

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THERESE LALUMIERE,

Plaintiff.

V.

WILLOW SPRINGS CARE, INC., a Washington corporation; JENNIFER NEWMAN, and her marital property; AARON HILL, and his marital property; and TAMARA BERUMEN, and her marital property,

Defendants.

NO: 1:16-CV-3133-RMP

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Joint Motion for Summary Judgment,

ECF No. 27. A telephonic hearing was held before the Court on October 10, 2017.

Laura Morse appeared on behalf of Defendants. Favian Valencia appeared on behalf of Plaintiff. The Court has considered the parties' arguments, reviewed the parties' exhibits, and is fully informed.

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BACKGROUND

Plaintiff Therese Lalumiere brings this suit alleging violations of the Family Medical Leave Act, 29 U.S.C. § 2615(a) over which the Court exercises federal question jurisdiction pursuant to 28 U.S.C. § 1331, and state law claims¹ over which the Court exercises supplemental jurisdiction pursuant to 28 U.S.C. § 1337. Finding that Ms. Lalumiere’s federal claims should be dismissed, the Court could remand all of Ms. Lalumiere’s state law claims to the state court, but instead exercises supplemental jurisdiction over the state law claims because the facts for all of the claims are intertwined.

From 2010 to 2015, Ms. Lalumiere worked as a Licensed Practical Nurse at Willow Springs Care, Inc., a skilled nursing care facility in Yakima, Washington, and a defendant in this matter. In 2015, at the time of the incidents at issue in this matter, Defendant Tamara Berumen was the Director of Nursing at Willow Springs and one of Ms. Lalumiere’s supervisors. ECF No. 28, ¶ 2.2. Defendant Jennifer Newman was the charge nurse responsible for supervising the nursing staff during Ms. Lalumiere’s weekend shifts. *Id.* ¶ 3.2. Defendant Aaron Hill was the Willow Springs Administrator in Training and worked with Ms. Berumen. *Id.* ¶ 4.3.

¹ Ms. Lalumiere's state law claims include intentional infliction of emotional distress, whistleblower retaliation, wrongful termination by constructive discharge in violation of public policy, false imprisonment, and negligent hiring. However, Ms. Lalumiere bundles the claims and arguments together.

Ms. Lalumiere's Reports of Employee Misconduct

Between January and April of 2015, Ms. Lalumiere reported to Ms. Berumen about medication distribution infractions by Dianne Odman, one of her coworkers at Willow Springs. ECF No. 1-2 at 4-5. Ms. Lalumiere asserts that she first verbally reported Ms. Odman's infractions to Ms. Berumen on January 12, 2015. ECF No. 1-2, ¶ 3.5; ECF No. 33-1 at 19. Ms. Lalumiere also wrote a letter to Ms. Berumen voicing her concern about Ms. Odman's work practices on March 20, 2015. ECF No. 33-6 at 2.

On April 2, 2015, Ms. Lalumiere made an anonymous report to the Washington Department of Social and Health Services (DSHS) about delayed medication distributions at Defendant Willow Springs, identifying Dianne Odman as the nurse responsible for the infractions. ECF No. 28, ¶ 40; ECF No. 45, ¶ 40. DSHS visited Willow Springs on April 18, 2015, to investigate Ms. Lalumiere's April 2 allegations. ECF No. 28, ¶ 50. As a result of the investigation, DSHS cited Defendant Willow Springs on April 28, 2015, for failing to administer medications in a timely manner. *Id.* ¶ 54-55; ECF No. 33-6 at 14-17. To address the issue, DSHS required Defendant Willow Springs to submit a plan of correction, but DSHS did not impose any other penalties on Willow Springs as a result of the April 18, 2015, investigation. *Id.* Although DSHS's investigation of Ms. Lalumiere's report took place before Ms. Lalumiere left her position at Willow Springs, the DSHS

1 response citing Willow Springs for failing to administer medications in a timely
2 manner was issued several days after Ms. Lalumiere left her job at Willow Springs.

3 *Ms. Lalumiere's 2015 Work Performance Citations*

4 Several times between January and March of 2015, Ms. Lalumiere received
5 citations from her supervisors at Willow Springs regarding issues with her work
6 performance.² *See, e.g.*, ECF No. 33-5, at 29. Alleging that many of these citations
7 were without basis, Ms. Lalumiere emphasizes several times in her pleadings that
8 Ms. Newman repeatedly and falsely accused her of misconduct. ECF No. 44-2 at 3,
9 4, 5, 9, 10.

10 On January 4, 2015, Ms. Newman cited Ms. Lalumiere for failing to give a
11 patient insulin on January 3, 2015. ECF No. 28, ¶ 13.6. On January 5, 2015, Ms.
12 Lalumiere met with her Willow Springs supervisors, Ms. Berumen and Ms.
13 Newman, to discuss the January 3 incident and to address any existing issues. ECF
14 No. 33-1, at 18-19.

15 On January 12, 2015, Ms. Berumen texted Ms. Lalumiere and notified her that
16 Ms. Berumen had received several complaints about Ms. Lalumiere "regarding
17 resident care and slander against other nurses." *Id.* at 33. On January 15, 2015, Ms.
18 Berumen wrote a Willow Springs Corrective Action Report for Ms. Lalumiere's
19 work performance, citing Ms. Lalumiere's failure to assess a resident's changed

20 _____
21 ² Ms. Newman was out on maternity leave from January 31 to February 22, and no
negative incidents or infractions against Ms. Lalumiere were documented during
February.

1 condition on January 9, 2015; her failure to change a resident's leaking catheter on
2 January 9, 2015; her unprofessional conversations about other coworkers; and her
3 inappropriate conversation with a resident's family members after the family had
4 lodged a complaint. ECF No. 33-5 at 29. Ms. Lalumiere disagreed with the
5 statements in the report, and she noted that she felt her coworkers were "talking
6 about [her] and making false statements." *Id.*

7 Ms. Lalumiere states that citations at Willow Springs were usually issued on
8 the same day that an error occurred, and she states that the January 15 citation for
9 issues that had happened on January 9 and 10, 2015, led her "to believe that Ms.
10 Newman was getting back at [Ms. Lalumiere] for reporting [Ms. Newman] and Ms.
11 Odman to [Ms. Berumen]" on January 12, 2015. ECF No. 44-2, ¶ 10. However,
12 Ms. Berumen, rather than Ms. Newman, issued the January 15 Corrective Action
13 Report, and Ms. Berumen asserts that she had a legitimate reason for the delay in
14 issuing it. ECF No. 33-3 at 15. Ms. Berumen had received a letter from a resident's
15 son, dated January 13, 2015, regarding his concerns about Ms. Lalumiere's care of
16 his mother, a Willow Springs Resident, and Ms. Berumen included the son's
17 concerns in the January 15 Corrective Action Report. ECF No. 33-5 at 26-27; ECF
18 No. 33-5 at 29.

19 Citations against Ms. Lalumiere continued. On March 15, 2015, Ms. Newman
20 cited Ms. Lalumiere for failing to administer a medication and improperly
21 documenting its administration. ECF No. 28, ¶ 25. On March 28, 2015, Ms.

