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

10 ISATU VILLE,

11 Plaintiff,

12 v.

13 FIRST CHOICE IN HOME CARE,

14 Defendant.

CASE NO. C17-0548JLR

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court is Defendant First Choice In-Home Care's ("First Choice")
17 motion for summary judgment. (MSJ (Dkt. # 31).) Plaintiff Isatu Ville opposes the
18 motion. (See Resp. (Dkt. # 43).) Ms. Ville was represented by counsel at one point, but
19 is now proceeding *pro se*. (See Mot. to Withdraw (Dkt. # 22); Order (Dkt. # 24).) The
20 court has examined the motion, the relevant portions of the record, and the applicable

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1 law. Being fully advised,¹ the court GRANTS First Choice's motion and DISMISSES
2 this case with prejudice for the reasons set forth below.

3 II. BACKGROUND

4 Ms. Ville was employed by First Choice as a homecare aide from November 3,
5 2015, to July 25, 2016. (Compl. (Dkt. # 5) at 2; Answer (Dkt. # 10) ¶¶ 3-4.) Ms. Ville
6 served as a homecare aide for a number of different clients while employed by First
7 Choice. (See Compl., Ex. 1 (Dkt. # 5-1) at 20-27.) A standard workweek for First
8 Choice employees is Sunday through Saturday. (Lord Decl. (Dkt. # 33) ¶ 1.) When an
9 employee works more than 40 hours in a standard workweek, that employee is paid
10 overtime wages at time and one-half for each hour over 40 hours. (*Id.*) First Choice
11 "makes every effort to mitigate overtime hours" because it cannot bill Medicaid through
12 the Washington State Department of Social and Health Services for overtime wages. (*Id.*
13 ¶¶ 2, 4.) In other words, First Choice is "100% responsible for covering the cost of the
14 half time pay received by the employee working overtime." (*Id.* ¶ 4.) First Choice
15 requires that its employees first receive authorization before working overtime. (*Id.* ¶ 2.)
16 However, a homecare aide who works unauthorized overtime is still entitled to wages at
17 time and one-half. (*Id.*)

18 From Sunday, July 17, 2016, through Friday, July 22, 2016, Ms. Ville worked 39
19 hours. (Bigby Decl. (Dkt. # 32) ¶ 1, Ex. 1 at 1-8.) The parties disagree about whether
20

21 ¹ The parties do not request oral argument on the motion (*see* MSJ at 1; Resp. at 1), and
22 the court determines that oral argument would not be helpful to its disposition of the motion, *see*
Local Rules W.D. Wash. LCR 7(b)(4).

1 Ms. Ville was originally scheduled to work for client N.H. on Saturday, July 23, 2018.
2 (*See* 6/15/2018 Letter (Dkt. # 28) at 9 (letter from Ms. Ville explaining that she was
3 working her “regular shift” on July 23, 2016); Gaviglio Decl. (Dkt. # 34) ¶¶ 1-3 (First
4 Choice explaining that Ms. Ville no longer worked a Saturday shift for N.H.)) Both
5 parties agree, however, that on July 22, 2016, Brenda Jackson, a Senior Direct Care
6 Supervisor at First Choice, called Ms. Ville and instructed her to not work for N.H. on
7 July 23, 2016. (*See* Gaviglio Decl. ¶ 3; Bigby Decl. ¶ 4, Ex. 4 (“Ville Dep.”) at 33:11-21;
8 Compl. at 2-3.)

9 At 9:23 a.m. on July 23, 2016, Angel Gaviglio, a Direct Care Supervisor with First
10 Choice, received a phone call from John Clark, a First Choice caregiver who was at
11 N.H.’s residence and who was scheduled to work with N.H. from 8:00 a.m. to 1:00 p.m.
12 that day. (Gaviglio Decl. ¶ 4; Lord Decl. ¶ 3.) Mr. Clark informed Ms. Gaviglio that Ms.
13 Ville had arrived at N.H.’s residence at 8:00 a.m. intending to complete a work shift.
14 (Gaviglio Decl. ¶ 4; *see also* Bigby Decl., Ex. 1 at 1; Compl. at 3.) Ms. Gaviglio
15 immediately called Ms. Ville on her cell phone to instruct her to leave the premises, but
16 the call went to voicemail. (Gaviglio Decl. ¶ 4.) Ms. Gaviglio eventually reached Ms.
17 Ville on N.H.’s home phone shortly before 10:00 a.m., and instructed her to leave the
18 premises. (*Id.* ¶ 5.) Ms. Ville responded that she would not leave unless the directive
19 was put in writing. (*Id.*; Compl. at 3; Ville Dep. at 36:3-18.) Ms. Gaviglio called Ms.
20 Ville back shortly after 10:00 a.m., and instructed her that, if she did not leave N.H.’s
21 residence, then Ms. Gaviglio would call the police. (Gaviglio Decl. ¶ 6.) At 10:30 a.m.,
22 Ms. Jackson called Ms. Ville and directed her to leave to N.H.’s home. (*Id.* ¶ 7.) Ms.

