.*, 586
13 F.2d 138, 141 (9th Cir. 1978)).

14 Plaintiff has not alleged any facts which would indicate that Defendant ratified or
15 acquiesced to any alleged sexual harassment by Julian Garcia 1 or 2. The facts demonstrate
16 that Defendant took reasonable steps to address Plaintiff's concerns regarding the presence
17 of Julian Garcia on its property. As such, Plaintiff cannot meet her burden to demonstrate
18 that she was engaged in a protective activity.⁸

19 *C. Counts Three and Four Discrimination/Harassment and Adverse*
20 *Employment Action in Violation of the ADA*

21 To establish a *prima facie* case of discrimination under the ADA, Plaintiff must show
22 "that she: (1) is disabled; (2) is qualified; and (3) suffered an adverse employment action
23 because of her disability." *Snead v. Metropolitan Prop. & Cas. Ins. Co.*, 237 F.3d 1080,
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25
26 ⁸Additionally, Defendant has come forward with a legitimate, non-discriminatory reason for
27 Plaintiff's dismissal. Upon completing their initial investigation regarding Julian Garcia, Defendant
28 sought additional information from Plaintiff. Plaintiff refused to cooperate. Plaintiff may not
believe those reasons, but she cannot come forward with any evidence to demonstrate that they are
merely pretextual.

1 1087 (9th Cir. 2001); *Kennedy v. Applause, Inc.*, 90 F.3d 1477 (9th Cir. 1996).⁹ “Under
2 subsection (C), individuals who are ‘regarded as’ having a disability are disabled within the
3 meaning of the ADA.” *Sutton v. United Air Lines*, 527 U.S. 471, 489, 119 S.Ct. 2139, 2149,
4 144 L.Ed.2d 450 (1999). Further, under subsection (C), a covered entity must either believe
5 “that one has a substantially limiting impairment that one does not have or that one has a
6 substantially limiting impairment, when, in fact, the impairment is not so limiting.” *Id.*, 119
7 S.Ct. at 2150. “[A] plaintiff alleging a ‘regarded as’ claim [must] provide evidence of the
8 employer’s ‘misperception,’ or subjective belief that the plaintiff is substantially impaired.”
9 *Walton v. U.S. Marshals Service*, 492 F.3d 998, 1006 (9th Cir. 2007). Moreover, “a plaintiff
10 must show that her employer regards her as substantially limited in a major life activity and
11 not just unable to meet a particular job performance standard.” *Id.* at 1006 (citations
12 omitted). As such, “in order to state a ‘regarded as’ claim a plaintiff must establish that the
13 employer believes that the plaintiff has some impairment, and provide evidence that the
14 employer subjectively believes that the plaintiff is substantially limited in a major life
15 activity.” *Id.*

16 In this case, Plaintiff states that Defendant’s Human Resources Director told her that
17 she is “paranoid” for writing the May 15, 2008 memo and suggested that she participate in
18 Defendant’s employee assistance program. Pl.’s Resp. to Def.’s Mot. for Summ. J. [Doc. 98]
19 at 6. This coupled with her supervisor’s suggestion that perhaps she was “schizophrenic”
20 leads Plaintiff to assert that Defendant mistakenly believed that she was disabled.¹⁰ Plaintiff
21 does not demonstrate how these comments show that Defendant mistakenly believed that she
22

23 ⁹The Court notes that the ADA Amendments Act of 2008, which altered the ADA’s
24 definition of disability, does not apply to alleged acts occurring before January 1, 2009. *See Becerril*
25 *v. Pima County Assessor’s Office*, 587 F.3d 1162 (9th Cir. 2009).

26 ¹⁰Plaintiff also avers that a co-worker, Emily Regis, came into Ledger’s office when Ledger
27 made the comment about schizophrenia. Pl.’s Resp. to Def.’s Mot. for Summ. J. [Doc. 108] at 14.
28 Plaintiff asked Ms. Regis if Plaintiff had ever acted like she had schizophrenia, to which Ms. Regis
responded that she did not know her well enough. *Id.* The Court finds that this statement does not
support a finding of Defendant regarding Plaintiff as being a schizophrenic.

1 was “substantially limited” in a major life activity. “If the plaintiff does not have direct
2 evidence of the employer’s subjective belief that the plaintiff is substantially limited in a
3 major life activity, the plaintiff must further provide evidence that the impairment imputed
4 to the plaintiff is, objectively, a substantially limiting impairment.” *Walton*, 492 at 1006.
5 Even if the Court were to agree that Defendant mistakenly believed Plaintiff to be disabled,
6 there is no evidence of discrimination because of that disability. Defendant has given
7 legitimate, non-discriminatory reasons for Plaintiff’s termination, and Plaintiff has not
8 produced any evidence to demonstrate pretext.¹¹ *See Snead*, 237 F.3d at 1093 (applying
9 *McDonnell Douglas*¹² burden shifting to ADA claims). Accordingly, Plaintiff’s claim must
10 fail.

11 *D. Counts 5 and 6 Threats, Coercion and/or Intimidation and Retaliation*
12 *in Violation of the ADA*

13 Plaintiff alleges that she suffered “threats, coercion, and/or intimidation by
14 Defendant” and retaliation while engaged in a protected activity under the ADA. Pl.’s 3d
15 Amended Compl. [Doc. 29] at ¶¶ 85 & 88. In order to establish a *prima facie* case under 42
16 U.S.C. § 12203, Plaintiff “must show (1) involvement in a protected activity, (2) an adverse
17 employment action and (3) a causal link between the two.” *Brooks*, 229 F.3d at 928; *See also*
18 *Brown v. City of Tucson*, 336 F.3d 1181, 1187 (9th Cir. 2003) (applying the *Brooks* standard
19 to ADA claims). As discussed *supra*, Plaintiff cannot establish that she was involved in a
20 protected activity. Again, the Court notes, “[i]n order to prove that she engaged in protected
21 opposition, ‘the opposition must be directed at an unlawful employment practice of an
22 employer, not an act of discrimination by a private individual.’” *Folkerson*, 107 F.3d at 755
23 (9th Cir. 1997) (quoting *Silver v. KCA, Inc.*, 586 F.2d 138, 141 (9th Cir. 1978)). Moreover,
24 there is no evidence to support Plaintiff’s claim that she was threatened or coerced by

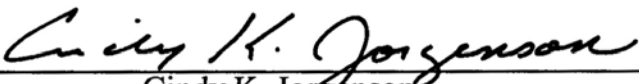
25
26 ¹¹Plaintiff’s refusal to cooperate in Defendant’s further investigation of her claims led
27 Defendant to question her judgment. This, coupled with her refusal to follow protocol placed
28 Plaintiff’s ability to represent the company as an attorney in doubt.

¹²411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

1 Defendant. Accordingly, Plaintiff cannot establish a *prima facie* case under the ADA.
2 Because Plaintiff has failed to meet her initial burden, the Court does not reach the
3 *McDonnell Douglas* burden shifting analysis appropriate for a retaliation claim.

4 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Summary
5 Judgment [Doc. 69] is GRANTED.

6 DATED this 6th day of September, 2011.

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8 
9 Cindy K. Jorgenson
10 United States District Judge
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