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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDITH BARNETT

Plaintiff

v.

PA CONSULTING GROUP, INC.

Defendant.

Civil Action No. 04-1245 (BJR)

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the court on Defendant PA Consulting Group, Inc.'s ("PA") Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rules for the District of Columbia 7.1 and 56.1. From October 2000 to November 2003, Plaintiff Judith Barnett worked as a Managing Consultant in PA's Transportation Group. In October 2003, PA merged the Transportation Group into its Information Technology Infrastructure Group ("ITI"), thereby eliminating several positions including Ms. Barnett's. Plaintiff asserts that PA discriminated against her in the reduction in force ("RIF") based on her age and gender. She claims that the RIF disproportionately affected women and older professional

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1 employees without justification. PA counters that the RIF did not have a discriminatory bias, and
2 asserts that substantial financial setbacks in PA's Transportation Group after the events of
3 September 11, 2001 led PA to reorganize the practice by narrowing its focus and eliminating
4 non-core services. Upon consideration of Defendant's motion and reply, the opposition thereto,
5 as well as the relevant law, the motion for summary judgment is granted.¹

6 **II. LEGAL BACKGROUND**

7 *A. Summary Judgement Standard*

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9 A motion for summary judgment should be granted only "if the movant shows that there
10 is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
11 law." Fed.R.Civ.P. 56(a). A material fact is one that "might affect the outcome of the suit under
12 the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The movant
13 must support its factual positions by "citing to particular parts of materials in the record,
14 including depositions, documents, electronically stored information, affidavits or declarations,
15 stipulations ..., admissions, interrogatory answers, or other materials." Fed.R.Civ.P. 56(c)(1)(A);
16 *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets its burden, the
17 non-moving party must then establish that a genuine dispute as to any material fact exists. *See*
18 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To meet its
19 burden, the non-moving party must show that "the evidence is such that a reasonable jury could
20 return a verdict" in its favor. *Anderson*, 477 U.S. at 248. Such evidence must consist of more
21 than mere unsupported allegations or denials and must set forth specific facts showing that there
22 is a genuine dispute for trial. *See* Fed.R.Civ.P. 56(c)(1), (e); *Celotex*, 477 U.S. at 322 n. 3. If the
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¹ On August 30, 2011, Plaintiff filed a Request for Expedition in which she requested that "the motion for summary judgment and other proceedings in this case be addressed as expeditiously as possible." (Dkt. No. 67.). The court will grant the request.

1 evidence is “merely colorable” or “not significantly probative,” summary judgment may be
2 granted. *Anderson*, 477 U.S. at 249–50.

3 *B. The ADEA and DCHRA*

4 Pursuant to the ADEA, it is illegal for an employer to terminate, fail to hire or promote,
5 or otherwise discriminate against any individual “because of” such individual's age. 29 U.S.C. §
6 623. The DCHRA makes it unlawful for an employer to discharge or refuse to hire an individual
7 “wholly or partially for a discriminatory reason based upon the actual or perceived: race, color,
8 religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender
9 identity or expression, family responsibilities, genetic information, disability, matriculation, or
10 political affiliation of any individual.” D.C.Code § 2-1402.11(a)(1). Discrimination claims under
11 the ADEA and DCHRA have traditionally been analyzed under the *McDonnell Douglas* burden
12 shifting framework. *See Goos v. Nat'l Ass'n of Realtors*, 715 F. Supp. 2, 3 (D.D.C.1989) (because
13 the DCHRA was “modeled on Title VII,” courts employ “the Title VII prima facie case analysis
14 established in *McDonnell Douglas*” when analyzing motions for summary judgment); *Mianegaz*
15 *v. Hyatt Corp.*, 319 F. Supp. 2d 13, 20 (D.D.C.2004) (“[T]he same analytical framework applies
16 to both ADEA and DCHRA claims.”).

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18
19 The D.C. Circuit, however, has instructed that when considering a motion for summary
20 judgment in an employment discrimination case, a district court need not consider whether a
21 plaintiff has actually satisfied the elements of a prima facie case if the defendant has offered a
22 legitimate, non-discriminatory reason for its actions. *Brady v. Office of the Sergeant at Arms*, 520
23 F.3d 490, 494 (D.C.Cir.2008). Instead, “the district court must resolve one central question: Has
24 the employee produced sufficient evidence for a reasonable jury to find that the employer's
25 asserted non-discriminatory reason was not the actual reason and that the employer intentionally

1 discriminated against the employee on the basis of race, color, religion, sex, or national origin?”

2 *Id.* In other words, a court must determine whether “all the evidence, taken together, [is]
3 insufficient to support a reasonable inference of discrimination.” *Jones v. Bernanke*, 557 F.3d
4 670, 678 (D.C.Cir.2009) (citing *Brady*, 520 F.3d at 494–95); *see also Holcomb v. Powell*, 433
5 F.3d 889, 896–97 (D.C.Cir.2006) (“[T]he plaintiff must show that a reasonable jury could
6 conclude from all of the evidence that the adverse employment decision was made for a
7 discriminatory reason.” (quoting *Lathram v. Snow*, 336 F.3d 1085, 1088 (D.C.Cir.2003))).
8 “[A]ll of the evidence,” in turn, means “any combination of (1) evidence establishing the
9 plaintiff’s prima facie case; (2) evidence the plaintiff presents to attack the employer’s proffered
10 explanation for its actions; and (3) any further evidence of discrimination that may be available
11 to the plaintiff, such as independent evidence of discriminatory statements or attitudes on the part
12 of the employer.” *Holcomb*, 433 F.3d at 897; *see also Washington v. Chao*, 577 F. Supp. 2d 27,
13 39 (D.D.C.2008).
14

15 A plaintiff bears the burden of persuasion to show that a defendant’s proffered non-
16 discriminatory reason for the challenged action is a pretext. *See Morgan v. Fed. Home Loan*
17 *Mortgage Corp.*, 328 F.3d 647, 654 (D.C.Cir.2003). “A plaintiff can carry this burden by
18 showing that a non-discriminatory reason offered by a defendant is false, *Montgomery v. Chao*,
19 546 F.3d 703, 707 (D.C.Cir.2008), or otherwise ‘presenting enough evidence to allow a
20 reasonable trier of fact to conclude that the employer’s proffered explanation is unworthy of
21 credence.’” *Wicks v. Am. Transmission Co. LLC*, 701 F. Supp. 2d 38, 45 (D.D.C.2010) (quoting
22 *Desmond v. Mukasey*, 530 F.3d 944, 962 (D.C.Cir.2008)). A plaintiff may also “attempt[] to
23 produce evidence suggesting that the employer treated other employees of a different race, color,
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1 sex, or national origin more favorably in the same factual circumstances” than the employer
2 treated the plaintiff. *Brady*, 520 F.3d at 495.

