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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TAMMY BOONE

Plaintiff,

v.

CEMENTATION USA INC., a Nevada
Corporation.

Defendant.

Case No. 2:12-CV-01674-APG-NJK

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

(Dkt. #21)

Tammy Boone alleges that, while working for Cementation USA Inc. ("Cementation") as an office clerk, she was sexually harassed by her supervisor on a daily basis. After Boone opposed the harassment, she was allegedly given a negative work evaluation. Boone sued Cementation, alleging four claims: (1) hostile work environment sexual harassment, (2) quid pro quo sexual harassment, (3) gender discrimination; and (4) retaliation. Cementation has moved for summary judgment. (Dkt. #21.)

I rule in Cementation's favor on Boone's claims of hostile work environment, quid pro quo harassment, and gender discrimination. Cementation addressed the alleged harassment with reasonable care and Boone unreasonably failed to take advantage of the available remedies. Cementation is not liable for quid pro quo harassment because Boone has provided no evidence of anything more than an unfulfilled sexual threat, which is insufficient. Boone's gender discrimination claim fails for a variety of reasons, including that there were no open positions for which she was qualified. But I deny Cementation's motion on the retaliation claim. There is a triable issue of fact whether Boone's supervisor retaliated after Boone reported the sexual harassment.

1 **I. BACKGROUND**

2 In January of 2012, Boone began working as an office clerk at Cementation’s Leeville,
3 Nevada mining project.¹ The mining project was temporary, and Boone knew her employment
4 would last only until the Leeville project was completed later in 2012.²

5 Boone alleges that about two weeks after she began working, her supervisor, Charlie
6 Lackie, began to sexually harass her.³ The harassment allegedly took various forms, including:
7 Lackie viewing sexually explicit jokes near where Boone worked;⁴ Lackie texting Boone
8 sexually explicit communications, such as that he needed Boone to help him take a bath;⁵ Lackie
9 making sexually suggestive comments such as that Boone could thank Lackie in “other ways;”⁶
10 and Lackie telling Boone that he was going to do a “reach around” on her.⁷

11 On April 7, 2012, Lackie filled out a work-review form for Boone. Lackie marked that
12 Boone qualified for continued employment.⁸ He rated Boone’s safety, quality of work, and
13 attendance as “five out of five.”⁹

14 On April 27, 2012, Boone discussed the harassment with two of her co-workers.¹⁰ Boone
15 said she felt uncomfortable reporting the harassment, so one of her co-workers decided to make a
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20 ¹ (Dkt.#29, ¶ 1.)

21 ² (Dkt.#29, ¶ 6.)

22 ³ (Dkt. #21, Ex. A, at 8:19-25; 10:6-14; 9:10-10:5.)

23 ⁴ (Dkt. #21, Ex. A, at 20.)

24 ⁵ (*Id.* at 56.)

25 ⁶ (*Id.* at 233.)

26 ⁷ (*Id.* at 9, 16-17.)

27 ⁸ (Dkt. #21, Ex. I, at 33-34.)

28 ⁹ (*Id.*)

¹⁰ (Dkt. #21, Ex. A, at 166-167.)

1 report on Boone's behalf. He reported the harassment to Cementation management that same
2 day.¹¹

3 On April 28, 2012, the day after management first received a report of Boone's
4 harassment, Cementation's human resources department contacted Boone.¹² Wiley Finch, the
5 human resources director, told Boone that Cementation would investigate the harassment
6 immediately and remove Lackie from the project if needed.¹³ Boone refused to discuss the
7 harassment in detail, but Finch nevertheless offered to place Boone on paid vacation.¹⁴ Boone
8 refused. Finch asked Boone to come into Cementation's Salt Lake City office the following week
9 for a meeting.¹⁵

11 Over the next several days, Finch regularly called and emailed Boone to gather
12 information about the alleged harassment.¹⁶ Eventually, Boone cancelled the meeting in Salt
13 Lake City.¹⁷ Finch called and offered to drive to Elko to meet with Boone, but Boone admitted
14 she was already out of state.¹⁸ On May 1, 2012, Boone emailed a complaint to Finch that, for the
15 first time, provided specific details about the alleged harassment.¹⁹ After receiving the complaint,
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20 ¹¹ (*Id.* at 112-13.)