1 Ville again refused. (*Id.*) At 10:36 a.m., Ms. Gaviglio called the police and requested
2 assistance in removing Ms. Ville from N.H's premises. (*Id.*; Compl. at 3.) At 11:44
3 a.m., Ms. Gaviglio received confirmation from the police that Ms. Ville had been
4 removed. (Gaviglio Decl. ¶ 7; Bigby Decl., Ex. 1 at 1.)

5 On July 25, 2016, Ms. Ville met with Ms. Gaviglio, Ms. Jackson, and T.J. Ford,
6 First Choice's Director of Human Resources. (Gaviglio Decl. ¶ 8; Compl. at 4.) First
7 Choice claims that it entered this meeting intending to retain Ms. Ville, in part because
8 there is a shortage of eligible homecare aides in Washington. (Lord Decl. ¶ 6.) However,
9 according to First Choice, at the meeting Ms. Ville refused to take responsibility for her
10 July 23, 2016, actions and represented that she would continue to disregard company
11 directives. (Gaviglio Decl. ¶ 8.) Ms. Ville states that, at the meeting, she refused to sign
12 a "warning for insubordination" and "paperwork about having sole responsibility of (sic)
13 the police being contacted." (Compl. at 4.) Ms. Ville's employment was terminated after
14 this meeting. (Bigby Decl. ¶ 2, Ex. 2 ("Termination Letter").) First Choice's termination
15 letter states that Ms. Ville was fired as a "result of insubordination and refusing to abide
16 by First Choice In-Home Care's policies and procedures." (*Id.*)

17 Ms. Ville filed a complaint with the EEOC, which was dismissed on March 16,
18 2017, after the EEOC determined that it was "unable to conclude that the information
19 obtained establishes violations of the statutes." (Compl., Ex. 1 at 1.) Ms. Ville filed the
20 present case on April 10, 2017, alleging employment discrimination based on race, sex,
21 color, and national origin, as well as retaliation. (*See* Dkt.; Compl. at 2.; *see also* Ville
22 Dep. at 24:13-17.) Ms. Ville is a black female who was born in Sierra Leone. (Compl. at

1 4.) Ms. Ville argues in part that Mr. Clark, who is a white American male, was allowed
2 to work overtime hours for N.H. while Ms. Ville was denied this opportunity. (*See Resp.*
3 at 5.) First Choice explains that Mr. Clark was N.H.'s primary caregiver, which is a role
4 "based on the length of time the caregiver has been assigned to the client, the caregiver's
5 ability to provide task training to other assigned caregivers, and the number of monthly
6 hours the caregiver is providing to that client." (Lord Decl. ¶ 3.) Mr. Clark worked with
7 N.H. from December 2014 until October 2017, when N.H. passed away. (*Id.*) As N.H.'s
8 primary caregiver, Mr. Clark was given the majority of N.H.'s caregiver hours and
9 overtime hours when necessary, though he still needed permission from a Direct Care
10 Supervisor before working overtime. (*Id.*; MSJ at 8.)

11 On August 1, 2018, First Choice filed this motion for summary judgment on all of
12 Ms. Ville's allegations, claiming that, as a matter of law, Ms. Ville cannot prove that First
13 Choice discriminated or retaliated against her. (*See MSJ at 6.*) Ms. Ville responded on
14 September 7, 2018. (*See Resp.*) The court now addresses the motion.