3 III. FACTUAL BACKGROUND

4 The following material facts are undisputed, except where noted:

5 A. *PA Consulting Group, Inc.*

6 PA is a large, multinational enterprise that provides business consulting services
7 worldwide. (*See* Exhibit 39 attached to Plaintiff’s Opposition to Motion for Summary Judgement
8 (“Pl. Op.”).)² It is headquartered in London, England, and has offices in more than thirty
9 countries, including the United States. (*Id.*). At all times relevant to this case, PA was headed by
10 Jon Moynihan, the Chairman of the Board and Chief Executive Officer, and Bruce Tindale, the
11 Chief Operating Officer. PA is organized as a partnership. (Deposition of Patrick Kelly taken on
12 September 12, 2007 (“Kelly Dep.”) at 16.). The position of Managing Consultant is immediately
13 below that of Partner. (*Id.* at 27.).
14

15 In any given year, PA employs somewhere between 160 and 180 people holding the title
16 “Partner”. (Deposition of Jon Moynihan taken on October 30, 2007 (“Moynihan Dep.”) at 49.).
17 At the time of this lawsuit, 5 to 12 of the 163 to 179 partners at PA were women,³ and only 32
18 women had ever held the title. (*Id.*; Pl. Ex. 10.). Central to this case is the merger of PA’s
19 Transportation Group into a larger division, the Information Technology Infrastructure Group
20 (“ITI”) in 2003. During this period, ITI had eight partners, none of whom were women. (Kelly
21 Dep. at 35-36, 56-57.). During 2002-2004, ITI employed 37 Managing Consultants and one was
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² Plaintiff’s exhibits attached to the opposition are referred to as “Pl. Ex. ____”.

³ The parties dispute the exact number of partners and female partners at PA during this time.

1 a woman. (*Id.* at 72.). During this same timeframe, the Transportation Group employed up to
2 nine women. (Pl. Ex. 1.).

3 *B. Judith Barnett*

4 Plaintiff Judith Barnett has a diverse employment background. She is a lawyer who, after
5 a brief foray in private legal practice, built a career in national government. She served in four
6 presidential administrations, including a tenure as Deputy Assistant Secretary for Trade
7 Development in the Department of Commerce during the Clinton Administration. (Deposition
8 testimony of Judith Barnett taken on July 12, 2007 “Barnett Dep.” at 37-43.). Following her
9 service in the Clinton Administration, she returned to the private sector and joined a consulting
10 firm, Hagler Bailly/GKMG, in its Transportation Group. (*Id.* at 49 and 52.). While at Hagler
11 Bailly/GKMG, she developed an practice in international trade, focusing on the Middle East and
12 North Africa. (Barnett Dep. at 50.).

14 *C. Ms. Barnett Joins PA*

15 In the Fall of 2000, PA acquired Hagler Bailly/GKMG and the entire Transportation
16 Group transferred over to PA. (Barnett Dep. at 63.). Both before and after the acquisition, the
17 Transportation Group was headed by Jim Miller. (*Id.* at 117.). The Transportation Group’s
18 consulting services primarily focused on airport and/or airline related work. (*Id.* at 51.). After the
19 acquisition, Ms. Barnett repeatedly attempted to transfer to another group within PA because she
20 felt that her Middle East/North Africa trade practice did not fit with the airline/aviation focus of
21 the Transportation Group.⁴ (*See, e.g.,* Exs. 6, 7, 8, 10, 11 and 13 attached to the Motion for
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25 ⁴ Ms. Barnett’s largest client was Mars, Inc. (Kelly Dep. at 120.). She assisted the company in its
international trade in several countries. Ms. Barnett also claims that she “netted” seven new clients valued at
\$700,000 for PA, sold multiple projects in China, landed a contract to provide services to Khalifa Airlines, and
developed a burgeoning trade practice in the Middle East. (*See* Barnett Dep. at 227-230.).

1 Summary Judgment.).⁵ From 2000 to 2001, Ms. Barnett sent eight written memos and emails
2 asking to move from the Transportation Group because “Transportation is not the group for the
3 type of work I do.” (Def. Ex. 7; *see also* Def. Exs. 6, 8, 10, 11 and 12.). She made similar
4 comments in her bi-annual performance reviews, including as late as 2002 when she noted “my
5 practice is quite different from the Transportation practice.” (Def. Ex. 8 at 5; Pl. Ex. 6 at 3.).

6 While at PA, Ms. Barnett received high praise from Mr. Miller. (*See* Deposition of James
7 Miller taken on September 20, 2007 (“Miller Dep.”) at 125 (“As an employee, she was tireless.
8 She worked hard. I mean, she was pretty much a 24/7 type of person. As to quality of work, she
9 produced great work for the client. I mean, my impression...[was that her clients]...said great
10 things about her.”)). Mr. Miller described her performance for the first half of 2003 as “very
11 good!” (Pl. Ex. 5 at 4.).

12
13 *D. The Transportation Group’s Practice Begins to Fail*

14 The Transportation Group suffered substantial financial setbacks as a result of the events
15 of September 11, 2001, which had a catastrophic affect on the airline industry. In 2002, alone,
16 the Group was “about a million dollars in debt.” (Barnett Dep. pp. 170-171.). Leadership at the
17 highest levels of PA began a review of the Transportation Group. The first step of the review was
18 to diagnose the problem, and in January 2003, Mr. Moynihan commissioned a study of the
19 Group by PA’s auditing department. The auditing department examined practice files,
20 interviewed Mr. Miller, and met with some of the group’s employees. (Pl. Ex. 4.). Thereafter, on
21 January 27, 2003, Jinesh Shah, PA’s Head of Internal Audit, issued a report. (*Id.*). The audit
22 revealed that the Transportation Group suffered from a low utilization rate: “the adverse results
23 are primarily due to low utilization (actual consulting utilization 25% against a budget of 65%).
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⁵ Hereinafter referred to as “Def. Ex. ____”.

1 (*Id.* at § 1.2.2.). The audit also noted that some staff members “appear to be coasting,” and that
2 some of the Managing Consultants were not “covering their costs”. (*Id.* at 4.). The auditors noted
3 that Ms. Barnett appeared to be one of the few who “seems to cover her costs.” *Id.* The audit
4 further stated:

5
6 It should be recognized that not all Managing Consultants and Principals are
7 pulling their weight. Those incapable of stepping up to the challenges confronting
8 the Transportation Practice should be counselled out, those with a profitable
9 business stream, but outside the main focus should be allowed to continue, and
those with potential to grow and diversify the practice should be given the most
help and direction.

10 (*Id.* at Recommendations § 3-2.).

11 *E. PA Executives Meet to Decide the Fate of the Transportation Group*

12 After receiving Mr. Shah’s audit report, Mr. Moynihan convened a series of
13 “Transportation Practice Review Meetings,” the first of which took place in mid-February 2003.
14 (*See, e.g.*, Pl. Ex. 14.). Additional meetings occurred in March, May and September 2003. (Pl.
15 Exs. 14, 24 and 25.). In addition to Mr. Moynihan, the regular attendees of these meetings
16 included Mr. Miller, Mr. Tindale, James Cullen (PA’s Global Chief of Human Resources),
17 Annette Wigton (U.S. Human Resources Leader), Ken Rubin (Head of the Infrastructure &
18 Development Services Group (“I&DS”)), and Jon Kanter.⁶ (*See, e.g.*, Pl. Op. at Ex 14.).

19
20 In preparation for these meetings, Mr. Tindale began acquiring information on each of
21 the Transportation Group’s employees. On February 11, 2003 Mr. Moynihan sent an email to
22 Mr. Tindale in which he requested that the information Mr. Tindale collected through Jon Kanter
23 and Bill Loose (PA’s Global Resource Manager) be “melded” with Mr. Shah’s audit report: “i
24 [sic] assume that we would want to meld Bill’s comments...with Jinesh’s, when coming to a final
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⁶ It is not clear from the record what position Mr. Kanter held at PA.