1 Newman sent Ms. Lalumiere home early from her shift after Ms. Newman and Ms.
2 Lalumiere had a disagreement. *Id.* ¶¶ 33-34; ECF No. 33-1 at 29. On March 29,
3 2015, Ms. Newman wrote a Medication Error Report documenting Ms. Lalumiere's
4 failure to administer a patient's medication. ECF No. 44-2 at 17.

5 Ms. Lalumiere met with Defendants Berumen, Newman, and Hill on March
6 30, 2015, to discuss Ms. Lalumiere's work performance. ECF No. 33-1, at 18-19;
7 *id.* at 39-40; ECF No. 33-3 at 27. At the March 30 meeting, Ms. Lalumiere alleges
8 that Defendants asked her to resign and that Defendants falsely accused her of
9 looking at confidential documents. ECF No. 33-1 at 39-40. Ms. Lalumiere did not
10 resign following the March 30 meeting, and Defendants argue that they did not
11 pursue any disciplinary action in response to the allegations about confidential
12 documents.

13 On April 11, 2015, Ms. Lalumiere asserts that Ms. Newman falsely accused
14 Ms. Lalumiere of pre-popping medications. ECF No. 44-2 at 10; ECF No. 28, ¶¶ 42,
15 48. Ms. Newman never issued a written citation for this infraction.

16 *Ms. Lalumiere's Documentation of Harassment*

17 In January of 2015, Ms. Lalumiere complained to Ms. Berumen that she was
18 being "verbally harassed" and given "the cold shoulder" by Ms. Newman. ECF No.
19 1-2 at 4-5. Ms. Lalumiere has described several instances in which she asserts that
20 she felt harassed by Defendants. For example, at the end of the January 5, 2015,
21 meeting with Ms. Berumen and Ms. Newman, Ms. Lalumiere stated that she

1 “offered to shake [Ms. Newman’s] hand,” but “[Ms. Newman] refused and gave me
2 angry look [sic].” ECF No. 44, ¶ 8. Ms. Lalumiere stated that in mid-January 2015,
3 “Ms. Newman’s demeanor toward me changed drastically and became intimidating
4 and she refused to communicate with me about even basic job tasks that I needed her
5 guidance [sic].” *Id.* ¶ 11.

6 Ms. Lalumiere met with Defendants Hill and Berumen on January 22, 2015,
7 and, at that meeting, presented a letter to Defendant Hill “describing the harassment
8 and false accusations” that she was experiencing. ECF 44-2 at 5; ECF No. 33-5 at
9 33. Ms. Lalumiere also provided a copy of her January 22 letter to Ms. Berumen.
10 ECF No. 33-5 at 31-33. In the January 22 letter, Ms. Lalumiere asked the
11 undesignated recipient of the letter to investigate whether Ms. Newman was
12 involved in complaints that Ms. Berumen had received about Ms. Lalumiere’s work
13 performance. ECF No. 33-5 at 33. Ms. Lalumiere hoped this investigation would
14 help “remove that cold front looming over [her].” *Id.* The letter does not contain
15 any other examples of false accusations or harassment targeting Ms. Lalumiere.

16 On one occasion in March 2015, Ms. Lalumiere observed Defendants
17 Berumen and Newman talking together, after which Ms. Lalumiere concluded that
18 Defendants Berumen and Newman gave her “the cold shoulder,” although Ms.
19 Lalumiere did not hear the contents of the conversation between Defendants
20 Berumen and Newman. ECF No. 28, ¶ 30; ECF No. 33-1 at 27. On March 28,
21 2015, the date that Ms. Newman sent Ms. Lalumiere home early, Ms. Lalumiere

1 asserts that Ms. Newman said, “Mind your own team,” “in the voice of kind of a
2 style [sic].” ECF No. 33-1 at 39 (deposition testimony of Ms. Lalumiere); ECF No.
3 44-2, ¶ 22 (Ms. Lalumiere’s written statement recharacterizes the situation, stating
4 that Ms. Newman “immediately yelled at [Ms. Lalumiere] in an intimidating tone of
5 voice”).

6 Ms. Lalumiere alleges that many of the work performance citations she
7 received in January and March of 2015 were the result of false accusations made by
8 Jennifer Newman and other coworkers. ECF No. 44-2 at 3, 4, 5, 9, 10. Ms.
9 Lalumiere appears to consider work performance citations as one aspect of the
10 harassment that she alleges.

11 *Events of April 19, 2015*

12 *Accusation of “Pre-Popping” Medications:* On April 19, 2015, the day after
13 the DSHS visit to investigate Ms. Lalumiere’s anonymous report about Ms.
14 Odman’s infractions, Ms. Lalumiere reported to work at Willow Springs. Shortly
15 after 8:00 a.m. that morning, Ms. Newman responded to a report from the Willow
16 Springs activities assistant, Holly Jorgensen, and observed that Ms. Lalumiere’s cart
17 contained at least three medication cups containing medications for different
18 patients. ECF No. 28, ¶¶ 60, 64. The practice of preparing medications for
19 distribution for more than one patient at a time is called “pre-popping,” and pre-
20 popping medications is discouraged at Willow Springs. *Id.* ¶ 43. Ms. Lalumiere
21 continues to assert that she did not pre-pop the medications in her cart on April 19,

1 2015. ECF No. 44-2 at 10-11. However, in her deposition testimony, Ms.
2 Lalumiere stated that she “had a few pre-popped medication [sic]” and agreed that
3 she had pre-poured medications for more than one patient. ECF No. 33-1 at 32.

4 *Conference Room Events:* Ms. Lalumiere went to the Willow Springs
5 conference room after Ms. Newman took the medications that Ms. Lalumiere had
6 prepared from Ms. Lalumiere’s cart. *Id.* ¶ 67; ECF No. 45, ¶ 67. The parties dispute
7 whether Ms. Lalumiere went into the conference room of her own volition or
8 whether Ms. Newman directed Ms. Lalumiere to go to the conference room with her.
9 ECF No. 28, ¶ 67; ECF No. 45, ¶ 67.

10 It is undisputed that once Ms. Lalumiere was seated in the Willow Springs
11 conference room, Ms. Newman asked Ms. Lalumiere whether she intended to return
12 to work to finish distributing medications, whether she was going home, or whether
13 she was quitting. ECF No. 28, ¶ 69; ECF No. 45, ¶ 69. Ms. Lalumiere sent a text
14 message to Ms. Berumen at 8:25 A.M. stating that the charge nurse, Ms. Newman,
15 was “still harassing” her, the “stress go up [sic] and the blood pressure and it take
16 away [sic] the focus of my mind,” and that Ms. Lalumiere thought it would be best
17 to go home. ECF No. 33-6 at 19-20. Ms. Berumen responded that Ms. Lalumiere
18 needed to listen to Ms. Newman and should continue to work her shift. *Id.* at 20;
19 ECF No. 28, ¶ 74.