21 ¹² (*Id.* at 118-19.)

22 ¹³ (*Id.*)

23 ¹⁴ (*Id.* at 118-19.)

24 ¹⁵ (*Id.* at 123.)

25 ¹⁶ (Dkt. #21, Ex. F, at 41-42.)

26 ¹⁷ (Dkt. #21, Ex. H, at ¶8.)

27 ¹⁸ (*Id.*)

28 ¹⁹ (Dkt. #21, Ex. F, at 47.)

1 Finch attempted to contact Boone several times to gather additional information. Boone never
2 responded.²⁰

3 On May 5, 2012, Boone was laid off because the Leeville project was ending. Lackie
4 filled out Boone's final paperwork and rated her as "above average" for safety and work habits,
5 and "average" for attitude. But he wrote that, overall, he would not recommend her for rehire.²¹

6 After fully investigating Boone's complaint, Finch concluded that some of the allegations
7 were substantiated and others were not. Finch sent Boone a letter that contained his findings.²² A
8 "Disciplinary Action Report" was issued against Lackie, and he was required to take sexual
9 harassment training, including a class in workplace harassment and a class in managerial
10 harassment.²³ After her position ended on May 5, 2012, Boone did not apply for a transfer or
11 rehire at Cementation.²⁴

12 On September 23, 2012, Boone filed her lawsuit in this Court. Cementation seeks
13 summary judgment as to all of her claims.

14 **II. LEGAL STANDARD - SUMMARY JUDGMENT**

15 Summary judgment is appropriate when "the pleadings, depositions, answers to
16 interrogatories, and admissions on file, together with the affidavits, if any, show there is no
17 genuine issue as to any material fact and that the movant is entitled to judgment as a matter of
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24 ²⁰ (*Id.* at 49.)

25 ²¹ (Dkt. #21, Ex. B, at Ex. F.)

26 ²² (Dkt. #21, Ex. F, at 49:16-50:16.)

27 ²³ (*Id.* at 55:22-56:11.)

28 ²⁴ (Dkt. #21, Ex. A, at 105-107.)

1 law.”²⁵ For summary judgment purposes, the court views all facts and draws all inferences in the
2 light most favorable to the nonmoving party.²⁶

3 If the moving party demonstrates the absence of any genuine issue of material fact, the
4 burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine
5 issue for trial.”²⁷ The nonmoving party “must do more than simply show that there is some
6 metaphysical doubt as to the material facts.”²⁸ She “must produce specific evidence, through
7 affidavits or admissible discovery material, to show” a sufficient evidentiary basis on which a
8 reasonable fact finder could find in her favor.²⁹

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10 A party must support or refute the assertion of a fact with admissible evidence.³⁰ As the
11 summary judgment procedure is the pretrial functional equivalent of a directed-verdict motion, it
12 requires consideration of the same caliber of evidence that would be admitted at trial.³¹ Thus, it is
13 insufficient for a litigant to merely attach a document to a summary judgment motion or
14 opposition without affirmatively demonstrating its authenticity.
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20 ²⁵ *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

21 ²⁶ *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

22 ²⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

23 ²⁸ *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted).

24 ²⁹ *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at
248–49.

25 ³⁰ Fed. R. Civ. Proc. 56(c)(1); *Orr*, 285 F.3d at 773; *Harris v. Graham Enterprises, Inc.*,
26 2009 WL 648899, at *2 (D. Ariz. Mar. 10, 2009).

27 ³¹ *Anderson*, 477 U.S. at 251 (citing *Bill Johnson’s Restaurants, Inc. v. NLRB*, 461 U.S.
28 731, 745 n.11 (1983)).