1 decision on each person? (which [sic] should be taken when and by who?)”. (Pl. Ex. 1 at 2.). Mr.
2 Tindale responded: “I’ll ask Kate [Price] to arrange for Jinesh’s and Bill’s comments to be
3 brought together in a single document and redistributed to us before Thursday.” (*Id.*). Ms. Price
4 then sent an email to Messrs. Moynihan and Tindale (among others) that stated: “As requested,
5 please find attached a document which combines Bill’s and Jinesh’s comments. You will see that
6 it’s missing some ages—I’ll send through an updated copy as soon as I’ve received that info.”
7 (*Id.* at 1.). The attached document was entitled “View of TP Staff”. (*Id.* at 1.).

8
9 *F. PA Decides to Restructure the Transportation Group*

10 During the course of the Transportation Practice Review Meetings, it was decided that
11 the Transportation Group needed to be restructured, and that it would benefit from having fewer
12 employees and new leadership. (Moynihan Dep. at 78-79; Kelly Dep. at 100.). In addition,
13 Messrs. Moynihan and Tindale considered merging the Transportation Group with Mr. Rubin’s
14 Infrastructure and Development Group at PA. (Pl. Ex. 1 at 3.). Accordingly, in February and
15 March 2003, Mr. Miller considered a number of employees for inclusion in a reduction-in-force
16 (“RIF”). (Pl. Ex. 14 at 2.). Ms. Barnett was not among those considered. (Miller Dep. at 261-262,
17 290-291, 294-295, 301-305.). At this point, Mr. Miller decided to include two individuals in the
18 RIF, Arnie Levine, a Managing Consultant, age 54, and Robert Tardio, a Principal Consultant,
19 age 74. (Miller Dep. at 300.). Thereafter, Mr. Levine left PA in April 2003 and Mr. Tardio left in
20 September 2003. (Pl. Ex. 24.). Ms. Barnett testified that she thought that both of these
21 terminations made good sense. As to Mr. Levine, she testified that his “revenues weren’t
22 existent” and as to Mr. Tardio she testified that “he never billed an hour.” (Barnett Dep. at 238
23 and 326.).
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1 G. *Patrick Kelly Gets Involved for the First Time*

2 At some point in September 2003, it was decided that the Transportation Group would
3 not merge with the Infrastructure and Development Group, but rather, would be absorbed by the
4 Information Technology Infrastructure Group (“ITI”) headed by Patrick Kelly. (Kelly Dep. pp.
5 94-96; Pl. Ex. 26.). Thereafter, Mr. Kelly participated in the September 23, 2003 Transportation
6 Practice Review meeting. (Pl. Ex. 26.). At the meeting, seven individuals were identified for
7 potential inclusion in the RIF. (*Id.*). Ms. Barnett was still not on the list. (*Id.*).
8

9 On September 30, 2003, Mr. Miller met with Mr. Kelly to discuss the Transportation
10 Group staff. (Miller Dep. at 322-323.). The purpose of the meeting was to “introduce [Mr. Kelly]
11 to the transportation practice and ... introduce [Mr. Miller] to the ITI practice....” (*Id.*). During
12 the meeting, Messrs. Kelly and Miller focused on three criteria for evaluating the Transportation
13 Group employees: “skills and capabilities,” “performance,” and “commitment” to PA. (Pl. Ex.
14 9.). The rating scale they devised scored employees on a scale of one check mark to three check
15 marks, with three being the highest. *Id.* Ms. Barnett received three check marks for
16 “performance” and “commitment to PA,” and two for “skills and capabilities.” *Id.* Next to “skills
17 and capabilities,” Mr. Miller added the word “Trade.” *Id.* After this meeting, Mr. Kelly
18 concluded that the Transportation Group needed to focus its energies more directly on its
19 primary work for airports and airlines. (*Id.* at 103, 224-228.). He claims that it was at this point
20 that he decided that “non-core” services and activities should be eliminated from the
21 Transportation Group through the RIF. (*Id.* at 224-228.). Ms. Barnett claims that this is not true,
22 and that Mr. Kelly made this up in order to justify her termination after she filed suit.
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25 H. *Mr. Kelly Decides to Terminate Ms. Barnett*

 On October 10, 2003, Mr. Kelly traveled to Washington D.C. to meet with the members

1 of the Transportation Group in advance of the reorganization. Mr. Kelly met with Ms. Barnett,
2 for the first time, to discuss her trade practice and background. (Kelly Dep. at 150-156.). Mr.
3 Kelly claims that his meeting with Ms. Barnett confirmed his growing understanding that Ms.
4 Barnett's practice was not "core" to the Transportation practice. (*Id.* at 155-156.). He claims that
5 it was after this meeting that he decided to add her name to the group that Mr. Miller had
6 previously identified for inclusion in the RIF. Mr. Kelly testified that the sole reason he included
7 Ms. Barnett in the RIF was the poor fit between her trade practice and the rest of the
8 Transportation Group. (*Id.* at 223-226.). He further testified that he did not consider her
9 utilization, profitability, performance, or revenues. (*Id.* at 223-224.). Ms. Barnett disputes this,
10 claiming that Mr. Kelly is lying to cover for the age and gender bias that tainted her termination.
11

12 *I. PA Implements the RIF*

13 Thereafter, on October 17, 2003, five Transportation Group employees—two men and
14 three women, ages 29 to 57—were notified that their positions were terminated. (Pl. Ex. 37.).
15 Ms. Barnett was one of the members terminated. (*Id.*). She was 57-year-old at the time. Also
16 included in the RIF were:
17

18 Zvezda VanPelt, female, age 29
19 Edmund Pinto, male, age 63
20 Tammylynn Pertillar, female, age 35
21 Garbor Kovacs, male, age 46

22 (*Id.*). After the October 2003 RIF, eighteen employees remained in the Transportation Group
23 including Lynn McDevitt, a female Principal Consultant who was 58-years-old at the time. (Def.
24 Ex. 21.). This also included six Managing Consultants:

25 Barney Parrella, male, age 55
Michael Flemming, male, age 41
Sam Fairchild, male, age 49
Peter Siggins, male, age 43

1 Gao Quingguo, male, age 41
Rick Russell, male, age 50

2
3 (*Id.*). The following additional members remained after the RIF:

4 Mark King, male, age 46
5 Chris Weaver, male, age 29
6 Mira Aiello, female, age 26
7 Richard Sullivan, male, age 49
8 Stephen Blessing, male, age 45
9 George Novak, male, age 40
Ed Scerbo, male, age 36
Kevin Schorr, male, age 36
Nikhil Takakar, male, age 26
Jim Miller, male, age 47

10 (*Id.*). In addition, in November 2003, PA decided to close down the Transportation
11 Group's office in China and therefore terminated all of the employees working in that office. The
12 following employees left PA as a result:

13
14 Zhao Tong, female, age 37
15 Zhao Yuan, female, age 30
16 Zhang Yixin, female, age 30
Na Jin, female, age 27 (later rehired)

17 (Def. Ex. 19 at Interrogatory Response No. 9.).

18 *J. Ms. Barnett Forms The Barnett Group LLC*

19 On October 18, 2003, Ms. Barnett wrote to Mr. Rubin (PA's Head of Infrastructure &
20 Development Services Group ("I&DS")) regarding the possibility of joining his practice. (Pl. Ex.
21 33.). Mr. Rubin responded on October 21, 2003, stating that the group's partners had some
22 concerns about her financial performance and concern that she would not be willing to work at
23 the salary I&DS could offer her, but that he was willing to discuss the issue further with the
24 I&DS partners if she was still interested. (Def. Exs. 18 and 19.). Ms. Barnett disputes that Mr.
25 Rubin was willing to offer her a position with I&DS, but regardless, does not recall whether she

1 followed up with him. (Barnett Dep. at 294-298.). Instead, she left PA and set up her own
2 company named The Barnett Group LLC one week after receiving Mr. Rubin's email. (*Id.* at
3 297.).