20 *Response to Ms. Lalumiere’s Health Concerns:* After texting with Ms.
21 Berumen, Ms. Lalumiere indicated to Ms. Newman that she was not feeling well and
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1 was experiencing high blood pressure. ECF No. 33-6 at 26. A Willow Springs
2 nurse took Ms. Lalumiere's blood pressure in the conference room and found Ms.
3 Lalumiere's blood pressure to be high. ECF No. 45, ¶ 70 (Ms. Lalumiere's
4 statement of facts describing the results of the blood pressure assessment as
5 "extremely elevated"); ECF No. 33-3 at 22-23 (deposition of Ms. Newman stating
6 that Ms. Lalumiere's blood pressure was "a little high"). Ms. Newman asked what
7 kind of transportation Ms. Lalumiere would like to use to go to the hospital, and Ms.
8 Lalumiere said, "whatever you can have [sic]." ECF No. 33-6 at 26. Ultimately,
9 Ms. Newman told Ms. Lalumiere that she should drive herself to the hospital. *Id.*

10 *Departure from Willow Springs:* Ms. Lalumiere was in the conference room
11 on April 19, 2015, for about thirty minutes altogether, after which she counted the
12 medications in her cart as required by Willow Springs procedures and filled out her
13 paid-time-off paperwork before leaving Willow Springs. ECF No. 28, ¶¶ 79, 81;
14 ECF No. 45, ¶¶ 79, 81. Exiting the building, Ms. Lalumiere bumped into Ms.
15 Newman with her purse as Ms. Lalumiere walked past Ms. Newman, and Ms.
16 Newman told Ms. Lalumiere not to touch her or she would have Ms. Lalumiere
17 arrested. ECF No. 33-1 at 42; ECF No. 33-4 at 11. Ms. Lalumiere then sat in her
18 personal vehicle in the Willow Springs parking lot for about twenty-five minutes
19 before leaving the facility to drive home. ECF No. 28, ¶ 84; ECF No. 45, ¶ 84. Ms.
20 Lalumiere did not go to the hospital on April 19, 2015. ECF No. 28, ¶ 81; ECF No.
21 45, ¶ 81.

Interactions with Willow Springs After April 19, 2015

2 Following the April 19, 2015, incident Ms. Lalumiere spoke with Defendant
3 Hill and asked him to investigate how she had been treated. ECF No. 28, ¶ 86; ECF
4 No. 45, ¶ 86. Defendant Hill passed Ms. Lalumiere's complaints along to Nursing
5 Home Administrator Chris Bosworth, who met with Ms. Lalumiere and her husband
6 on April 23, 2015. ECF No. 28, ¶¶ 87-89. Mr. Bosworth suggested an opportunity
7 for Ms. Lalumiere to work at another nursing facility. *Id.* ¶¶ 98. Ms. Lalumiere
8 declined to take the position offered by Mr. Bosworth. ECF No. 30 at 2. Ms.
9 Lalumiere never returned to Willow Springs after leaving on April 19, 2015. ECF
10 No. 55, ¶ 85.

DISCUSSION

A. Legal Standard for Summary Judgment

13 A court may grant summary judgment where “there is no genuine dispute as
14 to any material fact” of a party’s prima facie case, and the moving party is entitled to
15 judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-33 (1986);
16 see also FED. R. CIV. P. 56(c). A genuine issue of material fact exists if sufficient
17 evidence supports the claimed factual dispute, requiring “a jury or judge to resolve
18 the parties’ differing version of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec.*
19 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). “A key purpose of summary
20 judgment ‘is to isolate and dispose of factually unsupported claims.’” *Id.* (citing
21 *Celotex*, 477 U.S. at 324).

1 The moving party bears the burden of showing the absence of a genuine issue
2 of material fact, or in the alternative, the moving party may discharge this burden by
3 showing that there is an absence of evidence. *See Celotex*, 477 U.S. at 325. The
4 burden then shifts to the nonmoving party to set forth specific facts showing a
5 genuine issue for trial. *See id.* at 324. The Court will not infer evidence that does
6 not exist in the record. *See Lujan v. National Wildlife Federation*, 497 U.S. 871,
7 888-89 (1990) (court will not presume missing facts). However, “[t]he evidence of
8 the non-movant is to be believed, and all justifiable inferences are to be drawn in his
9 favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

10 ***B. Family Medical Leave Act***

11 Ms. Lalumiere alleges that Defendants prevented her from exercising her
12 rights under the federal Family Medical Leave Act. In her complaint, Ms. Lalumiere
13 asserts three grounds for her Leave Act claims. ECF No. 1-2, at 9. First, Ms.
14 Lalumiere argues that Defendants prevented her from taking protected leave to
15 address her concerns about her high blood pressure on April 19, 2015, in violation of
16 the Act. Second, Ms. Lalumiere argues that Willow Springs retaliated against her
17 for taking medical leave in violation of the Act. Third, Ms. Lalumiere argues that
18 Willow Springs did not return her to her position, or a similar position, upon her
19 return from medical leave. However, in her response to Defendants’ Motion for
20 Summary Judgment, Ms. Lalumiere argues only her first claim and does not provide
21 any facts supporting her second or third claims. ECF No. 44 at 10-11. Therefore,

1 the Court considers Ms. Lalumiere's second and third FMLA claims abandoned and
2 does not address them.

3 "The FMLA creates two interrelated, substantive employee rights: first, the
4 employee has a right to use a certain amount of leave for protected reasons, and
5 second, the employee has a right to return to his or her job or an equivalent job after
6 using protected leave." *Bachelder v. America West Airlines, Inc.*, 259 F.3d 1112,
7 1122 (9th Cir. 2001). The FMLA provides that it "shall be unlawful for any
8 employer to interfere with, restrain, or deny the exercise of or the attempt to
9 exercise, any right provided under this subchapter." 29 U.S.C. § 2615(a)(1).

10 To state a prima facie interference claim under § 2615(a)(1), a plaintiff must
11 establish that (1) she was eligible for the FMLA's protections, (2) her employer was
12 covered by the FMLA, (3) she was entitled to medical leave under the FMLA, (4)
13 she provided sufficient notice of her intent to take leave, and (5) her employer
14 denied her FMLA benefits to which she was entitled. *See Sanders v. City of*
15 *Newport*, 657 F.3d 772, 778 (9th Cir. 2011).

16 Ms. Lalumiere claims that Defendants interfered with her FMLA rights by
17 preventing her from taking protected leave on April 19, 2015, when Ms. Lalumiere
18 expressed that she was feeling unwell and was concerned about her blood pressure
19 being high. ECF No. 44 at 10-11. The parties do not dispute that Ms. Lalumiere
20 was eligible for FMLA protections on April 19, 2015, or that Willow Springs was
21 covered by the FMLA. Nor do the parties appear to dispute that Ms. Lalumiere was

1 entitled to leave under the FMLA on April 19, 2015, or that Ms. Lalumiere provided
2 sufficient notice of her intent to take medical leave on April 19, 2015. The disputed
3 issue is whether Defendants did not allow Ms. Lalumiere to take protected leave to
4 address her health concerns on April 19, 2015.

5 Defendants argue that because Ms. Lalumiere left work less than thirty
6 minutes after notifying Ms. Berumen of her request to go home, and because Ms.
7 Lalumiere received compensation for her leave on April 19, 2015, Defendants did
8 not interfere with or prevent Ms. Lalumiere from taking protected leave. ECF No.
9 27, at 12. Ms. Lalumiere does not dispute that she left work around thirty minutes
10 after she first indicated to Defendants Newman and Berumen that she was feeling
11 unwell and wanted to go home. Nor does Ms. Lalumiere dispute that she received
12 payment for the leave that she requested on April 19, 2015.