1 **III. DISCUSSION**

2 **A. Quid Pro Quo Harassment**

3 To constitute actionable quid pro quo harassment, a supervisor must explicitly or
4 implicitly threaten to change the plaintiff's job status if she does not accept sexual conduct.³²
5 Critically, "[a]n unfulfilled, or inchoate, quid pro quo threat by a supervisor is not enough."³³
6 Instead, the threat must be sufficiently concrete to constitute a "tangible employment action."³⁴ A
7 tangible employment action in this context occurs either when the employee accedes to the
8 threat,³⁵ or when the supervisor follows through on the threat by making a significant change in
9 the employee's work status. Making a significant change to an employee's work status includes
10 conduct such as "hiring, firing, failing to promote, reassignment with significantly different
11 responsibilities, or a decision causing a significant change in benefits."³⁶

13 Boone argues Lackie conditioned her transfer on sexual acts because he suggestively
14 stated he "knew one way" she could get transferred and then failed to give Boone a positive
15 recommendation. But even assuming Lackie's comment was an "implicit" threat, there is no
16 evidence Boone acceded to the threat. Nor is there evidence showing Lackie fulfilled the threat
17 by carrying out a tangible employment action. A negative recommendation is not a "significant
18 change in employment status" and thus cannot constitute a tangible employment action. Boone
19 was never refused a transfer or a rehire because she never applied for either. Her conclusory
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23 ³² The supervisor must have "explicitly or implicitly condition[ed] a job, a job benefit, or
24 the absence of a job detriment, upon [the] [plaintiff's] acceptance of sexual conduct." *Craig v. M*
& O Agencies, Inc., 496 F.3d 1047, 1054 (9th Cir. 2007) (quoting *Nichols v. Frank*, 42 F.3d 503,
510-11 (9th Cir. 1994)) (internal quotation marks omitted).

25 ³³ *Holly D. v. California Inst. of Tech.*, 339 F.3d 1158, 1175 (9th Cir. 2003).

26 ³⁴ *Id.*

27 ³⁵ *Id.*

28 ³⁶ *Id.*

1 belief that a tangible employment action was likely is insufficient to defeat a motion for summary
2 judgment.³⁷ Therefore, as a matter of law Boone cannot maintain her quid pro quo harassment
3 claim, so I grant summary judgment in favor of Cementation on it.

4 **B. Hostile Work Environment**

5 To prove a work environment is hostile, “a plaintiff must show: (1) she was subjected to
6 verbal or physical conduct of a sexual nature; (2) the conduct was unwelcome; and (3) the
7 conduct was sufficiently severe or pervasive to alter the conditions of her employment and create
8 an abusive work environment.”³⁸ The environment must be “both objectively and subjectively
9 offensive.”³⁹

10
11 In contrast to quid pro quo liability, employers are not automatically liable for a hostile
12 work environment.⁴⁰ The employer may raise an affirmative defense of “reasonable care.” The
13 reasonable care defense requires both: “(1) that the employer exercised reasonable care to prevent
14 and correct promptly any sexually harassing behavior, and (2) that the plaintiff employee
15 unreasonably failed to take advantage of any preventive or corrective opportunities provided by
16 the employer or to avoid harm otherwise.”⁴¹ “The legal standard for evaluating an employer’s
17 efforts to prevent and correct harassment . . . is not whether any additional steps or measures
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21 ³⁷ *Forsberg v. Pacific Northwest Bell Tel. Co.*, 840 F.2d 1409, 1419 (9th Cir. 1988)
22 (“[P]urely conclusory allegations . . . with no concrete, relevant particulars, will not bar summary
23 judgment.”).

24 ³⁸ *Porter v. Cal. Dep’t Corr.*, 419 F.3d 885, 892 (9th Cir. 2005) (citing *Vasquez v. County
of Los Angeles*, 349 F.3d 634, 642 (9th Cir. 2004)).

25 ³⁹ *E.E.O.C. v. Prospect Airport Servs., Inc.*, 621 F.3d 991, 997 (9th Cir. 2010) (quoting
26 *Nichols v. Azteca Restaurant Enterprises, Inc.*, 256 F.3d 864, 871–72 (9th Cir. 2001)).

27 ⁴⁰ *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 72 (1986).

28 ⁴¹ *Faragher v. City of Boca Raton*, 524 U.S. 775, 777–78 (1998).