4 Ms. Barnett filed the present suit in the Superior Court for the District of Columbia on
5 April 1, 2004, alleging claims of discrimination on the basis of gender and age in violation of the
6 District of Columbia Human Rights Act ("DCHRA"), D.C. Code § 2-1402.11. (Dkt. No. 1 ¶ 1.).
7 She filed an amended complaint on July 16, 2004 adding a claim pursuant to the Age
8 Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621 et seq. (*Id.* at ¶ 6.). PA
9 removed it to this court on July 26, 2004. (Dkt. No. 1.). Defendant moved for summary judgment
10 after the parties concluded discovery. (Dkt. No. 54.).

12 IV. ANALYSIS

13 Ms. Barnett alleges that her termination violated the ADEA and DCHRA because it was
14 motivated by two impermissible motives: discrimination against her based on her age and
15 discrimination against her based on her gender. PA, in turn, has offered a legitimate, non-
16 discriminatory explanation for Ms. Barnett's termination: she was included in the RIF because
17 her trade practice did not fit with the Transportation Group's focus on aviation/airline services.
18 PA has produced evidence in the form of internal reports, communication between management,
19 and sworn testimony, to support its non-discriminatory justification for Ms. Barnett's
20 termination. The record evidence shows that after the events of September 11th, the
21 Transportation Group's practice was struggling financially. (*See, e.g.*, Pl. Ex. 4; Barnett Dep. at
22 170-171.). The communications between management show a team of high level executives
23 contemplating what action to take with respect to the practice. (*See* Pl. Ex. 4, 14, 24, 25 and 26;
24 Kelly Dep. at 94-96; Moynihan Dep. at 78-79.). Eventually, it was decided that the
25

1 Transportation Group would need to be restructured (including changing leadership and
2 terminating some employees) and then merged with PA’s Information Technology Infrastructure
3 group. (Moynihan Dep. at 78-79, 130-131.). At that point, the record shows that Mr. Moynihan
4 put Patrick Kelly, the Head of the Information Technology Infrastructure practice, in charge of
5 implementing the RIF, *see* Moynihan Dep. at 130-131, and Mr. Kelly testified that he decided to
6 include Ms. Barnett in the RIF because her trade practice did not fit with the Transportation
7 Group’s practice. (Kelly Dep. at 223-224.).

8
9 The court finds that PA has produced sufficient evidence to indicate a legitimate, non-
10 discriminatory reason for terminating Ms. Barnett. *See Texas Dept. Of Community Affairs v.*
11 *Burdine*, 450 U.S. 248, 259-260 (1981) (holding that in producing non-discriminatory reasons
12 for its challenged action, the employer is not obligated to support these reasons with objective
13 evidence sufficient to satisfy the “preponderance of the evidence” standard). The burden is now
14 on Ms. Barnett to produce sufficient evidence for a reasonable jury to find that the PA’s asserted
15 non-discriminatory reason was not the actual reason it terminated her and that, instead, PA
16 intentionally discriminated against her on the basis of her age and/or gender. *See Smith v. Janey*,
17 664 F. Supp. 2d 1 (D.D.C. 2009); *Burdine*, 450 U.S. at 253 (plaintiff at all times retains the
18 ultimate burden of persuasion).
19

20 A. *Mr. Kelly Was the Sole Decision-Maker*

21 First, Ms. Barnett attempts to discredit PA’s stated rationale by showing that PA “lied”
22 about who made the decision to terminate her. (Pl. Op. at 40.). PA claims that Mr. Kelly, and Mr.
23 Kelly alone, made the decision; she claims that Messrs. Moynihan and Tindale were involved in
24 the decision. She argues that a jury could reasonably determine that Moynihan and Tindale were
25 “dissembling to cover up a discriminatory purpose.” (*Id.* at 41 quoting *Reeves v. Sanderson*

1 *Plumbing Products*, 530 U.S. 133, 147 (2000).

2 The court finds that the record evidence supports PA's claim that Mr. Kelly was the sole
3 decision-maker. Mr. Kelly testified that he, alone, made the decision to let her go after meeting
4 with her in October 2003. (Kelly Dep. at 150-156; 223-226.). Mr. Miller testified that it was Mr.
5 Kelly's decision to terminate Ms. Barnett. (Miller Dep. at 373.). In fact, he testified that he did
6 not agree with the decision. (*Id.* at 371.). Both Messrs. Moynihan and Tindale testified that they
7 did not participate in the decision to terminate Ms. Barnett. (Moynihan Dep. at 167-168; Tindale
8 Dep. at 79-80.).

9
10 The evidence that Ms. Barnett cites to challenge PA's claim that Mr. Kelly was the sole
11 decision-maker, does not create an issue of fact. All of the evidence she points to, the emails
12 between management and the Practice Review Meeting Minutes, only serve to establish that
13 Messrs. Moynihan and Tindale participated in the initial review of the Transportation Group
14 practice, encouraged Mr. Miller to devise and implement a plan to address the poor financial
15 state of the practice, and then to find new leadership for the practice to work with Mr. Miller to
16 make and implement such a plan. (*See, e.g.*, Pl. Exs. 14, 24, 25 and 26.). Ms. Barnett points to
17 Mr. Kelly's testimony that he recalls having a conversation with Mr. Tindale at some point prior
18 to Mr. Kelly's meeting with the Transportation Group in October 2003. (Kelly Dep. at 112-114.).
19 However, Mr. Kelly testified that the focus of the conversation "wasn't about closing down the
20 unit" but rather was "can we turn this unit to profit?" (*Id.* at 113.). Mr. Kelly further testified that
21 he did not recall speaking with Mr. Tindale about Ms. Barnett during that discussion. (*Id.*). PA
22 has acknowledged that Messrs. Moynihan and Tindale played a "10,000 foot" role in pushing for
23 a reorganization of the practice. But with respect to the actual decision to terminate Ms. Barnett,
24 PA has steadfastly maintained, and the sworn testimony supports, that Mr. Kelly, alone, made
25

1 the decision.

2 Ms. Barnett cites Magistrate Judge Kay’s Memorandum Order addressing her motion to
3 compel discovery from PA as evidence that Messrs. Moynihan and Tindale “played leading
4 roles” in her termination. (Pl. Op. at 1.). In moving for a broader scope of discovery, Ms. Barnett
5 submitted to the court several of the Practice Review Meeting minutes and e-mails in which
6 Messrs. Moynihan and Tindale participated as described above. Magistrate Judge Kay ruled that
7 “[g]iven the evidence that high level PA executives were involved in identifying at least some of
8 the individuals to be ‘RIF-ed’ Plaintiff is entitled to explore the role these individuals played in
9 the RIF of her position.” (Dkt. No. 35 at 7.). In so ruling, Magistrate Judge Kay emphasized that
10 “relevance for discovery purposes is broadly construed.” (*Id.*) (internal quotations and citations
11 omitted). The Magistrate Judge’s ruling was limited to the scope of discovery; it certainly is not
12 a ruling on Moynihan and Tindale’s involvement in Ms. Barnett’s termination.
13

14 In short, the only evidence that Ms. Barnett has that PA is lying about who made the
15 decision to terminate her, is her own unsupported allegations. But this, without more, is not
16 sufficient to defeat summary judgment. *See Anderson*, 477 U.S. at 257 (“[A] plaintiff must
17 present affirmative evidence in order to defeat a properly supported motion for summary
18 judgment.”); *Rand v. CF Industries, Inc.*, 42 F.3d 1139, 1146 (7th Cir. 1994) (plaintiff cannot
19 avoid summary judgment merely by asserting that employer’s executives are lying to conceal
20 intentional age discrimination); *Curl v. International Business Mach. Corp.*, 517 F.2d 212, 214
21 (5th Cir.1975) (a motion for summary judgment cannot be defeated solely by conclusional
22 allegations that a witness lacks credibility); *Fernandez v. China Ocean Shipping, (Group) Co.*,
23 312 F. Supp. 2d 369 (E.D. N.Y. 2003), *judgment aff’d*, 94 Fed. Appx. 866 (2d Cir. 2004) (merely
24 asserting that a witness may be lying, without any evidence to contradict the witnesses' testimony
25

1 cannot defeat a motion for summary judgment).

2 *B. The “View of TP Staff” Spreadsheet*

3 Presumably Ms. Barnett seeks to connect the decision to terminate her to Messrs.
4 Moynihan and Tindale because she believes that she can link the February 23, 2003 “View of TP
5 Staff” spreadsheet with the age column to these individuals. Ms. Barnett again claims that PA
6 “lied” about the identity of the official who ordered the inclusion of the ages on the spreadsheet.
7 (Pl. Op. at 40-41.). She argues that a jury could infer discriminatory intent from this deception.
8

9 The “View of TP Staff” is a spreadsheet that is attached to a February 10, 2003 email
10 from Bill Loose (PA’s Global Resource Manager) to Andrew Hook (PA’s Chief Operating
11 Officer) and Mr. Tindale. (Pl. Ex. 1.). It was later forwarded on to Mr. Moynihan. (*Id.*). Mr.
12 Tindale testified that the document was created when Mr. Moynihan requested that the
13 comments of two employees who audited the Transportation Group be “melded” into one
14 document. (*Id.* at 2.). Mr. Tindale requested that his secretary, Kate Price, complete the project.
15 (*Id.*). Thereafter, Ms. Price sent the spreadsheet along with an email stating, “As requested,
16 please find attached a document which combines Bill’s and Jinesh’s comments. You’ll see that
17 it’s missing some ages.” (*Id.* at 1.). The email was sent eight months before Mr. Kelly made the
18 decision to terminate Ms. Barnett.
19

20 Mr. Moynihan testified that he has “absolutely no idea” why the age category was added
21 to the spreadsheet and he “absolutely did not” ask Ms. Price to include the information.
22 (Moynihan Dep. at 109-111.). In fact, he testified that he had no recollection of ever seeing the
23 document. (*Id.* at 109.). Mr. Tindale testified that he did not know who added the age category to
24 the spreadsheet and that “[he couldn’t] imagine why [he] would have, but [he could not give] a
25 definitive yes or no to” whether he requested that the information be included. (Tindale Dep. at

1 64.). Both testified that Ms. Price, a secretary in London, might have added the age information
2 on her own, due to the fact it was, at the time, sometimes appropriate to consider age when
3 making employment decisions in England. (Moynihan Dep. at 110-114; Tindale Dep. at 64.).

4 Despite Ms. Barnett's repeated declarations, there is no evidence in the record that PA
5 attempted to hide the identity of who, if anyone, ordered that the age category be included in the
6 spreadsheet. Moreover, whoever ordered that the age column be included in the spreadsheet, or
7 why it was in the spreadsheet at all, is irrelevant. As discussed *supra*, Mr. Kelly, alone, made the
8 decision to terminate Ms. Barnett, and he testified that he did not see the spreadsheet prior to
9 making his decision, nor had anyone told him about the information contained on it. Ms. Barnett
10 has presented no evidence to suggest otherwise, other than to claim that Mr. Kelly is lying. As
11 previously discussed, this, without more, cannot defeat a summary judgment motion.
12

13 Indeed, it is difficult to see the relevance of the document even if it could be tied to
14 Messrs. Moynihan and Tindale. The spreadsheet was created eight months before Ms. Barnett
15 was terminated. In the intervening time between the creation of the spreadsheet and her
16 termination, the Practice Review Meeting minutes record four meetings from February 13, 2003
17 to September 23, 2003 in which Messrs. Moynihan and Tindale participated. Notably, while a
18 number of employees are identified in those minutes as being considered for possible inclusion
19 in the RIF, Ms. Barnett's name does not appear once. (*See* Pl. Exs. 14, 24, 25 and 26.). It is only
20 *after* Mr. Kelly is brought in to the picture that Ms. Barnett is considered for the RIF. (Miller
21 Dep. at 305-311; Moynihan Dep. at 130-131.).
22

23
24 *C. Plaintiff's Pretext Claims*

25 Next, Ms. Barnett offers seven reasons why PA's proffered reason for terminating her is
pretext: (1) two years prior to the RIF, her supervisor, Mr. Miller "rejected [her] suggestion that

1 she move to a different practice, thus confirming that she fit well within Transportation”; (2) Mr.
2 Kelly solicited information on the performance history, commitment, and skills of each of the
3 Transportation Group staff members being considered for the RIF, thereby proving that he
4 considered more than just “fit” in reaching his decision; (3) Ms. Barnett had higher performance
5 and commitment scores than all of the five men retained after the RIF; (4) Mr. Kelly and Mr.
6 Miller gave Ms. Barnett the same rating in “skills capability” as five other consultants who were
7 retained after the RIF; (5) Mr. Kelly terminated Ed Pinto as part of the RIF even though his
8 expertise was a “precise match with the ‘airline/airport’ core work of Transportation”; (6) PA
9 retained young men whose areas of practice did not “fit” with the focus of the Transportation
10 Group; and (7) PA sought to keep Ms. Barnett’s key client, Mars Inc., in the Transportation
11 Group even after she was terminated. (*See Pl. Op.* at 32-36.). The court will address each of these
12 claims in turn.

14 *1. Plaintiff’s trade practice did not “fit” with the Transportation Group’*
15 *Core Services*

16 Ms. Barnett does not dispute that her trade practice—“a one-stop shop for U.S.
17 companies interested in creating or expanding trade and investment, particularly in the Middle
18 East/North Africa and in China”—did not fit with the core of the Transportation Group’s
19 practice—airport security/airline work. (Barnett Dep. at 59.). Ms. Barnett repeatedly
20 acknowledged the “misfit” and attempted to transfer to other practice groups within PA. (Barnett
21 Dep. at 117, Pl. Exs. 5, 6, 8, 9, 10 and 13.). The mismatch was even more pronounced after Mr.
22 Kelly streamlined the Transportation Group’s consulting services in preparation the merger with
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1 ITI.⁷

2 For reasons not in evidence in this case, Ms. Barnett never moved. She claims, however,
3 that “PA management insisted that she remain in Transportation, confirming that her practice fit
4 nicely there.” (Pl. Op. at 33.). She cites to her own deposition testimony in which she says “I
5 talked with Jim [Miller] – actually he talked to me and he said I really want you to stay here, he
6 said you are doing great here....” (Barnett Dep. at 33.). The court is unpersuaded. Mr. Miller’s
7 alleged statement to Ms. Barnett is hardly evidence that PA management “confirmed” that her
8 practice fit with the Transportation Group. Even if Mr. Miller had told Ms. Barnett that her
9 practice “fit” well with Transportation, such a statement from Mr. Miller would do little to
10 undermine PA’s stated rational for terminating Ms. Barnett. The record evidence shows that Mr.
11 Kelly, not Mr. Miller, concluded that Ms. Barnett’s practice did not “fit” with the focus of the
12 Transportation practice and that is why Mr. Kelly, not Mr. Miller, selected her for the RIF. Ms.
13 Barnett presents no evidence that Mr. Kelly ever indicated that her practice fit with the
14 Transportation Group, or that he was ever involved in a request by Ms. Barnett to move to
15 another practice.
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18 2. *PA’s Review of Performance Data Is Not Evidence of Pretext*

19 Next Ms. Barnett argues that because Messrs. Moynihan, Tindale, Miller and Kelly
20 reviewed certain performance data related to the Transportation Group employees before the
21 RIF, Mr. Kelly’s decision must not have been limited to whether her practice “fit” with the
22 Transportation Group. This argument is based entirely on Ms. Barnett’s own conjecture. She
23 offers no deposition testimony or documentary evidence suggesting that performance played any
24

25 _____
⁷ The services offered after the merger were: airport privatization, airport air service development, airport transformation, airline route profitability, airline labor, and airline transformation. (See Kelly Dep. pp. 103, 224-228.).

1 role whatsoever in Mr. Kelly's decision. Indeed, the evidence confirms the opposite. Mr. Kelly
2 testified unequivocally that: (1) he included Ms. Barnett in the RIF because her Middle
3 East/Africa trade practice did not fit well with the aviation/airline focus of the Transportation
4 Group, and (2) he did not consider Ms. Barnett's performance, utilization rate, revenue
5 generation or profitability in reaching his decision. (Kelly Dep. at 223-224.). In addition, in the
6 RIF "Business Justification Memorandum" dated October 16, 2003, in which the employees
7 selected for the RIF were identified and the rationale for their inclusion was given, Mr. Miller
8 stated:
9

10 [Ms. Barnett's] current work on Middle East and North Africa Trade consultancy
11 no longer fits within the practice as it is essentially a standalone offering. As this
12 is a non-core activity, we will no longer be pursuing these markets resulting in the
13 elimination of the position of trade sector leader...

14 (Def. Ex. 16.). The mere fact that various senior level executives and managers, while mulling
15 over what to do with the Transportation practice, reviewed performance information on the
16 practice's employees along with other information, does not mean, as Ms. Barnett asserts that
17 Mr. Kelly must have relied on it.

18 3. *"Skills and Capability" Are Not the Same as "Fit"*

19 Ms. Barnett's next theory concerns the meeting between Mr. Kelly and Mr. Miller in
20 September 2003 in which Mr. Miller provided Mr. Kelly with his impression of the
21 Transportation Group staff. Mr. Kelly testified that the purpose of the meeting was to allow him
22 to better understand the Group's practice and its members, so that he could formulate a plan to
23 bring the Group to profitability. (Kelly Dep. at 172-177.). During the meeting, Mr. Miller gave
24 Mr. Kelly his impression of each staff member, including their "skills and capability," their
25 "performance," and their "commitment to PA." (*Id.*). During their discussion of Ms. Barnett, Mr.

1 Miller gave her two out of three check marks for “skills and capability.”⁸

2 Ms. Barnett, again without citation to the record, asserts that “skills and capability”
3 equate with “fit.” She argues that if “fit” were the real criterion, she would not have been chosen
4 for the RIF because five other consultants who were not included in the RIF also received two
5 check marks for “skills and capability” but had lower scores than she in one of the other two
6 categories. (Pl. Op. at 33.). This argument fails because it is premised on the incorrect
7 assumption that “skills and capability” means “fit.” This assertion is inconsistent with the record
8 evidence.
9

10 Mr. Miller testified that Ms. Barnett’s “skills and capability” score, coupled with his note
11 “Trade” in the “skills and capability” column directly to the left of the two check marks (“Trade
12 √√”) meant:

13 A: What two checks basically meant was Judith’s skill set
14 within her area was very, very good, but her skill set was not transferable across
15 the whole company in terms of the company’s propositions. That’s what it
meant...

16 ***

17 A: Two basically meant Judith is an expert in trade.

18 Q: Okay.

19 A: But not in aviation.

20 (Miller Dep. at 336.). Moreover, the only other staff member who received a similar, non-
21 aviation industry caveat on this criteria (George Gao, whose “skills and capability” column reads
22 (“China √√”)) was also affected by the RIF. He was offered an opportunity to work with I&DS’s
23 practice with a reduction in salary. Mr. Gao accepted the offer and ultimately split his time
24 between I&DS and the Transportation Group’s practice with a commensurate reduction in his
25 salary. (Kelly Dep. at 290-294, Errata Sheet, at 14.).

⁸ Three check marks was the highest score an individual could receive.

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4. *Other Employees Retained Fit in the Transportation Group Practice*

Ms. Barnett argues that several younger male employees not included in the RIF “‘fit’ no better than [she].” (Pl. Op. at 34.). She points to Peter Siggins, Sam Fairchild, and George Gao. Ms. Barnett ignores testimony demonstrating that each of these employees had substantial backgrounds or business within the Transportation Group. For instance, Mr. Fairchild, although admittedly a “problem child” for PA, was in many ways a “real asset to the Transportation practice.” (Reply at 12; Miller Dep. at 390-391.). He is a former Department of Transportation official, who served in two presidential administrations as Special Assistant to the President, reporting to Andy Card, Acting Assistant Secretary of Transportation, and Deputy Assistant Secretary of Transportation, dealing with transportation matters, including aviation. (Miller Dep. at 390-391.). While at PA, Mr. Fairchild serviced a variety of airline clients including Southwest Airlines throughout his employment. (*Id.*). In addition, Mr. Fairchild was affected by the restructuring of the Transportation Group. As part of the reorganization, PA reduced Mr. Fairchild’s salary by nearly \$100,000. (Def. Ex. 35.).⁹

Nor does Ms. Barnett’s reliance on PA’s retention of Messrs. Siggins and Gao advance her argument. Mr. Siggins joined the Transportation Group practice in the summer of 2003, and once there, he worked on aviation and airport-related projects such as the Port Authority proposal to LaGuardia, JFK, and Newark Airports. (Miller Dep. at 340-342.). Finally, as discussed in the preceding section, Mr. Gao was negatively affected by the RIF. (Kelly Dep. at 290-294.).

Ms. Barnett’s reliance on *Aka v. Washington Hospital Center*, 156 F.3d 1284 (D.C.Cir.

⁹ The court also notes that at the time of the RIF, Mr. Fairchild, 49, was only seven years younger than Ms. Barnett—a difference without legal significance for comparator purposes. *See Dunaway v. Int’l Bhd. of Teamsters*, 310 F.3d 758, 763 (D.C.Cir. 2002) (finding that in the absence of other evidence of age discrimination, plaintiff who had been replaced by a worker seven years younger had not made a prima facie showing of age discrimination).

1 1998) is misplaced. In *Aka*, plaintiff claimed that he was not hired for a position because of his
2 age. The employer countered that plaintiff was not hired because other candidates were better
3 qualified for the position. The district court granted summary judgment for the employer, and, in
4 reversing, the Circuit Court held that “[a] review of the evidence in this case reveals that a
5 reasonable factfinder could conclude that...the balance of qualifications weighed markedly in
6 [plaintiff’s] favour....” *Id.* at 267. The court went on to state that “if a factfinder can conclude
7 that a reasonable employer would have found the plaintiff to be significantly better qualified for
8 the job, but this employer did not, the factfinder can legitimately infer that the employer
9 consciously selected a less-qualified candidate—something that employers do not usually do,
10 unless some other strong consideration, such as discrimination, enters into the picture.” *Id.* at
11 266.
12

13 Ms. Barnett attempts to apply the same reasoning to this case. She argues that a jury
14 could reasonably determine that the “significant differences in qualifications” between herself
15 and “Sam Fairchild and his ilk” constitutes “powerful circumstantial evidence of bias.” (Pl. Op.
16 at 4.). Ms. Barnett expends a lot of energy arguing that she was more qualified than the younger
17 men who were retained by PA—alleging higher utilization, revenues and performance. (*Id.* at 17,
18 21-27.). This argument is irrelevant, however, in light of the explicit undisputed testimony from
19 Mr. Kelly that his selection of Ms. Barnett for inclusion in the RIF had nothing whatsoever to do
20 with these factors, but rather was based entirely on the nature of her practice. It is not this court’s
21 role to second-guess Mr. Kelly’s business judgment on behalf of PA with respect to the optimal
22 form and function of its Transportation Practice and whether Ms. Barnett’s position fit into that
23 vision. *See Jackson v. Gonzales*, 496 F.3d 703, 708 (D.C.Cir. 2007) (courts must not second-
24 guess an employer’s initial choice of appropriate qualifications; rather, the courts defer to the
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1 employer's decision of what non-discriminatory qualities it will seek in filling a position);
2 *Holcomb v. Powell*, 433 F.3d 889, 897 (D.C.Cir. 2006) ("We have consistently declined to serve
3 as a super-personnel department that re-examines an entity's business decisions.").¹⁰

4 6. *Mr. Pinto's Inclusion in the RIF Offers No Evidence of Discrimination*

5 Ms. Barnett's fifth pretext argument, the fact that Mr. Pinto was terminated as part of the
6 RIF even though his work focused on the airport and aviation sector, does not advance her case.
7 The undisputed evidence shows that a different decision-maker, Mr. Miller, made the decision to
8 include Mr. Pinto in the RIF. (*See* Miller Dep. at 384.). "Different employment decisions,
9 concerning different employees, made by different supervisors, are seldom sufficiently
10 comparable to establish a prima facie case of discrimination for the simple reason that different
11 supervisors may exercise their discretion differently." *Radue v. Kimberly-Clark Corp.*, 219 F.3d
12 612, 618 (7th Cir. 2000). In addition, it is undisputed that Mr. Miller decided to include Mr.
13 Pinto in the RIF because Mr. Pinto's only client project was coming to a close leaving him no
14 expectation of incoming revenues and because Mr. Pinto had repeatedly announced his intention
15 to resign his position to spend time with his retiring wife. (Miller Dep. at 307-310.).

16 7. *PA Made No Attempt to Retain Mars, Inc.*

17 Finally, Ms. Barnett argues that PA was "eager" to keep her principal client, Mars, Inc.,
18 in the Transportation Group even after she was terminated. The record evidence states otherwise.
19 When questioned at his deposition, Mr. Kelly stated unequivocally that PA did not want to keep
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23 ¹⁰ Likewise, Ms. Barnett points to the hiring of Ken Currie one week before she was terminated as "an odd
24 way to reduce operating expenses" and instead is evidence of a "plan to make the staff younger and more
25 masculine." (Pl. Op. at 28.). Mr. Kelly testified that his "job was to turn the [Transportation Group] into profit. The
approach I took was to focus the unit hard on delivering its core propositions. [Mr. Miller] put forward a strong case
that [Mr. Currie] was important for that, to improve the chances of the success of the unit." (Kelly Dep. at 235-236.).
He further testified "[Mr. Currie] has skills that would be valuable to that proposition that was central to the unit...I
wanted to at the same time as taking these actions to reshape the team, to be investing in the unit, because you know,
the unit needed some support to thrive." (*Id.* at 236.). Given that Mr. Currie's skills "fit" the Transportation Group
and Ms. Barnett's did not, PA's hiring of Mr. Currie at this time lends Ms. Barnett no support.

1 the Mars business in the Transportation practice. (Kelly Dep. at 324.). Mr. Kelly testified further
2 that if Mars had insisted on remaining with PA, he would have subcontracted the work out,
3 eliminating any suggestion that PA intended to carry-on Ms. Barnett's international trade
4 practice. (*Id.* at 324-325.).

5 The email that Ms. Barnett cites as evidence of PA's intent to keep Mars as a client, in
6 fact, demonstrates the opposite. In mid-October 2003, after PA notified Ms. Barnett of her
7 termination, Ms. Barnett raised with Mr. Miller how to handle the ongoing work she had for
8 Mars. (Pl. Ex. 38.). Mr. Miller emailed Mr. Kelly, and Mr. Kelly responded "I agree we need to
9 do the best by Mars and Judith. For Mars we want their transaction in the middle east [sic] to
10 succeed [sic] and we would also like to maintain the relationships so we could leverage it for
11 other PA work. For Judith we dont [sic] want to chop off her source of income." (*Id.*). Mr. Kelly
12 then went on to set out "a number of options," which included: (1) "allow[ing] Judith to carry out
13 this work stream" herself; (2) PA "provid[ing] the service but [with] Judith sub-contracted" to
14 PA; and (3) "find another way to do the work and hold Judith to her employment contract which
15 says she cant [sic] compete for six months." (*Id.*). Mr. Kelly suggested that "only 1 and 2 are
16 options," but concluded that "1 is the only feasible option," meaning that PA should allow Ms.
17 Barnett to continue performing the Mars work on her own and release her from the non-compete
18 restriction Mr. Kelly believe existed. (*Id.*). Nothing in this email suggests that PA was trying to
19 steal Ms. Barnett's client from her.
20
21

22 *D. Plaintiff's Statistical Evidence*

23 Next, Ms. Barnett attempts to bolster her pretext claim by presenting comparative and
24 statistical evidence of gender and age discrimination. She maintains that the RIF must have been
25 the result of age bias because it resulted in the termination of "the four oldest Managing

1 Consultants in the Transportation Group.” (Pl. Op. at 3.). The evidence bears out differently. The
2 composition of the group selected for the RIF, and the remaining Transportation Group
3 employees after the RIF, demonstrates that the termination decisions were made without regard
4 to age. As an initial matter, the court notes that at the time of Ms. Barnett’s termination, Mr.
5 Kelly was 49-years-old, only seven years younger than plaintiff. “This is relevant evidence that
6 age discrimination has not occurred.” *Clifton v. Federal National Mortgage Association*, 36
7 F.Supp.2d 20, 26 n. 6 (D.D.C. 1999) (noting decision makers were over forty at the time of
8 termination of plaintiff). In addition, Lynn McDevitt, the oldest employee in the Transportation
9 Group—at age 58 and one year older than Ms. Barnett—remained in the Transportation Group
10 after the RIF. (Def. Ex. 21.). This undercuts Ms. Barnett’s age discrimination claim. *See, e.g.,*
11 *Mundy v. Household Finance Corp.*, 885 F.2d 542, 546 (9th Cir. 1989) (reasonable inference of
12 age discrimination is undercut by retention of older employee).

14 Twelve of the eighteen employees who remained in the Transportation Group—a two-
15 thirds majority—were over the age of forty, and therefore within the class of persons protected
16 by the ADEA. Def. Ex. 21; 29 U.S.C. § 631(a). All of the Managing Consultants who remained
17 in the Group after the RIF were close in age to Ms. Barnett and all were over the age 40. (Def.
18 Ex. 21.). Their ages were 55, 50, 49, 43, 41 and 41. (*Id.*). An age difference of less than ten years
19 is not sufficient to support a showing of age discrimination. *Grosjean v. First Energy Corp.*, 349
20 F.3d 332, 338 (6th Cir. 2003) (an age difference of less than ten years is not sufficient to support
21 a prima facie inference of age discrimination); *see also O’Conner v. Consolidated Coin Caterers*
22 *Corp.*, 517 U.S. 308, 313 (1996) (the inference of discrimination necessary to sustain an ADEA
23 case “cannot be drawn from the replacement of one worker with another worker insignificantly
24 younger.”); *Dunaway v. Int’l Bhd. of Teamsters*, 310 F.3d 758, 763 (D.C.Cir. 2002) (finding that
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1 in the absence of other evidence of age discrimination, plaintiff who had been replaced by a
2 worker seven years younger had not made a prima facie showing of age discrimination); *Radue*
3 *v. Kimberly-Clark Corp.*, 219 F.3d 612, 617 (7th Cir. 2000) (in an ADEA action involving a
4 reduction in force, plaintiff must show, among other things, that other similarly situated
5 employees *substantially* younger than plaintiff were treated more favourably); *Grossmann v.*
6 *Dillard Dep't Stores, Inc.*, 109 F.3d 457, 459 (8th Cir. 1997) (finding that a jury could not
7 reasonably infer age discrimination where an employer, who also was in the protected age group,
8 hired plaintiff when he was forty-eight, fired him when he was fifty-two, and the following year
9 hired four new employees over forty, two of them over fifty).

11 Moreover, the employees included in the RIF were nearly evenly split between under
12 forty and over forty—ages 25, 29, 46, 57, and 63. (Pl. Ex. 37.). To the extent that Ms. Barnett
13 seeks to include the termination of the employees in Transportation Group's China office in the
14 RIF (which she seeks to do for purposes of her sex discrimination claim), then eight employees
15 total were included in the RIF, with only three of them over the age 40. (*Id.*; Def. Ex. 19.). In the
16 China office, the employees let go were ages 27, 30, 30 and 37. (*Id.*).¹¹ Their inclusion destroys
17 any inference that PA conducted the RIF in an effort to rid itself of older employees. Ms. Barnett
18 attempts to buttress her age discrimination claim by including the April 2003 termination of
19 Arnie Levine (male, age 54) and the September 2003 termination of Bob Tardio (male, age 74)
20 in the October 2003 RIF. Consideration of Messrs. Levine's and Tardio's terminations in
21 connect with Ms. Barnett's is improper because a different decision maker—Mr. Miller, not Mr.
22 Kelly—made the decision with respect to their separations from PA. Equally important is the
23 fact that Ms. Barnett herself testified that terminating Mr. Levine and Mr. Tardio made good
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¹¹ PA asserts that Ja Nin, age 27, was originally terminated but rehired for administrative purposes. Ms. Barnett does not dispute this claim.

1 business sense. In her deposition Ms. Barnett acknowledged that Mr. Tardio's termination was
2 "reasonable" because "he never billed an hour." (Barnett Dep. at 326.). Regarding Mr. Levine,
3 Ms. Barnett testified that his "revenues weren't existent." (*Id.* at 238.). These assertions entirely
4 undercut her allegation that Messrs. Levine's and Tardio's terminations from PA support an
5 inference of age discrimination.

6 Ms. Barnett's gender discrimination claim fares no better. Two of the five U.S. employees
7 let go in the October 2003 RIF were male. Adding Messrs. Levine and Tardio to the equation, as
8 Ms. Barnett seeks to do to support her age claim, brings the number to four men and only three
9 women. In shutting down its entire China Transportation operation, PA let go four additional
10 female employees, but there were no male employees in China to terminate. After the RIF, PA
11 retained three female Transportation Group employees—including the oldest member of the
12 practice. These statistics do not create an inference of discrimination.

14 Ms. Barnett attempts to bolster her sex discrimination claim by citing the historically low
15 number of women at management level in PA. In any given year, PA employs somewhere
16 between 160 and 180 people holding the title "Partner". (Moynihan Dep. at 49.). At the time of
17 this lawsuit, as few as 5 of the 179 partners were women and just 32 women had ever held the
18 title "Partner" at PA. (*Id.*; Pl. Op. at Ex. 10). In 2002-2004, ITI employed 37 Managing
19 Consultants, one of whom was a woman. (Moynihan Dep. at 72; Pl. Op. Ex. 1.). Prior to its
20 merger with ITI, the Transportation Group employed nine women.

22 PA concedes that the historical statistics overall do not demonstrate equal number of men
23 and women in leadership positions at PA. However, this alone, does not prove discriminatory
24 intent. Notably missing is any evidence that the disparity is the result of discrimination. To the
25 contrary, there is no evidence that women at PA have repeatedly sought and been turned down

1 for the partnership rank. *See, e.g., Roberson v. Snow*, 404 F.Supp.2d 79, 91 (D.D.C. 2005)
2 (ruling that plaintiff's attempt to show pretext by pointing to historical disparities within the
3 company was unavailing because he "failed to show actual statistics comparing rates of
4 promotion at [the company] between similarly situated black and white employees, or even
5 statistics comparing rates of hiring black and white applicants to their presence in the applicant
6 pool"); *Metrocare v. Wash. Metro. Area Transit Auth.*, 679 F.2d 922, 930 (D.C.Cir. 1982)
7 (holding that while "[p]roper statistical evidence can be the most important vehicle for showing
8 class discrimination," the plaintiff failed to "compare the percentage of blacks hired for given
9 jobs with the percentage of blacks qualified for those positions" and it was not sufficient to
10 merely show that black managers formed a smaller percentage of the manager pool than did
11 managers of other races).¹²

13 Having considered all of the record evidence in its full context, the court finds that Ms.
14 Barnett has not met her burden of showing that a reasonable jury could conclude that she
15 suffered discrimination. PA produced evidence of a legitimate, non-discriminatory reason for
16 Ms. Barnett's termination: that her trade practice did not fit within the Transportation Group's
17 practice. Ms. Barnett fails to put forward sufficient evidence for a reasonable jury to find that
18 PA's legitimate, non-discriminatory reason was not the actual reason for her termination, and
19 that PA intentionally discriminated against her on the basis of gender and age. Her claim that
20 PA's witnesses are lying, without more, cannot defeat summary judgment. *See Anderson*, 477
21 U.S. at 257 ("[A] plaintiff must present affirmative evidence in order to defeat a properly
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25 ¹² Ms. Barnett references a 2001 EEOC complaint filed by a former PA employee, Anita Mosner, as evidence of a discriminatory atmosphere. (Pl. Op. at 11.). PA counters that Ms. Mosner's allegations are unreliable in that she later withdrew the complaint and eventually paid two million dollars to PA in settlement of the EEOC complaint and a related lawsuit. (*See Reply* at 10; Def. Ex. 34.). The court agrees and will not consider Ms. Mosner's EEOC filing in ruling on this motion.

1 supported motion for summary judgment.”). Accordingly, the court will grant PA’s motion for
2 summary judgment.¹³

3 **V. CONCLUSION**

4 Based on the foregoing, the court hereby GRANTS Plaintiff’s Request for Expedition
5 and GRANTS Defendant’s Motion for Summary Judgment. The case is hereby DISMISSED.

6 DATED this 14th day of October, 2011.
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10 Barbara Jacobs Rothstein
11 U.S. District Court Judge
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¹³ The parties dispute whether Ms. Barnett had the opportunity to join another group at PA after her position with the Transportation Practice was terminated. Because the court finds that Ms. Barnett’s termination was not tainted by bias, it is not necessary for the court to address this issue.