13 Ms. Lalumiere contends that Defendants interfered with Ms. Lalumiere's
14 rights under the FMLA because Ms. Newman chose to deny Ms. Lalumiere's
15 request for leave for "several minutes." ECF No. 44, at 10-11. It is undisputed that
16 in the conference room, Ms. Lalumiere did not immediately request leave. ECF No.
17 33-1 at 34. After stating that she was not feeling well, Ms. Lalumiere expressed her
18 concern that her blood pressure was high and that she desired to go home. *Id.* A
19 nurse took Ms. Lalumiere's blood pressure, and when Ms. Newman observed that
20 Ms. Lalumiere's blood pressure was elevated, Ms. Newman approved Ms.

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1 Lalumiere's request to leave work early. Based on these facts, Ms. Lalumiere has
2 failed to articulate how Defendants denied her FMLA benefits.

3 Taking all the evidence in the light most favorable to Ms. Lalumiere, the
4 Court finds that Ms. Lalumiere has failed to create a genuine issue of material fact
5 and failed to support an essential element of her FMLA interference claims.
6 Therefore, the Court finds that summary judgment is properly granted as to Ms.
7 Lalumiere's Family Medical Leave Act claims.

8 ***C. Washington State Family Leave Act Claim***

9 Ms. Lalumiere alleges that Defendants prevented her from exercising her
10 rights under the Washington State Family Leave Act (WFLA) by preventing Ms.
11 Lalumiere from taking protected leave immediately on April 19, 2015, and by
12 retaliating against Ms. Lalumiere for taking protected leave. Ms. Lalumiere asserted
13 her federal and state Leave Act claims jointly, alleging that Defendants violated the
14 WFLA on the same three grounds as the Family Medical Leave Act. ECF No. 1, ¶
15 4.2; *see supra*.

16 In relevant part, the WFLA states that “[i]t is unlawful for any employer to
17 interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right
18 provided under this chapter.” RCW 49.78.300. “The Washington Family Leave Act
19 ‘mirrors its federal counterpart and provides that courts are to construe its provisions
20 in a manner consistent with similar provisions of the FMLA.’” *Crawford v. JP*
21 *Morgan Chase NA*, 983 F.Supp.2d 1264, 1269 (W.D. Wash. 2013) (quoting

1 *Washburn v. Gymboree Retail Stores, Inc.*, 2012 U.S. Dist. LEXIS 156240, *21
2 (W.D. Wash. Oct. 30, 2012)).

3 The Court analyzed Ms. Lalumiere's WFLA claims under the same standards
4 applied to her FMLA claims and notes that Ms. Lalumiere failed to raise a genuine
5 issue of material fact or support her *prima facie* case regarding her WFLA claims.
6 For the same reasons that the Court is granting summary judgment on the FMLA
7 claims, specifically that Ms. Lalumiere has failed to demonstrate how Defendants
8 interfered with her FMLA or WFLA rights, the Court finds that summary judgment
9 is properly granted regarding Ms. Lalumiere's WFLA claims.

10 ***D. Intentional Infliction of Emotional Distress Claim***

11 Ms. Lalumiere alleges that Defendants committed the tort of intentional
12 infliction of emotional distress based on the events of April 19, 2015, and on Ms.
13 Lalumiere's claims of verbal harassment and being falsely accused of workplace
14 infractions in January and March of 2015.

15 In order to succeed in a claim for intentional infliction of emotional distress
16 ("IIED"), a plaintiff must prove: "(1) extreme and outrageous conduct, (2)
17 intentional or reckless infliction of emotional distress, and (3) actual result to
18 plaintiff of severe emotional distress." *Kloepfel v. Bokor*, 66 P.3d 630, 632 (Wash.
19 2003). The conduct must be "so outrageous in character, and so extreme in degree,
20 as to go beyond all possible bounds of decency." *Id.* "[M]ere insults, indignities,
21 threats, annoyances, petty oppressions or other trivialities" will not be sufficient to

1 establish an IIED claim. *Strong v. Terrell*, 195 P.3d 977, 982 (Wash. Ct. App.
2 2008).

3 In *Strong*, the plaintiff's supervisor repeatedly verbally harassed plaintiff
4 during a period of over two years between 1999 and 2002. *Id.* at 979-80.

5 He pointedly told "blonde jokes," and he made fun of her by ridiculing
6 her with remarks about her personal life, including disparaging the
7 house she purchased and her husband's employment, and telling her that
8 her son was going to find out that she was a "bum" mother because she
had placed him in therapy. *Strong* asserted that Terrell's behavior
caused her to vomit and to have anxiety attacks, depression, and heart
palpitations.

9 *Id.* The Washington Court of Appeals agreed with the trial court's finding that the
10 supervisor's harassment did not rise to the level of outrageous and extreme conduct
11 and affirmed the trial court's grant of summary judgment for defense on *Strong*'s
12 intentional infliction of emotional distress claim. *Id.* at 982.

13 Ms. Lalumiere attempts to distinguish *Strong*, arguing that the employer
14 reprimanded and "eventually terminated" the supervisor after the plaintiff
15 complained of the supervisor's conduct. ECF No. 44, at 3. Although a follow-up
16 investigation in *Strong* did lead to the recommendation that the supervisor should be
17 terminated, the employer merely recommended that the supervisor "take some
18 additional management training classes to improve his management style," and the
19 supervisor resigned from his position nearly two years after the plaintiff's initial
20 complaint. *Strong*, 195 P.3d at 980. *Strong* demonstrates the very high bar that

1 plaintiffs are required to meet to succeed in intentional infliction of emotional
2 distress claims.

3 The parties in the present matter dispute whether Defendants' conduct rises to
4 the level of outrageous and extreme. Defendants argue that Ms. Lalumiere bases her
5 intentional infliction of emotional distress claims on the April 19, 2015, accusation
6 that Ms. Lalumiere pre-popped patient medications, subsequent interactions in the
7 Willow Springs conference room, and Defendants' response to Ms. Lalumiere's
8 concern about her blood pressure. ECF No. 27, at 6. Defendants contend that Ms.
9 Lalumiere has not created a genuine issue of material fact or supported her prima
10 facie case regarding whether Defendants' treatment of Ms. Lalumiere on April 19,
11 2015, was outrageous or extreme. *Id.*

12 Ms. Lalumiere asserts that on April 19, 2015, Defendants denied Ms.
13 Lalumiere medical treatment and held her against her will in a room when she was
14 requesting to be taken to the hospital. ECF No. 1-2, at 10. Although Ms. Newman
15 did not provide an ambulance for Ms. Lalumiere, a Willow Springs nurse took Ms.
16 Lalumiere's blood pressure. ECF No. 33-6 at 26. Ms. Lalumiere acknowledges that
17 she went to the conference room of her own volition, had a cell phone in her hand
18 which she used to text Ms. Berumen during the time that she was in the conference
19 room, and did not go to the hospital or seek medical treatment for four days after the
20 events of April 19, 2015. *See* ECF No. 33-1 at 33; ECF No. 28, ¶ 81. The Court

1 concludes that Ms. Lalumiere has not created a genuine issue of material fact as to
2 whether Defendants acted in an outrageous or extreme manner on April 19, 2015.

3 Ms. Lalumiere also alleges that Defendants' conduct constituted intentional
4 infliction of emotional distress based on Ms. Lalumiere's assertion that she
5 repeatedly experienced harassment and false accusations from Defendants in the
6 months preceding the events of April 19, 2015. ECF No. 44, at 3. Without offering
7 evidentiary support, Ms. Lalumiere asserts that the work performance accusations
8 against her were false. She also noted her disagreement with the citations that she
9 received from her Willow Springs supervisors. *See, e.g.*, ECF No. 33-5 at 29
10 (Willow Springs Corrective Action Report dated January 15, 2015, showing that Ms.
11 Lalumiere checked the box next to "I disagree with the Company's statement for the
12 following reason," accompanied by her handwritten comments).

13 However, Ms. Berumen and Ms. Newman were not the only Willow Springs
14 coworkers who reported Ms. Lalumiere for work performance errors. A number of
15 other Willow Springs employees also noted that Ms. Lalumiere behaved
16 unprofessionally at times between January and April of 2015. ECF No. 33-5 at 35-
17 39; ECF No. 33-1 at 39 (acknowledging a March 28, 2015, incident report filed by
18 coworker Jody Shively); ECF 33-4 at 10 (deposition of Ms. Newman noting that
19 Holly Jorgensen observed Ms. Lalumiere with pre-popped medications on April 19,
20 2015). Ms. Lalumiere's belief and her conclusory allegations, without evidentiary

1 support, that Defendants falsely accused her of work performance issues are
2 insufficient to raise a genuine issue of material fact regarding Defendants' conduct.

3 Similarly, Ms. Lalumiere has offered only a few incidents to support her claim
4 of harassment. *See infra*. Ms. Lalumiere makes conclusory statements that Ms.
5 Newman verbally harassed and intimidated her. She describes interactions where
6 Ms. Newman refused to shake her hand or gave her "an angry look," or where
7 Defendants Berumen and Newman gave her "the cold shoulder." Ms. Lalumiere
8 also asserts, without support, that Defendants asked her to resign on March 30, 2015.
9 ECF No. 33 at 39.

10 To support her IIED claims against Defendants, Ms. Lalumiere also points to
11 Willow Springs Activities Assistant Holly Jorgensen's report to DSHS. ECF No. 44
12 at 3-4; ECF No. 44-2, ¶ 31. Ms. Jorgensen is not named as a defendant in this case.
13 She filed a report with DSHS against Ms. Lalumiere on April 22, 2015. ECF No.
14 44-2 at 13. Ms. Jorgensen stated that she reported Ms. Lalumiere to DSHS as a
15 result of manipulation by Ms. Newman. ECF No. 44 at 3-4; ECF 44-2 at 23. Ms.
16 Jorgensen stated in an email dated March 12, 2017, that "[Ms. Newman] would
17 make a point to put a negative spin on the way [Ms. Lalumiere] worked and she was
18 successful in swaying my opinion as I did not have an understanding of how things
19 worked in their department." *Id.* Ms. Lalumiere states that "DSHS investigated
20 [Ms. Jorgensen's] allegations and they were unfounded." ECF No. 44-2 at 13.

1 While Ms. Newman may have influenced Ms. Jorgensen, Ms. Jorgensen made
2 the report to DSHS herself. Furthermore, Ms. Lalumiere acknowledges that she
3 experienced no adverse effects as a result of Ms. Jorgensen's report and does not
4 argue that the DSHS report caused her severe emotional distress. *Id.* Ms.
5 Lalumiere's claims of Defendants' harassment and false accusations, without
6 additional evidentiary support, fail to raise a genuine issue of material fact regarding
7 whether Defendants' alleged conduct was extreme and outrageous.

8 Viewing these facts in the light most favorable to Ms. Lalumiere, the Court
9 finds that Ms. Lalumiere has not created a genuine issue of material fact or support
10 of her *prima facie* case regarding the outrageousness of Defendants' conduct on or
11 before April 19, 2015. Therefore, the Court finds that summary judgment is proper
12 as to Ms. Lalumiere's claims of intentional infliction of emotional distress.

13 ***E. Whistleblower Retaliation Claim***

14 Ms. Lalumiere alleges that Defendants retaliated against her in violation of the
15 Washington Law Against Discrimination (WLAD), RCW 49.60.210. ECF No. 1-2,
16 at 9. Ms. Lalumiere asserts that Defendants undertook adverse employment action
17 against Ms. Lalumiere after she made her report to DSHS on April 2, 2015, or in the
18 alternative, after Ms. Lalumiere reported her coworker's infractions to her
19 supervisors in January and March of 2015. ECF No. 44, at 6-7.

20 The WLAD states that it is "an unfair practice for any employer . . . or other
21 person to discharge, expel, or otherwise discriminate against any person because he

1 or she has opposed any practice forbidden by *this chapter*,” Chapter 49.60. RCW
2 49.60.210(1) (emphasis added). RCW Chapter 49.60 prohibits discrimination on the
3 basis of age, sex, marital status, sexual orientation, race, creed, color, national origin,
4 honorably discharged veteran or military status, or the presence of any sensory,
5 mental, or physical disability or the use of a trained dog guide or service animal by a
6 person with a disability.

7 To establish a *prima facie* case of retaliation under WLAD, a plaintiff must
8 show that: (1) she engaged in statutorily protected activity, (2) her employer took an
9 adverse employment action against her, and (3) there is a causal link between the
10 activity and the adverse action. *Alonso v. Qwest Communications Co.*, 315 P.3d
11 610, 620 (Wash. Ct. App. 2013). An employee engages in activity protected by the
12 Washington Law Against Discrimination only when she “opposes employment
13 practices forbidden by antidiscrimination law or other practices that [s]he reasonably
14 believed to be discriminatory.” *Id.* “[A]n employee who opposes employment
15 practices reasonably believed to be discriminatory is protected by the ‘opposition
16 clause’ whether or not the practice is actually discriminatory.” *Short v. Battle
17 Ground School District*, 279 P.3d 902, 912 (Wash. Ct. App. 2012) (quoting *Gifford
18 v. Atchison, T. & S.F.R. Co.*, 685 F.2d 1149, 1157 (9th Cir. 1982)).

19 On April 2, 2015, Ms. Lalumiere anonymously reported her coworker, Dianne
20 Odman, to DSHS for failing to timely distribute patient medications in violation of
21 nursing home regulations under RCW Chapter 18.51. ECF No. 44-2, ¶ 26. Ms.
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1 Lalumiere previously had reported her concerns about Ms. Odman to Ms. Berumen
2 orally on January 12, 2015, and in writing on March 20, 2015. ECF No. 33-1 at 19;
3 ECF No. 33-6 at 2. Because Ms. Lalumiere’s whistleblowing involved violations of
4 nursing home regulations rather than civil rights protections, Defendants contend
5 that RCW 49.60.210 is inapplicable to Ms. Lalumiere’s whistleblower retaliation
6 claims and argue that Ms. Lalumiere has abandoned her claim. ECF No. 27 at 9.

7 In response, Ms. Lalumiere argues that she engaged in activity statutorily
8 protected under Washington law when she reported the nursing home regulation
9 violations and when she alleged that Ms. Newman was treating her unfairly due to
10 her reports. ECF No. 44, at 6-7. She contends that conduct protected by RCW
11 18.51.220 should be subject to the same *prima facie* case analysis as conduct
12 protected by RCW 49.60.210. *Id.* RCW 18.51.220 provides that “No licensee shall
13 discriminate or retaliate in any manner against a patient or employee in its nursing
14 home on the basis or for the reason that such patient or employee . . . has initiated or
15 participated in any proceeding specified in this chapter.” RCW Chapter 18.51
16 provides regulations for nursing home standards. Regardless of which statute is
17 applied, the plaintiff must establish that adverse action occurred in order to prove
18 retaliation.

19 The parties dispute the factual issue of whether Defendants took any adverse
20 action against Ms. Lalumiere. The adverse actions Ms. Lalumiere alleges
21 Defendants took against her are, first, that she was constructively discharged due to

1 the creation of intolerable working conditions and, second, that she was not given a
2 promised raise. ECF No. 44 at 7.

3 The parties also dispute whether Ms. Lalumiere has established a causal link
4 between Ms. Lalumiere's reports and the alleged adverse actions. Defendants argue
5 that, even if Ms. Lalumiere can demonstrate that Defendants undertook an adverse
6 action against her, Ms. Lalumiere has not shown the required causal connection
7 between her reports and the alleged adverse actions. ECF No. 27 at 11.

8 “The Ninth Circuit has held that causation ‘may be inferred from
9 circumstantial evidence, such as the employer's knowledge that the plaintiff engaged
10 in protected activities and the proximity in time between the protected action and the
11 allegedly retaliatory employment decision.’” *Ellorin v. Applied Finishing, Inc.*, 996
12 F. Supp. 2d 1070, 1090 (W.D. Wa. 2014) (quoting *Yartzoff v. Thomas*, 809 F.2d
13 1371, 1376 (9th Cir. 1987)). To establish causation on the basis of circumstantial
14 evidence of an employer's knowledge of protected activity and an adverse
15 employment action, “the temporal proximity must be very close.” *Clark County*
16 *School District v. Breedon*, 532 U.S. 268, 273 (2001).

17 *Constructive Discharge Adverse Action and Causation Arguments*

18 Ms. Lalumiere argues that she was constructively discharged in two of her
19 claims. First, Ms. Lalumiere argues that her alleged constructive discharge is an
20 adverse action for the purposes of proving the *prima facie* case for whistleblower

1 retaliation. Second, Ms. Lalumiere argues that her alleged constructive discharge
2 may be used to prove her wrongful discharge in violation of public policy.

3 “Constructive discharge occurs where an employer deliberately makes an
4 employee’s working conditions intolerable, thereby forcing the employee to resign.”
5 *Sneed v. Barna*, 912 P.2d 1035, 1039 (Wash. Ct. App. 1996). “In order to survive
6 summary judgment on a constructive discharge claim, a plaintiff must show there
7 are triable issues of fact as to whether a reasonable person in [her] position would
8 have felt that [she] was forced to quit because of intolerable and discriminatory
9 working conditions.” *Ogden*, 2016 U.S. Dist. LEXIS 44076, at *72 (quoting
10 *Hardage v. CBS Broadcasting Inc.*, 427 F.3d 1177, 1184 (9th Cir. 2005), amended
11 on denial of reh’g, 433 F.3d 672, amended on reh’g of denial, 436 F.3d 1050)
12 (internal quotations omitted). At the summary judgment stage, the Court recognizes
13 that

14 [w]hether working conditions were so intolerable and discriminatory
15 as to justify a reasonable employee’s decision to resign is normally a
16 factual question for the jury. In general, however, a single isolated
17 incident is insufficient as a matter of law to support a finding of
constructive discharge. Thus, a plaintiff alleging a constructive
discharge must show some aggravating factors, such as a continuous
pattern of discriminatory treatment.

18 *Schnidriq v. Columbia Mach., Inc.*, 80 F.3d 1406, 1411-12 (9th Cir. 1996).

19 In support of the alleged adverse action of constructive discharge, Ms.
20 Lalumiere asserts that the “series of harassment, false accusations[,] and retaliation
21 for making reports of medical errors” that Ms. Lalumiere claims that she

1 experienced at Willow Springs, as well as Defendants' failure to provide her desired
2 level of medical attention on April 19, 2015, led her to resign from her position.
3 ECF No. 44 at 7. However, Ms. Lalumiere's disagreeing with the citations she
4 received from supervisors regarding her work performance, feeling offended by Ms.
5 Newman's lack of communication, and feeling that Defendants did not respond as
6 Ms. Lalumiere hoped they would to her medical issues on April 19, 2015, fail to
7 create genuine issues of material fact regarding the "intolerable" nature of her work.
8 Even taking all of Ms. Lalumiere's allegations as valid, the record does not show
9 any "aggravating circumstances." Defendants met with Ms. Lalumiere multiple
10 times to try to resolve the existing interpersonal and performance issues and kept her
11 on the work rotation even after she left Willow Springs on April 19, 2015.

12 Ms. Lalumiere's assertions rely upon the same factual underpinnings as her
13 claims under FMLA, WFLA, and intentional infliction of emotional distress. The
14 Court already has found that Ms. Lalumiere has failed to support those claims with
15 sufficient evidence and finds insufficient evidence to support the alleged
16 constructive discharge as an adverse action in Ms. Lalumiere's retaliation claim.
17 Furthermore, in her pleadings, Ms. Lalumiere already dismissed her constructive
18 discharge due to hostile work environment claim, thus conceding lack of support for
19 that claim. *See infra.*

20 To show that the necessary element of causation exists, Ms. Lalumiere asserts
21 that Defendants knew of her reports and, consequently, engaged in the conduct

1 which led to Ms. Lalumiere's alleged constructive discharge. Without supporting
2 evidence, Ms. Lalumiere alleges that Defendants knew that the DSHS investigation
3 on April 18, 2015, was the result of Ms. Lalumiere's report to DSHS. Ms.
4 Lalumiere also asserts that Ms. Berumen knew of her anonymous tip to DSHS on
5 April 2, 2015. ECF No. 44 at 9. However, Ms. Lalumiere's assertions that Ms.
6 Berumen had knowledge of her report to DSHS are not supported by evidence. *See*,
7 *e.g.*, ECF No. 33 at 24 (deposition of Ms. Berumen, stating that she thought it was a
8 possibility that Ms. Lalumiere's complaint prompted the DSHS investigation on
9 April 18, 2015). Ms. Lalumiere also asserted at oral argument that Ms. Newman
10 knew of Ms. Lalumiere's reports to Ms. Berumen and to DSHS. Ms. Lalumiere has
11 offered no support for this assertion and, in her deposition testimony, acknowledged
12 that she did not know whether Ms. Newman knew of Ms. Lalumiere's January and
13 March reports to Ms. Berumen. ECF No. 33-1 at 20, 26.

14 Ms. Lalumiere argues a series of circumstantial inferences to support the
15 creation of a genuine issue of material fact regarding causation in her whistleblower
16 retaliation claim. First, Ms. Lalumiere argues that because Ms. Berumen knew of
17 the January and March reports against Ms. Odman, Ms. Newman also must have
18 known about them. However, she does not explain why that would be the case.

19 Second, Ms. Lalumiere argues that because Defendants Berumen knew and
20 Newman may have known about the January and March reports, they would have

1 known that the April 18 DSHS investigation was the result of a report made by Ms.
2 Lalumiere. Again, she does not explain why that would be the case.

3 Third, because Ms. Lalumiere argues that they both would have known that
4 Ms. Lalumiere had made these reports against Ms. Odman, Ms. Lalumiere concludes
5 that knowledge caused Ms. Berumen and Ms. Newman to retaliate against Ms.
6 Lalumiere by falsely accusing her of misconduct and treating her unkindly prior to
7 and on April 19, 2015, leading her to feel harassed and causing her to resign. But,
8 she does not offer a clear nexus to arrive at that conclusion.

9 Ms. Lalumiere's reports and Defendants' alleged actions occur in relatively
10 close proximity to one another. However, the Court finds that Ms. Lalumiere has
11 not created a genuine issue of material fact or supported her *prima facie* case that she
12 suffered an adverse action by being constructively discharged.

13 *Wage Increase Denial Adverse Action and Causation Arguments*

14 To prove that Defendants acted adversely in response to her reports, Ms.
15 Lalumiere alternatively asserts that on March 11, 2015, Ms. Berumen "denied [Ms.
16 Lalumiere's] twenty-five cent raise of January 9, 2015." ECF No. 44 at 8; ECF No.
17 44-2 at 6. The denial of a promised raise may be an adverse action, but Ms.
18 Lalumiere has not presented any evidence to support her claim to this wage increase
19 and has thus failed to create a genuine issue of material fact as to whether her failure
20 to receive the alleged raise constitutes an adverse action.

1 The only arguments that Ms. Lalumiere puts forth to support the element of
2 causation with regards to her alleged wage increase denial are that Defendants knew
3 about Ms. Lalumiere's reports about Ms. Odman and that Ms. Newman issued
4 citations for Ms. Lalumiere's poor work performance multiple times. ECF No. 44 at
5 9. Ms. Lalumiere alleges that Defendants promised her the wage increase on
6 January 9, 2015. ECF No. 44 at 8. Ms. Lalumiere also asserts that Ms. Berumen
7 told Ms. Lalumiere that the alleged raise depended on Ms. Lalumiere's getting along
8 with her coworkers. ECF No. 33-1 at 19.

9 The evidence shows that Ms. Berumen had knowledge of Ms. Lalumiere's
10 January 12, 2015, report regarding Ms. Odman's infractions because Ms. Lalumiere
11 made the report to Ms. Berumen. Two months elapsed between Ms. Lalumiere's
12 January 12 report and an incident on March 11 during which Ms. Lalumiere alleges
13 that Ms. Berumen denied the raise. ECF No. 44 at 8. Therefore, even if the Court
14 assumes that Ms. Lalumiere was entitled to the alleged raise, which is not supported
15 by any evidence other than Ms. Lalumiere's assertion, the temporal proximity
16 supporting an adverse action is missing.

17 Because Ms. Lalumiere has not presented evidence to raise any genuine issue
18 of fact or to support that Defendants' actions were adverse, the Court finds that Ms.
19 Lalumiere has failed to support an essential element in her *prima facie* case for
20 whistleblower retaliation. Therefore, summary judgment is proper as to her
21 whistleblower retaliation claims.

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1 ***F. Wrongful Termination by Constructive Discharge in Violation of Public***
2 ***Policy Claim***

3 Ms. Lalumiere alleges that Defendants wrongfully terminated her employment
4 at Willow Springs in violation of public policy. A plaintiff must actually be
5 discharged to prevail on a claim of wrongful discharge in violation of public policy.
6 *Briggs v. Nova Services*, 213 P.3d 910, 916 (Wash. 2009) (affirming summary
7 judgment to employer on wrongful discharge claim where plaintiff was not
8 discharged). “In an action for wrongful discharge, the discharge may be either
9 express or constructive.” *Blumhoff v. Tukwila School District No. 406*, 3008 Wash.
10 App. LEXIS 2704 (Wash. Ct. App. Nov. 17, 2008).

11 There is no dispute that Defendants did not expressly terminate Ms.
12 Lalumiere’s employment at Willow Springs. Instead, Ms. Lalumiere “actually did
13 resign” from her position. ECF No. 44 at 11. However, she is alleging that she was
14 constructively discharged, relying on the same allegations that she alleged for her
15 IIED and retaliation claims. ECF No. 44 at 11 (incorporating the arguments made in
16 her whistleblower retaliation claim, which in turn relies upon the same “series of
17 harassment, false accusations, and retaliation,” ECF No. 44 at 7, that Ms. Lalumiere
18 argues in her IIED claim, *id.* at 3). Ms. Lalumiere asserts that Defendants’ alleged
19 retaliatory conduct against Ms. Lalumiere for whistleblowing, as well as
20 Defendants’ failure to provide her desired level of medical attention on April 19,
21 2015, led Ms. Lalumiere to resign. ECF No. 44 at 11.

1 The Court previously considered Ms. Lalumiere’s allegations regarding
2 constructive discharge as part of her whistleblower retaliation claims and found
3 summary judgment proper because Ms. Lalumiere failed to support her claims with
4 evidence sufficient to create a genuine issue of material fact or satisfy her prima
5 facie case. Accordingly, the Court finds that Ms. Lalumiere has not established a
6 genuine issue of material fact as to the essential element of whether she was
7 constructively discharged from Willow Springs in violation of public policy.

8 Even if Ms. Lalumiere could sustain her constructive discharge allegations,
9 she also must demonstrate facts to prove the prima facie case for wrongful
10 termination in violation of public policy. To prevail in a public policy tort case, the
11 plaintiff must show (1) clarity, (2) jeopardy, (3) causation, and (4) the absence of
12 justification. *Gardner v. Loomis Armored*, 913 P.2d 377 (Wash. 1996). “‘Clarity’ is
13 shown by the existence of a clear public policy.” *Truss v. Foss Home & Village*,
14 208 Fed.Appx. 590, 591 (9th Cir. 2006) (citing *Gardner*, 913 P.2d at 382). A
15 plaintiff shows “jeopardy” if “the employee’s discharge jeopardizes that public
16 policy.” *Gardner*, 913 P.2d at 382. The plaintiff must prove “that the public-policy-
17 linked conduct caused the dismissal.” *Id.* Finally, the defendant “must not be able
18 to offer an overriding justification for the dismissal.” *Id.*

19 Ms. Lalumiere has not expressly argued any of the prima facie elements of her
20 wrongful termination in violation of public policy claim. Instead, she appears to rely
21 on the same arguments made in support of her whistleblower retaliation and

1 intentional infliction of emotional distress claims, and the Court has found those
2 claims properly dismissed on summary judgment. The Court will not presume facts
3 or arguments not in the record. *See Lujan v. National Wildlife Federation*, 497 U.S.
4 871, 888-89 (1990) (court will not presume missing facts).

5 Considering all the evidence in the light most favorable to Ms. Lalumiere, her
6 allegations are insufficient to sustain a claim for wrongful termination by
7 constructive discharge past the summary judgment stage. The Court finds summary
8 judgment proper and dismisses Ms. Lalumiere's wrongful termination by
9 constructive discharge in violation of public policy claims.

10 ***G. False Imprisonment Claim***

11 Ms. Lalumiere alleges that Defendants falsely imprisoned her by confining
12 her to the Willow Springs conference room on April 19, 2015. In order to succeed
13 in a claim of false imprisonment, a plaintiff must show that the liberty of her person
14 was restrained. *Moore v. Pay'N Save Corp.*, 581 P.2d 159, 162-63 (Wash. Ct. App.
15 1978). The restraint must be accomplished by (1) physical force; (2) threat of
16 physical force; or (3) conduct reasonably implying that physical force will be used.

17 *Id.*

18 Defendants argue that Ms. Lalumiere went to the conference room under her
19 own power, that Ms. Newman asked Ms. Lalumiere repeatedly to leave the
20 conference room to return to work, and that no physical restraint was ever used.
21 ECF No. 54-3 at 7. Ms. Lalumiere admits that Ms. Newman never used physical

1 force or the threat of physical force to keep Ms. Lalumiere in the conference room.
2 ECF No. 33-1 at 35. Ms. Lalumiere has stated that Ms. Newman demanded that Ms.
3 Lalumiere leave the conference room to return to the floor and distribute patient
4 medications. *Id.* at 34. However, Ms. Lalumiere asserts that due to her physical
5 condition, which she refers to as “debilitated,” Ms. Newman falsely imprisoned Ms.
6 Lalumiere when Ms. Newman did not help Ms. Lalumiere go to the hospital. ECF
7 No. 44 at 5. During oral argument, Ms. Lalumiere argued that, for a period of about
8 five to ten minutes, she felt that she was not free to leave the conference room.

9 The evidence, viewed in the light most favorable to Ms. Lalumiere, does not
10 create a genuine issue of material fact as to her false imprisonment claims. She
11 acknowledges that Ms. Newman made no threat of physical force, although Ms.
12 Lalumiere asserts that she felt Ms. Newman wanted to harm her and had “evil eyes.”
13 ECF No. 33-1 at 36. Ms. Lalumiere had her cell phone with her in the conference
14 room and texted Ms. Berumen, but did not call an ambulance herself, despite her
15 concerns about her high blood pressure. *Id.* Ms. Lalumiere states that her hands
16 were “trembling” and “sweaty” to explain why she was unable to call 911, *id.*, yet
17 she was able to send a lengthy text message to Ms. Berumen. *Id.* at 34; ECF No. 33-
18 6 at 19-21. Finally, Ms. Lalumiere acknowledges that Ms. Newman repeatedly told
19 Ms. Lalumiere that she should leave the conference room to continue distributing
20 patient medications.

1 Therefore, the Court finds that the evidence is insufficient to raise a genuine
2 issue of material fact or satisfy the *prima facie* elements to support a claim of false
3 imprisonment. The Court dismisses Ms. Lalumiere's false imprisonment claims.

4 ***H. Negligent Hiring Claims***

5 Ms. Lalumiere alleges that Defendant Willow Springs negligently hired
6 Defendant Hill. To prove negligent hiring, a plaintiff must show that (1) Willow
7 Springs knew or, in the exercise of ordinary care, should have known of its
8 employee Aaron Hill's unfitness at the time of hiring; and (2) the negligently hired
9 employee proximately caused injuries to Plaintiff. *Carlsen v. Wackenhut Corp.*, 868
10 P.2d 882, 886 (Wash. Ct. App. 1994).

11 Ms. Lalumiere claims that Defendant Hill did not possess the proper training
12 or license to serve as a nursing home administrator. ECF No. 44 at 12. Ms.
13 Lalumiere asserts that she believed Defendant Hill to be the acting Administrator of
14 Willow Springs and that she expected Defendant Hill, in that capacity, to respond to
15 any complaints she raised. ECF No. 44 at 12; ECF No. 33-1 at 47. Ms. Lalumiere
16 claims that Mr. Hill "was conducting his job illegally and unable to handle [her]
17 complaints." ECF No. 44-2, ¶ 4. However, Ms. Lalumiere also made an accusation
18 of unfitness regarding Mr. Bosworth, a licensed nursing home administrator, when
19 his actions in response to her complaints were unsatisfactory to Ms. Lalumiere. ECF
20 No. 33 at 47 (deposition of Ms. Lalumiere, stating that both Defendant Hill and Mr.
21

1 Bosworth were “unqualified” because they did not perform the investigations she
2 expected or hoped they would).

3 Defendants do not dispute the fact that Defendant Hill was not licensed to be a
4 nursing home administrator, but contend that Defendant Hill acted as an
5 Administrator in Training and had 2,000 hours of experience as an Administrator in
6 Training before working at Willow Springs. ECF No. 32 at 2. Randy Hyatt, a
7 licensed nursing home administrator and the Chief Financial Officer of Hyatt Family
8 Facilities which operates Willow Springs, stated that Defendant Hill was hired as an
9 Administrator in Training in February 2013. *Id.* The Board of Nursing Home
10 Administrators performed an investigation of Defendant Hill and closed the case
11 against him without disciplinary action because the evidence did not support a
12 violation. ECF No. 32-1 at 2 (letter to Mr. Hyatt regarding investigation of
13 Defendant Hill).

14 Ms. Lalumiere met with Defendant Hill to discuss her issues on January 22,
15 2015, and felt that he did not respond to her complaint. *Id.* ¶ 12. On March 30,
16 2015, Ms. Lalumiere met with Defendants Hill, Berumen, and Newman to address
17 Ms. Lalumiere’s concerns about Ms. Odman’s alleged errors and Ms. Lalumiere’s
18 work performance. *Id.* ¶¶ 24-25. Ms. Lalumiere felt that “[t]he meeting ended
19 without [Ms. Lalumiere] being able to express [her] concerns and without a plan of
20 action.” *Id.* ¶ 25. When Ms. Lalumiere communicated with Defendant Hill after
21

1 April 19, 2015, he directed her to Administrator Chris Bosworth, who met with her
2 and attempted to help address some of her concerns. ECF No. 28, ¶ 87.

3 Ms. Lalumiere asserts that she was injured by Defendant Hill, alleging that if
4 Defendant Hill was licensed, he would have acted differently by performing the
5 investigation that she requested or responding to her complaints. ECF No. 44 at 12.
6 She claims Defendant Hill could have prevented the retaliation and constructive
7 discharge that Ms. Lalumiere alleged and that the Court already has dismissed. *Id.*
8 Ms. Lalumiere asserts that Mr. Hill's lack of qualification caused Ms. Lalumiere
9 humiliation, but she fails to provide supporting evidence of any actual injury. ECF
10 No. 33 at 47.

11 The Court finds that Ms. Lalumiere has not provided sufficient facts to create
12 a genuine issue of material fact or to support her *prima facie* case regarding her
13 negligent hiring claim involving Defendant Hill. Therefore, summary judgment is
14 proper as to Ms. Lalumiere's negligent hiring claim.

15 ***I. Constructive Discharge Due to Hostile Work Environment Claim***

16 Ms. Lalumiere concedes and dismisses this claim. ECF No. 44 at 11.

17 ***J. Defamation Claim***

18 Ms. Lalumiere concedes and dismisses this claim. ECF No. 44 at 11.

19 Accordingly, **IT IS HEREBY ORDERED:**

20 1. Defendants' Motion for Summary Judgment, **ECF No. 27**, is **GRANTED**.

1 2. All of Plaintiff's claims against all Defendants are dismissed with
2 prejudice.

3 3. Judgment shall be entered for Defendants.

4 4. All other pending motions are terminated.

5 The District Court Clerk is hereby directed to enter this Order, enter Judgment
6 as noted above, provide copies to all counsel, and **close this case**.

7 **DATED** November 7, 2017.

8
9 *s/Rosanna Malouf Peterson*
10 ROSANNA MALOUF PETERSON
11 United States District Judge