1 would have been reasonable if employed, but whether the employer's actions as a whole
2 established a reasonable mechanism for prevention and correction."⁴²

3 Even assuming Boone has raised triable issues regarding whether she worked in a hostile
4 work environment,⁴³ she has not raised a triable issue regarding Cementation's affirmative
5 defense of reasonable care.

6 **i. Whether Cementation exercised reasonable care to prevent and**
7 **correct harassment**

8 There is no genuine issue of fact material to whether Cementation exercised reasonable
9 care in preventing harassment. Cementation had an adequate sexual harassment policy in place,
10 and Boone admits she signed it when her employment commenced.⁴⁴ There is no evidence
11 Cementation had prior knowledge that Lackie harassed employees and thus should not have been
12 allowed to supervise Boone.⁴⁵ There also is no evidence indicating Cementation should have
13 known about Boone's harassment sooner and taken action sooner than it did.
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15 Similarly, there is no genuine dispute of fact material to whether Cementation reasonably
16 corrected the harassment. When the harassment was reported, Cementation management
17 responded immediately and thoroughly. Finch contacted Boone within 24 hours of the report.
18 Finch regularly called and emailed Boone to try to gather facts about her complaint. Finch
19 offered to remove Lackie or to put Boone on paid vacation. Cementation reprimanded Lackie
20 and required him to attend harassment classes. There is no reasonable dispute about whether
21 Cementation established a reasonable mechanism for prevention and correction of harassment.
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⁴² *Holly D.*, 339 F.3d at 1177.

24 ⁴³ I need not determine whether Boone's allegations rise to the level of objectively "severe
25 and pervasive" because Boone has not rebutted Cementation's showing that its affirmative
26 defense applies.

27 ⁴⁴ (Dkt. #21, Ex. A, at 105-107.)

28 ⁴⁵ (Dkt. #21, Ex. A, 59:11-18.)

1 **ii. Whether Boone unreasonably failed to mitigate the harassment**

2 “Th[e] second prong of the defense is intended to fulfill a ‘policy imported from the
3 general theory of damages, that a victim has a duty to use such means as are reasonable under the
4 circumstances to avoid or minimize the damages that result from violations of the statute.’”⁴⁶

5 One important factor to this inquiry is how long the plaintiff delayed in taking advantage of
6 available preventative and corrective mechanisms.⁴⁷ In fact, “proof . . . [of] an unreasonable
7 failure to use any complaint procedure provided by the employer will normally suffice to satisfy
8 the employer's burden under the second element of the defense.”⁴⁸
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10 Boone made no effort to mitigate the alleged harassment she is suing over. She is suing to
11 recover for harassment she endured over a four-month period: from January, 2012, when she
12 started work at Cementation, to the end of April, 2012, when she stopped working with Lackie.⁴⁹

13 But Boone never attempted to take advantage of any available preventative or corrective
14 measures during this period. Boone asserts she failed to act because she felt uncomfortable
15 making a report. But a hesitation about filing a report does not excuse her delay.⁵⁰ While Boone
16 eventually filed a written harassment complaint on May 2, 2012, she is suing only for harassment
17 that occurred before that date.
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22 ⁴⁶ *Holly D.*, 339 F.3d at 1178.

23 ⁴⁷ *Id.* at 1178-79 (ruling affirmative defense met, in part, because of plaintiff’s delay in
reporting harassment).

24 ⁴⁸ *Id.*

25 ⁴⁹ Boone alleges Lackie’s harassment began in January, two weeks after she started at
Cementation. She alleges the harassment continued into the end of April, when she reported the
26 harassment for the first time.

27 ⁵⁰ *Id.* (rejecting argument that delay in reporting was excusable because plaintiff was
“uncomfortable” making a harassment report).