15 III. ANALYSIS

16 A. Summary Judgment Standard

17 Summary judgment is appropriate if the evidence, when viewed in the light most
18 favorable to the nonmoving party, demonstrates "that there is no genuine dispute as to
19 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
20 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
21 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
22 there is no genuine issue of material fact and that he or she is entitled to prevail as a

1 matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden,
2 then the nonmoving party “must make a showing sufficient to establish a genuine dispute
3 of material fact regarding the existence of the essential elements of his case that he must
4 prove at trial” in order to withstand summary judgment. *Galen*, 477 F.3d at 658. A fact
5 is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*,
6 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient
7 evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods.,*
8 *Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

9 In determining whether the fact-finder could reasonably find in the nonmoving
10 party’s favor, “the court must draw all reasonable inferences in favor of the nonmoving
11 party, and it may not make credibility determinations or weigh the evidence.” *Reeves v.*
12 *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). Nevertheless, the
13 nonmoving party “must do more than simply show that there is some metaphysical doubt
14 as to the material facts Where the record taken as a whole could not lead a rational
15 trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Scott v.*
16 *Harris*, 550 U.S. 372, 380 (2007) (internal quotation marks omitted) (quoting *Matsushita*
17 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

18 The court may only consider admissible evidence when ruling on a motion for
19 summary judgment. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773-75 (9th Cir. 2002).
20 “Conclusory allegations unsupported by factual data cannot defeat summary judgment.”
21 *Rivera v. Nat’l R.R. Passenger Corp.*, 331 F.3d 1074, 1078 (9th Cir. 2003).

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1 **B. Discrimination**

2 Ms. Ville alleges four kinds of discrimination: (1) disparate treatment based on
3 race; (2) disparate treatment based on color; (3) disparate treatment based on national
4 origin; (4) and disparate treatment based on sex. (*See* Compl. at 2; *see also* Ville Dep. at
5 24:13-17.) Under Title VII of the Civil Rights Act of 1964, it is unlawful for an
6 employer to “discharge any individual, or otherwise to discriminate against any
7 individual with respect to his compensation, terms, conditions, or privileges of
8 employment, because of such individual’s race, color, religion, sex, or national origin.”
9 42 U.S.C. § 2000e-2(a). Similarly, under the Washington Law Against Discrimination
10 (“WLAD”), it is an unfair practice for an employer to discharge or discriminate against
11 any person in compensation or in other terms or conditions of employment because of
12 “sex . . . , race, creed, color, [or] national origin.” RCW 49.60.180(2)-(3).

13 Courts use the burden-shifting analysis set forth in *McDonnell Douglas Corp. v.*
14 *Green*, 411 U.S. 792, 802-04 (1973), to analyze discrimination claims under Title VII and
15 WLAD. *See Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir.
16 2006); *Kouame v. DAL Global Servs.*, 292 F. Supp. 3d 1154, 1160 (W.D. Wash. 2018)
17 (citing *Hill v. BCTI Income Fund-I*, 23 P.3d 440, 445-46 (Wash. 2001)). The *McDonnell*
18 *Douglas* analysis has three components. *McDonnell Douglas*, 411 U.S. at 802-04. First,
19 the plaintiff must present a *prima facie* case of discrimination. *Id.* at 802. Second, if the
20 plaintiff succeeds in presenting a *prima facie* case, there is rebuttable presumption of
21 discrimination and the burden shifts to the employer to produce a legitimate,
22 nondiscriminatory reason for the adverse employment action. *Robinson v. Pierce Cty.*,

1 539 F. Supp. 2d 1316, 1326 (W.D. Wash. 2008) (citing *McDonnell Douglas*, 411 U.S. at
2 802). And third, if the employer presents a legitimate, nondiscriminatory reason for the
3 adverse action, the burden shifts back to the plaintiff to show that the employer's reason
4 is merely pretext for unlawful discrimination. *See McDonnell Douglas*, 411 U.S. at 804.

5 A plaintiff's burden at this stage is one of "production, not persuasion," which
6 may be proved through direct or circumstantial evidence. *Scrivener v. Clark Coll.*, 334
7 P.3d 541, 545 (Wash. 2014); *Cornwell*, 439 at 1030. Summary judgment is not
8 appropriate in discrimination cases "if, based on the evidence in the record, a reasonable
9 jury could conclude by a preponderance of the evidence that the defendant undertook the
10 challenged employment action because of the plaintiff's" membership in a statutorily
11 protected class. *Scrivener*, 334 P.3d at 545; *Cornwell*, 439 F.3d at 1028. But where "the
12 plaintiff has produced no evidence from which a reasonable jury could infer that an
13 employer's decision was motivated by an intent to discriminate, summary judgment is
14 entirely proper." *Kuyper v. State*, 904 P.2d 793, 797 (Wash. Ct. App. 1995).

15 1. *Prima Facie* Discrimination Case

16 Under the first *McDonnell Douglas* component, Ms. Ville must present a *prima*
17 *facie* case of discrimination. 411 U.S. at 802. To do so, Ms. Ville must prove that:
18 (1) she belongs to a protected class of persons; (2) she performed her job satisfactorily,
19 was qualified, and met the legitimate expectations of her employer; (3) she suffered an
20 adverse employment action; and (4) First Choice treated her differently than a similarly
21 situated employee who does not belong to the same protected class. *See Cornwell*, 439
22 F.3d at 1028; *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1282-83 (7th Cir. 1977);

1 | *Coghlan v. Am. Seafoods Co. LLC*, 413 F.3d 1090, 1093-94 (9th Cir. 2005). The inquiry
2 | is similar for all of Ms. Ville’s employment discrimination claims. *See Cornwell*, 439
3 | F.3d at 1028; *see also Lusk v. Senior Servs.*, No. C12-0733MJP, 2013 WL 2634946, at
4 | *5-7 (W.D. Wash. June 12, 2013) (analyzing plaintiff’s sex discrimination, race
5 | discrimination, and national origin claims under the standard articulated in *Cornwell*).
6 | The degree of proof required to establish a *prima facie* case is “minimal and does not
7 | even need to rise to the level of a preponderance of evidence.” *Villiarimo v. Aloha Island*
8 | *Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002) (citation omitted). Despite this low burden
9 | of proof, Ms. Ville’s discrimination claims all fail because she cannot establish the
10 | second element of a *prima facie* case.

11 | Both parties agree that Ms. Ville was terminated after she repeatedly ignored First
12 | Choice’s instructions not to work a shift at N.H.’s residence on July 23, 2016. Because
13 | Ms. Ville ignored these instructions, First Choice had to call the police to remove her
14 | from N.H.’s home. First Choice actually intended to retain Ms. Ville after this incident.
15 | (*See* Lord Decl. ¶ 6.) Ultimately, however, First Choice fired Ms. Ville because she
16 | refused to acknowledge that she had violated company policy, and she represented that
17 | she would continue to disregard company directives. (*Id.*)

18 | Ms. Ville has not presented any opposing evidence. Rather, without contradicting
19 | First Choice’s recitation of the facts, Ms. Ville repeatedly claims that she “did nothing
20 | wrong,” (*see* Resp. at 2, 4), and that it is her “right” to ignore First Choice’s instructions
21 | if they are not provided in writing (*see id.* at 11; *see also* Ville Dep. at 36:15-24 (“I have
22 | a right to demand that [First Choice put instructions in writing]. It is my right, if you hire

1 me with a reason, you need a reason to tell me to leave. And I have the right to ask you
2 to put it in writing. . . . It is the law, and I know I have that right.”.) Nor has Ms. Ville
3 provided evidence that she was performing her job satisfactorily, such as a performance
4 review. (*See generally* Dkt.) Although Ms. Ville provides a note from N.H.’s mother,
5 the note only explains the schedule of N.H.’s homecare aides and that N.H.’s mother did
6 not want First Choice to send the police to her home. (*See* 3/1/18 Letter (Dkt. # 25) at 6.)
7 The note says nothing about Ms. Ville’s job performance. (*See id.*) Moreover, at the
8 time she was fired, Ms. Ville had only worked with First Choice for eight months. (*See*
9 Lord Decl. ¶ 8.) This is too short a tenure to bolster Ms. Ville’s claim that she was
10 performing her job satisfactorily. *Cf. Kouame*, 292 F. Supp. 3d at 1161 (discussing that
11 an employee’s nine-year tenure with a company is proof of satisfactory job performance
12 for purposes of proving a *prima facie* case).

13 In total, the court finds that there is no genuine dispute of material fact that Ms.
14 Ville was not performing her job adequately and that her actions fall below the
15 “legitimate expectations of the employer.” *See Walia v. Potter*, No. C09-1188JLR, 2013
16 WL 392647, at *3 (W.D. Wash. Jan. 30, 2013). Ms. Ville has therefore failed to prove a
17 *prima facie* case of discrimination, and First Choice entitled to summary judgment.²

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21 ² Because Ms. Ville failed to establish the second element of a *prima facie* case of
22 employment discrimination, the court does not reach First Choice’s argument that Ms. Ville was
not treated differently than a similarly situated employee who does not belong to the same
protected class. (Mot. at 8; Resp. at 4-5.)

1 2. Legitimate, Nondiscriminatory Reasons for Termination

2 Even if Ms. Ville could establish a *prima facie* case of discrimination, her claims
3 would still fail because First Choice has come forward with more than enough evidence
4 to establish a “legitimate, nondiscriminatory reason” for her termination that Ms. Ville
5 has not shown is pretext. *Cornwell*, 439 at 1028; *see infra* § III.B.3. Specifically, First
6 Choice presented evidence that Ms. Ville was terminated as a “result of insubordination
7 and refusing to abide by First Choice In-Home Care’s policies and procedures.”
8 (Termination Letter; *see also* Gaviglio Decl. ¶ 8; Lord Decl. ¶ 6.) First Choice’s stated
9 reasons are legitimate, nondiscriminatory reasons for dismissing an employee. *See*
10 *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 270 (9th Cir. 1996) (listing “inadequate
11 work performance” and “behavior not in accordance with customary business practices”
12 as legitimate, nondiscriminatory reasons for dismissing an employee). The court finds
13 that First Choice has met its burden of producing a legitimate, nondiscriminatory reason
14 for dismissing Ms. Ville.

15 3. Pretext

16 The burden therefore shifts back to Ms. Ville to present sufficient evidence to
17 create a genuine dispute of material fact that (1) First Choice’s stated reasons for
18 discharge are merely a pretext for discrimination, or (2) that although First Choice’s
19 stated reasons are legitimate, discrimination nevertheless was a “substantial factor”
20 motivating First Choice. *See Scrivener*, 334 P.3d at 546. Ms. Ville does not need to
21 prove that First Choice’s sole motivation was discriminatory, but rather that
22 discrimination was a substantial factor in her dismissal. *Id.* Ms. Ville can meet this

1 | burden through either direct or circumstantial evidence. *Id.* at 545. Here, however, Ms.
2 | Ville has not provided any evidence that race, color, national origin, or sex played a
3 | substantial factor in her dismissal.

4 | First, she has not presented any direct evidence of First Choice's discriminatory
5 | intent, such as a First Choice manager or supervisor making negative comments about her
6 | membership in a protected class. *See Kouame*, 292 F. Supp. 3d at 1162. Likewise, she
7 | has not provided evidence of a company policy to withhold overtime hours to a protected
8 | class that she belongs to. *Id.*

9 | In contrast, First Choice compiled statistical evidence to show that it does not
10 | discriminate against its employees in granting overtime hours. It is well established that
11 | statistics can be useful in employment discrimination cases, in part because large
12 | statistical disparities can help establish a pattern or practice of discrimination, or enable
13 | the court to draw an inference of pretext. *See Penk v. Or. State Bd. of Higher Educ.*, 816
14 | F.2d 458, 462-63 (9th Cir. 1987) (citations omitted). Here, First Choice had 726
15 | employees in King County, Washington during Ms. Ville's eight-month tenure with the
16 | company. (Lord Decl. ¶ 7, Ex. 1 (Dkt. # 33-1).) Of those employees, 14% were
17 | unspecified as to race or gender; 70% were female; 14% were male; 33% were African
18 | American; and 29% were Caucasian. (*Id.*) Around one-third of First Choice's
19 | employees received overtime hours during this time period. (*Id.*) Of the employees that
20 | received overtime, 20% were unspecified as to race or gender; 63% were female; 16%
21 | were male; 22% were African American; and 36% were Caucasian. (*Id.*) Only 8% of the
22 | employees who received overtime were Caucasian males. (*Id.*) Although the court notes

1 that there is some statistical disparity between First Choice's general employee
2 demographics and the demographics of the employees that receive overtime, the court
3 does not find that this disparity is "significant or actionable." *See Penk*, 816 F.2d at 464;
4 *see also Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 337 (1977) (finding that
5 statistical evidence bolstered a *prima facie* case of discrimination where, in a company
6 with over 6000 employees, 83% of the African American employees held lower paying
7 jobs, whereas only 39% of nonminority employees held these jobs). Moreover, the
8 ultimate burden of persuasion remains on Ms. Ville to establish pretext, *see Martinez v.*
9 *Oakland Scavenger Co.*, 680 F. Supp. 1377, 1394 (N.D. Cal. 1987) (citing *Teamsters*,
10 431 U.S. at 336), and she has not attempted to refute First Choice's statistics or offer a
11 different narrative (*see generally* Resp.). The court finds that these statistics do not
12 reveal that Ms. Ville's termination was simply pretext for unlawful discrimination.

13 Lacking direct evidence, the court looks to circumstantial evidence. Ms. Ville,
14 however, has not presented any. (*See generally* Dkt.) At most, Ms. Ville offers the
15 conclusory remark: "I believe Defendant discriminated against me due to race (black)[,]
16 African national origin (Sierra Leone)[,] sex (female)[.]" (Resp. at 8 (nonconforming
17 capitalization altered).) Ms. Ville does not support this statement with any evidence.
18 (*See generally* Resp.; Dkt.) Moreover, Ms. Ville's claim is belied by the fact that First
19 Choice intended to retain her after the incident, firing her only after Ms. Ville represented
20 that she would continue to disregard company policies and directives. In other words,
21 Ms. Ville's claim is precisely the type of conclusory allegation "unsupported by factual
22 data [that] cannot defeat summary judgment." *Rivera*, 331 F.3d at 1078.

1 In sum, Ms. Ville has not presented sufficient evidence to create a genuine issue of
2 material fact that First Choice’s articulated reason for her termination—insubordination
3 and refusing to abide by First Choice In-Home Care’s policies and procedures—was
4 pretextual or that discrimination was a substantial motivating factor in her termination.
5 The court therefore GRANTS summary judgment to First Choice on this claim.

6 **C. Retaliation**

7 To establish a *prima facie* case of retaliation, a plaintiff must show that (1) she
8 was engaged in a protected activity; (2) she was subjected to an adverse employment
9 action; and (3) there is a causal connection between the protected activity and the adverse
10 action. *Lodis v. Corbis Holdings, Inc.*, 292 P.3d 779, 786 (Wash. Ct. App. 2013); *Walia*,
11 2013 WL 392647, at *5 (citing *Vasquez v. Cty. of L.A.*, 349 F.3d 634, 646 (9th
12 Cir.2003)). “If a plaintiff is able to establish a *prima facie* case, the burden shifts to the
13 employer to provide a legitimate, non-retaliatory explanation for the employment action.”
14 *Walia*, 2013 WL 392647, at *5 (citing *Bergene v. Salt River Agric. Improvement &*
15 *Power Dist.*, 272 F.3d 1136, 1141 (9th Cir.2001)). If the employer satisfies its burden,
16 the burden shifts back to the employee to show that the employer’s explanation is merely
17 a pretext for unlawful retaliation. *Id.*

18 Pursuant to WLAD, there are two statutorily protected activities in the context of
19 retaliation: (1) when an employee opposes practices forbidden by WLAD; or (2) when
20 an employee files a charge, testifies, or assists in a proceeding. *See* RCW 49.60.210(1).
21 Under federal law, retaliation is unlawful when an “employee has filed any complaint or
22 instituted” a proceeding. 29 U.S.C. § 215(a)(3). The only protected activity that Ms.

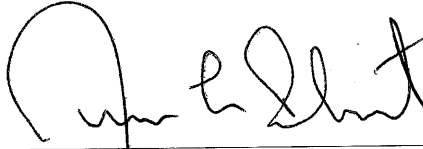
1 Ville has alleged is the filing of her EEOC complaint, which the EEOC dismissed on
2 March 16, 2017, after it was “unable to conclude that the information obtained
3 establishes violations of the statutes.” (See Compl., Ex. 1 at 1.) Ms. Ville, however, did
4 not file this complaint until after she was dismissed by First Choice. Therefore, Ms. Ville
5 cannot prove the third element of a *prima facie* case that “there is a causal connection
6 between the protected activity and the adverse action.” See *Lodis*, 292 P.3d at 786.

7 Moreover, even assuming that Ms. Ville can establish a *prima facie* case of
8 retaliation, Ms. Ville’s claim still does not survive summary judgment. For the reasons
9 explained above, First Choice has provided a legitimate, nondiscriminatory reason for
10 firing Ms. Ville—she repeatedly refused to follow First Choice’s policies and procedures,
11 and represented that she would continue to disregard company directives in the future—
12 and Ms. Ville has not provided sufficient evidence to raise a genuine dispute of material
13 fact regarding pretext. See *supra* § III.B.2-.3. The court therefore GRANTS summary
14 judgment to First Choice on this claim.

15 IV. CONCLUSION

16 For the foregoing reasons, the court GRANTS First Choice’s motion for summary
17 judgment (Dkt. # 31) and DISMISSES this case with prejudice.

18 Dated this th12 day of October, 2018.

19 
20 JAMES I. ROBERT
21 United States District Judge
22