1 Boone also suggests Cementation should have been on notice of the harassment because
2 two of her co-workers were aware of it. But Cementation has provided un rebutted evidence
3 showing that these co-workers did not have sufficient supervisory powers to put Cementation on
4 notice for purposes of Title VII.⁵¹ In addition, Boone failed to cooperate in the investigation and
5 failed to take advantage of the reasonable corrective measures Cementation offered.⁵²

6 As to the relevant period of time she was harassed, there is no genuine dispute of material
7 fact that Cementation instituted reasonable preventative and corrective measures for workplace
8 sexual harassment, and Boone unreasonably failed to take advantage of these available measures.
9 Cementation cannot be liable for a hostile work environment.
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11 **C. Gender Discrimination**

12 “In order to establish a prima facie case of discrimination, a plaintiff must show (1) that
13 [she] belongs to a protected class; (2) [she] was qualified for the position; (3) [she] was subject to
14 an adverse employment action; and (4) similarly situated individuals outside [her] protected class
15 were treated more favorably.”⁵³
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17 Boone does not address this cause of action in her opposition. Under Local Rule 7-2(d),
18 “[t]he failure of an opposing party to file points and authorities in response to any motion shall
19 constitute a consent to the granting of the motion.” Thus, Boone’s failure to oppose is
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21 ⁵¹ Boone suggests Kyle Hirsch’s alleged knowledge of harassment should be imputed to
22 Cementation because Hirsch was a “team lead.” But for purposes of Title VII, an employer is only
23 liable for actions of a supervisor with sufficient power to take tangible employment actions
24 against the plaintiff. *Vance v. Ball State University*, 133 S.Ct. 2434, 2439 (2013). Here, it is
undisputed that Hirsch did not have such authority. (Dkt. #21, Ex. G, at 25.).

25 ⁵² *Wallace v. San Joaquin Cnty.*, 58 F. App’x 289, 290 (9th Cir. 2003) (unreported)
26 (finding the affirmative defense applied where an employee failed to participate in the
investigation of her allegations and did not take advantage of the employer’s offer to seek a
transfer to another position under a new supervisor).

27 ⁵³ *Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003).

1 acquiescence to Cementation’s argument. I cannot, however, grant a summary judgment motion
2 merely because it is unopposed, even where local rules might permit it.⁵⁴ I must ensure
3 Cementation has met its burden to show an absence of triable issues and entitlement to judgment
4 as a matter of law.

5 Cementation has met its burden. Cementation provides evidence indicating there were no
6 open positions for which Boone was qualified.⁵⁵ Cementation also points out the lack of any
7 evidence showing Boone suffered a qualifying adverse employment action or that men were
8 treated more favorably than her.⁵⁶ Cementation is thus entitled to judgment in its favor as to
9 Boone’s gender discrimination claim.
10

11 **D. Retaliation**

12 Title VII prohibits supervisors from retaliating against employees for opposing sexual
13 harassment.⁵⁷ The *McDonnell Douglas* burden-shifting analysis applies to Title VII retaliation
14 claims.⁵⁸ To establish a prima facie case of retaliation, a plaintiff must show (1) involvement in a
15 protected activity; (2) an adverse employment action; and (3) a causal link between the two.⁵⁹ If
16 a plaintiff establishes a prima facie case, “the burden shifts to the defendant employer to offer
17 evidence that the challenged action was taken for legitimate, non-[retaliatory] reasons.”⁶⁰ “If the
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21 ⁵⁴ *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 949–50 (9th Cir.1993).

22 ⁵⁵ (Dkt. #21, Ex. H, at 29:8-12.)

23 ⁵⁶ Boone suggests in her Complaint that she was paid less than men, and that men were
24 more commonly transferred than women. But Cementation has provided un rebutted evidence
25 establishing neither of these allegations is true, and has pointed out the lack of any evidence in the
26 record supporting Boone’s claims. *See* (Dkt. #21, at 16-19; Ex. A, at 68:21-77:9.)

27 ⁵⁷ 42 U.S.C. § 2000e–3(a).

28 ⁵⁸ *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000).

⁵⁹ *Id.*

⁶⁰ *Dawson v. Entek Int’l*, 630 F.3d 928, 936 (9th Cir. 2011).

1 defendant articulates such a reason, the plaintiff bears the ultimate burden of demonstrating that
2 the reason was merely a pretext for a discriminatory motive.”⁶¹

3 The parties do not contest that Plaintiff engaged in a protected activity when she
4 submitted a written complaint against Lackie for sexual harassment. Thus I first need to
5 determine whether the other elements of Boone’s prima facie case are met.

6 **i. Adverse Employment Action**

7 Title VII’s anti-retaliation provision provides broader protection than that afforded to
8 sexual harassment generally.⁶² Instead of having to show a “tangible employment action,” to
9 prove retaliation the plaintiff need prove only a “materially adverse action”: an action which
10 reasonably “might have dissuaded a reasonable worker from making or supporting a charge” of
11 harassment.⁶³ A supervisor’s negative employment reference may constitute a materially adverse
12 action.⁶⁴

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14 Cementation argues that Boone’s retaliation claim fails because she cannot show she was
15 denied a rehire or transfer. Cementation ignores that a negative job reference, alone, may
16 constitute a materially adverse action for purposes of a retaliation claim. A reasonable jury could
17 find that a negative recommendation for rehire would dissuade a reasonable worker from
18 opposing harassment. Thus, Boone has established a triable issue on this element.

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20 **ii. Causal link**

21 The causal link between an adverse action and a retaliatory motive may be established by
22 circumstantial evidence, such as the employer's knowledge that the employee engaged in
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25 ⁶¹ *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000).

26 ⁶² *Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006).

27 ⁶³ *Id.* at 68

28 ⁶⁴ *Hashimoto v. Dalton*, 118 F.3d 671, 676 (9th Cir. 1997).

1 protected activities and the proximity in time between the protected action and the allegedly
2 retaliatory employment decision.⁶⁵

3 Cementation fails to address the causal nexus between Lackie's negative reference and his
4 alleged retaliatory motive. Prior to Boone reporting the sexual harassment, Lackie had given
5 Boone favorable ratings in a review and stated she qualified for continued employment.⁶⁶ A
6 month later, after Boone had reported the harassment and Finch had informed Lackie of Boone's
7 report, Lackie filled out another review stating he did not recommend Boone for rehire.⁶⁷ Lackie
8 gave Boone a negative review shortly after he learned Boone reported him for harassment. A
9 reasonable juror could find the two events casually linked. Boone has therefore raised a genuine
10 dispute of fact material to this element.

11
12 **iii. Pretext**

13 Cementation asserts Lackie had a legitimate, non-retaliatory reason for giving Boone a
14 poor work review, specifically, her attitude.⁶⁸ Cementation argues Boone has not raised a triable
15 issue as to whether its proffered motive is pretext.⁶⁹ I disagree. Boone has provided evidence
16 showing Lackie harassed her and gave her a negative review shortly after she filed her complaint,
17 despite giving her positive reviews previously. Cementation has provided no evidence showing
18 that Boone had a negative attitude, save Lackie's own testimony. Viewing the facts in a light
19 most favorable to Boone, a reasonable juror could find that Lackie's allegations about Boone's
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24 ⁶⁵ *Jordan v. Clark*, 847 F2d 1368, 1376 (9th Cir. 1988).

25 ⁶⁶ (Dkt. #21, Ex. A, at 33:20-34:14.)

26 ⁶⁷ (Dkt. #21, Ex. I, at 1 37:21-23, 38:18-22.)

27 ⁶⁸ (Dkt. #29, at 16-18.)

28 ⁶⁹ (*Id.*)

1 attitude are pretext, and that Lackie gave Boone a poor review in retaliation for her harassment
2 complaint.

3 Boone has set forth a prima facie case of retaliation, and she has established a triable issue
4 of fact as to whether Lackie's negative work reference was motivated by retaliatory animus.
5 Cementation is thus not entitled to judgment on Boone's retaliation claim.

6 **IV. CONCLUSION**

7
8 IT IS THEREFORE ORDERED that defendant Cementation USA Inc.'s Motion for
9 Summary Judgment (Dkt. #21) is GRANTED IN PART. Judgment is entered in favor of
10 Cementation as to Boone's first cause of action for hostile work environment harassment, second
11 cause of action for quid pro quo harassment, and third cause of action for gender discrimination.
12 The Motion is DENIED as to Boone's fourth cause of action for retaliation.

13
14 DATED this 9th day of December, 2014.



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16 _____
17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE