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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK MAYES,

Plaintiff,

v.

ALEXANDER OHASHI and ACE PARKING,

Defendants.

No. C18-0696 RSM

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendants Alexander Ohashi and Ace Parking's Motion for Summary Judgment against pro se Plaintiff Mark Mayes. Dkt. #35. Mr. Mayes claims that Defendants discriminated and retaliated against him because of his race and has also moved for summary judgment. Dkt. #39. The Court finds oral argument unnecessary to resolve the underlying issues. Having reviewed Defendants' Motion, Plaintiff's Response, Defendants' Reply, and all documents submitted in support thereof, the Court GRANTS Defendants' Motion for Summary Judgment and dismisses Plaintiff's claims.

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT -1

1 **II. BACKGROUND**

2 Plaintiff Mark Mayes is an African American man who was employed by Defendant Ace
3 Parking (“Ace”) from December 8, 2017 until February 24, 2018. Ace is a valet parking business
4 that manages parking for convention centers, hotels, special events, and other parking venues.
5 Dkt. #35-2 at ¶3. Ace hired Mr. Mayes to work as a valet driver at the Fairmont hotel parking
6 garage. Dkt. #35-1 at 5. Defendant Alexander Ohashi was the assistant manager at the Fairmont
7 Hotel location who supervised Mr. Mayes. Dkt. #35-4 at 1.

8 During Mr. Mayes’ employment, most of Ace’s employees were hired to work part-time
9 to handle the busy holiday season. Dkt. #35-3 at 2. Ace claims this included Mr. Mayes, who
10 was scheduled to work 23 hours during his first week starting on Monday, December 11, 2017.
11 *Id.* at 5. Work schedules would run Sunday through Saturday. Ace managers would email the
12 employees the Friday before the work week and post the schedules in the Ace parking lot. *Id.* at
13 2. Over the second, third, and fourth weeks of his employment with Ace, Mr. Mayes was
14 scheduled to work 36.5 hours, 41.5 hours, and 30 hours respectively. *Id.* at 6-8.

15 On Saturday, December 16, 2017, before the start of his third week at Ace, Mr. Mayes
16 texted Mr. Ohashi regarding alleged discriminatory behavior by other Ace employees. Dkt. #35-
17 1 at 25. Specifically, Mr. Mayes claimed that other employees were “making racist snarky
18 comments while I was there.” *Id.* Mr. Ohashi responded, “lmk who said something” to which
19 Mr. Mayes responded, “I don’t know the names ill [sic] get them for you once i ask them.” *Id.* at
20 26.” Mr. Ohashi states that Mr. Mayes never followed up with him regarding the names of the
21 employees referenced in his December 16 text. Dkt. #35-4 at 2.

22 Mr. Mayes worked his last shift on January 3, 2018, after which point he stopped showing
23 up for shifts. *Id.* at 8; Dkt. #35-2 at ¶4. Mr. Mayes was scheduled to work 16.5 hours the

1 following week, starting Sunday, January 7, 2018 through Saturday, January 13, 2018. Dkt. #35-
2 4 at 9. On February 24, 2018, Mr. Mayes emailed Mr. Ohashi stating, “I would like to stop
3 working to attend classes next month.” Dkt. #35-1 at 20. Mr. Mayes admits that nobody at Ace
4 terminated him. *Id.* at 40. He claims that he quit because his hours were cut and the employees
5 continued being “sarcastic.” Dkt. #35-1 at 39.

6 On January 21, 2018, Mr. Mayes emailed Ryan Sidlowski, a site manager for Ace Parking,
7 stating that he was not properly paid for his hours between December 16, 2017 and December 31,
8 2017. Dkt. #38-1 at 2. Specifically, Mr. Mayes claimed that his paycheck was incorrect since he
9 had worked 120 hours during that pay period but only received payment for 27.96 hours. *Id.* Mr.
10 Mayes later texted Mr. Ohashi that he only worked 112 hours for that pay period, not 120. Dkt.
11 #41-1 at 2. On January 22, 2018, Ace issued a separate paycheck to Mr. Mayes for 21 hours.
12 Dkt. #38-4 at 9. Mr. Mayes acknowledged this paycheck for 21 hours was “backpay” for his
13 work in December. Dkt. #38-3 at 2. Mr. Sidlowski also responded to Mr. Mayes’ email on
14 January 24, 2018 stating “Alex and I got it sorted out, and there will be a check for you here in
15 the next couple days.” *Id.* On February 7, 2018, Ace issued payment for an additional 81 hours
16 for Mr. Mayes’ work between December 16 and December 31, 2017. Dkt. #38-2 at 2. In total,
17 Ace paid Mr. Mayes for 129.96 hours for the pay period from December 16 through December
18 31, 2017.

19 In April 2018, Mr. Mayes filed a complaint with the U.S. Equal Employment Opportunity
20 Commission (“EEOC”) alleging discrimination and retaliation while employed at Ace. Dkt. #35-
21 1 at 52-55. On April 23, 2018, the EEOC dismissed Mr. Mayes’ charge and provided him a right
22 to sue letter. Dkt. #35-1 at 44. On May 15, 2018, Mr. Mayes, proceeding pro se, filed this
23 employment discrimination action against Ace and Mr. Ohashi in the U.S. District Court for the

1 Western District of Washington. Dkt. #1. Mr. Mayes alleges that Defendants engaged in
2 disparate treatment because of his race and retaliation for reporting racial discrimination. Dkt. #5
3 at 3. Specifically, he claims that Defendants reduced his work hours from full time to one day a
4 week after he complained that a coworker made a racist remark. *Id.* He also states in his Response
5 that Ace delayed payment for “at least a month” and failed to pay him for all the hours he worked.
6 Dkt. #36 at 1. He seeks monetary and punitive damages in the amount of \$1,000,000. Dkt. #5 at
7 6. On January 9, 2020, Defendants moved for summary judgment. Dkt. #35.

8 III. DISCUSSION

9 A. Legal Standard

10 Summary judgment is appropriate where “the movant shows that there is no genuine
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
12 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, (1986). Material facts are
13 those which might affect the outcome of the suit under governing law. *Id.* at 248. In ruling on
14 summary judgment, a court does not weigh evidence to determine the truth of the matter, but
15 “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d
16 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d
17 744, 747 (9th Cir. 1992)).

18 On a motion for summary judgment, the court views the evidence and draws inferences
19 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*
20 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
21 inferences in favor of the non-moving party. *See O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*
22 *on other grounds*, 512 U.S. 79 (1994). However, the non-moving party must make a “sufficient
23 showing on an essential element of her case with respect to which she has the burden of proof”

1 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the
2 non-moving party fails to properly support an assertion of fact or fails to properly address the
3 moving party’s assertions of fact, the Court will accept the fact as undisputed. Fed. R. Civ. P.
4 56(e). As such, the Court relies “on the nonmoving party to identify with reasonable particularity
5 the evidence that precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1278–79 (9th
6 Cir. 1996) (quotation marks and citations omitted). The Court need not “comb through the record
7 to find some reason to deny a motion for summary judgment.” *Carmen v. San Francisco Unified*
8 *Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001).

9 In the context of employment discrimination claims, “[s]ummary judgment in favor of the
10 employer in discrimination cases is often inappropriate because the evidence will generally
11 contain reasonable but competing inferences of both discrimination and nondiscrimination that
12 must be resolved by a jury [.]” *Kuyper v. State*, 79 Wash. App. 732, 739, 904 P.2d 793 (1995)
13 (internal quotation omitted). However, summary judgment is proper if a plaintiff produces no
14 evidence that an employer’s decision was motivated by an intent to discriminate. *Id.* A plaintiff
15 “must do more than express an opinion or make conclusory statements.” *Marquis v. City of*
16 *Spokane*, 130 Wash.2d 97, 105, 922 P.2d 43 (1996) (citation omitted). “The worker must
17 establish *specific and material facts* to support each element of his or her prima facie case.” *Id.*
18 (citation omitted) (emphasis added). A question of fact can be determined as a matter of law
19 “only where reasonable minds could reach but one conclusion.” *Davis v. West One Automotive*
20 *Group*, 140 Wash. App. 449, 166 P.3d 807, 811 (2007) (citation omitted).

21 For the reasons set forth below, the Court finds that Mr. Mayes has failed to raise any
22 genuine dispute of fact to survive summary judgment. Although the complaint does not explicitly
23 state under what statutes Mr. Mayes brings his claims, Defendants have interpreted his general

1 allegations of “disparate treatment” and “retaliation” as brought under 42 U.S.C. § 2000e (“Title
2 VII”), 42 U.S.C. § 1981 of the Civil Rights Act (“Section 1981”), and the Washington Law Against
3 Discrimination (“WLAD”). Dkt. #35 at 9-10. Mr. Mayes does not challenge Defendants’
4 understanding of his claims in his Response. *See* Dkt. #36.

5 **B. Disparate Treatment**

6 Mr. Mayes alleges racial discrimination in violation of Title VII, Section 1981 and the
7 WLAD. Dkt. #5 at 3. Under Title VII, an employer shall not “fail or refuse to hire or to discharge
8 any individual, or otherwise to discriminate against any individual with respect to his
9 compensation, terms, conditions, or privileges of employment, because of such individual’s race.”
10 42 U.S.C. § 2000e-2(a)(1). Section 1981 provides that “[a]ll persons within the jurisdiction of the
11 United States shall have the same right in every State and Territory to . . . the full and equal benefit
12 of all laws . . . as is enjoyed by white citizens.” The WLAD similarly bars discharge or
13 discrimination in the terms or conditions of employment because of race or national origin. RCW
14 49.60.180.

15 Because there will rarely be direct evidence of discrimination, discrimination claims are
16 often considered under the burden-shifting framework set forth in *McDonnell Douglas Corp. v.*
17 *Green*, 411 U.S. 792 (1973). *See Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 470
18 F.3d 827, 837–38 (9th Cir. 2006) (affirming that Title VII substantive standards apply to a Section
19 1981 claim); *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cnty.*, 189 Wash.2d 516, 404 P.3d 464,
20 470–71 (2017) (applying *McDonnell Douglas* framework to claims under the WLAD). Because
21 Washington courts look to federal law in interpreting the WLAD, *see id.*, the Court will consider
22 this motion under federal law, considering Washington case law where appropriate.

1 Under *McDonnell Douglas*, a plaintiff bears the initial burden of establishing a prima facie
2 case by raising an inference of discrimination—a “presumption that the employer unlawfully
3 discriminated against the employee.” *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253–
4 54 (1981). After this prima facie case is made, the burden “then shifts to the defendant to articulate
5 a legitimate nondiscriminatory reason for its employment decision.” *Wallis v. J.R. Simplot Co.*, 26
6 F.3d 885, 889 (9th Cir. 1994) (quoting *Lowe v. City of Monrovia*, 775 F.2d 998, 1005 (9th Cir.
7 1985), *as amended*, 784 F.2d 1407 (1986)). If the defendant succeeds, then to defeat summary
8 judgment, the plaintiff must demonstrate that the “articulated reason is a pretext for unlawful
9 discrimination by ‘either directly persuading the court that a discriminatory reason more likely
10 motivated the employer or indirectly by showing that the employer’s proffered explanation is
11 unworthy of credence.’” *Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658–9 (9th
12 Cir. 2002) (quoting *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115, 1124 (9th Cir. 2000) (quotation
13 marks and string citation omitted). “Although intermediate burdens shift back and forth under this
14 framework, ‘[t]he ultimate burden of persuading the trier of fact that the defendant intentionally
15 discriminated against the plaintiff remains at all times with the plaintiff.’” *Reeves v. Sanderson
16 Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000) (quoting *Burdine*, 450 U.S. at 253).

17 1. Plaintiff’s Prima Facie Case

18 An inference of discrimination may be established “in whatever manner is appropriate in
19 the particular circumstances.” *Diaz v. Am. Telephone & Telegraph*, 752 F.2d 1356, 1361 (9th Cir.
20 1985). “The requisite degree of proof necessary to establish a prima facie case for [§ 1981] claims
21 on summary judgment is minimal and does not even need to rise to the level of a preponderance
22 of the evidence.” *Wallis*, 26 F.3d at 889 (citing *Yartzoff v. Thomas*, 809 F.2d 1371, 1375 (9th Cir.
23 1987), *cert. denied*, 498 U.S. 939, (1990)). In disparate treatment cases, the inference is often

1 established by the plaintiff showing that: (1) he is a member of a protected class, (2) he was
2 qualified for his position, (3) he was subject to an adverse employment action, and (4) similarly
3 situated employees outside the protected class were treated more favorably. *Davis v. Team Elec.*
4 *Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008). Alternatively, instead of providing comparator evidence
5 of “similarly situated” employees, a plaintiff may provide evidence of “other circumstances
6 surrounding the adverse employment action” that give rise to an inference of discrimination.
7 *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004).

8 Defendants do not dispute that Plaintiff has satisfied the first and second elements, given
9 that Mr. Mayes is an African American and Ace had “no imminent plans to terminate Mr. Mayes”
10 based on his job performance. Dkt. #35 at 11. The Court’s analysis therefore focuses on the third
11 and fourth elements.

12 Mr. Mayes has alleged two adverse employment actions by Ace: (1) cutting his scheduled
13 hours to the point where he quit; and (2) refusing to pay him for his hours. First, Mr. Mayes
14 maintains that his hours were cut from “12 to 16 hours a day, every day, to being on the schedule
15 one day a week working 4 hours.” Dkt. #36 at 2. The work schedules provided by Defendants
16 directly contradict Mr. Mayes’ claims. Because Mr. Mayes has produced no evidence of his own
17 to refute Defendants’ claims, the Court will accept these hours reflected in the work schedules as
18 undisputed. Fed. R. Civ. P. 56(e). These schedules show that Mr. Mayes typically worked shifts
19 from 9:00AM to 4:30PM (7.5 hours) or from 10AM to 6PM (8 hours). *See* Dkt. #35-5 at 5-12.
20 None of these work schedules show that Mr. Mayes was scheduled for less than eight hours a
21 week. *See id.*

22 Although the work schedules contradict the specifics of Mr. Mayes’ factual claims, it is
23 apparent that Ace reduced Mr. Mayes’ scheduled hours the week after the Christmas holidays

1 ended. Starting December 31, 2017, Ace began scheduling Mr. Mayes for fewer hours compared
2 to the previous two weeks. *Id.* at 8. During this time, at least three other valets continued to
3 receive more scheduled hours than Mr. Mayes. *See id.* at 5-12. While there remains a material
4 dispute of fact as to whether Ace initially hired Mr. Mayes to work part-time or full-time, it is
5 undisputed that Mr. Mayes was the only African American valet working at Ace at this time. There
6 are significant weaknesses with Plaintiff’s argument, but the record supports that some individuals
7 outside of Plaintiff’s protected class continued to receive more scheduled hours. Because
8 Plaintiff’s burden is minimal, the Court finds that Mr. Mayes has established an inference of
9 unlawful discrimination with respect to his reduced hours. *Shokri v. Boeing Co.*, 311 F. Supp. 3d
10 1204, 1211 (W.D. Wash. 2018), *aff’d*, 777 F. App’x 886 (9th Cir. 2019) (“The requisite degree of
11 proof necessary to establish a prima facie case . . . is minimal”) (internal quotations omitted).

12 Turning to the second alleged adverse employment action, Mr. Mayes claims that Ace
13 refused to pay him until after he stopped working and ignored his repeated requests for payment
14 for a month. Dkt. #36 at 1; *see also* Dkt. #39 at 2. As an initial matter, Mr. Mayes never mentioned
15 this allegation in his initial complaint. *See* Dkt. #5 at 3. Instead, he appears to raise it for the first
16 time in his Response. Dkt. #36 at 1 (“I stated in my deposition that my desperate [sic] treatment
17 was ‘not getting paid for a month.’”). Accordingly, the Court is not convinced that this claim is
18 properly before the Court. *See Wasco Products, Inc. v. Southwall Technologies*, 435 F.3d 989,
19 992 (9th Cir. 2006) (allegations of a new claim or theory for relief asserted in opposition to a
20 summary judgment motion, but not in the complaint, cannot serve as a basis for avoiding summary
21 judgment); *see also Trishan Air, Inc. v. Federal Ins. Co.*, 635 F.3d 422, 435 (9th Cir. 2011) (claim
22 raised in opposition to summary judgment motion, but not in complaint, was not properly before
23 the district court).

1 Nevertheless, because Defendants have addressed this point in their briefing, the Court will
2 consider it here. Based on the provided payroll information, emails between Mr. Mayes and his
3 managers, and deposition transcripts, Mr. Mayes was apparently paid for 129.96 hours for the pay
4 period starting December 16, 2017 through December 31, 2017. *See* Dkt. #38-1 at 2 (January 21,
5 2018 email from Mr. Mayes); Dkts. #38-4 at 9 (January 22, 2018 check for 21 hours for
6 “backpay”); Dkt. #38-2 at 2 (February 7, 2018 check for 81 hours). While Mr. Mayes insists he
7 was not paid for most of his work and “none of this is right,” Dkt. #38-3 at 2, he has provided no
8 support for his assertions that he worked without pay and was shorted “more than 1,500 from [his]
9 first check.” Dkt. #39 at 1. Mr. Ohashi also texted Mr. Mayes on or around January 23, 2018 to
10 clarify what remaining hours he was owed. Dkt. #41-1 at 2. The evidence plainly contradicts Mr.
11 Mayes’ claims, given that Ace responded within three days of Mr. Mayes’ email and compensated
12 him for more than the 120 hours he claimed he was owed. Supplemental evidence produced on
13 March 5, 2020, further supports Ace’s claims that it did not unilaterally delay processing Mr.
14 Mayes’ payments. On the contrary, Ace was delayed in processing a check for 21 additional hours
15 Mr. Mayes claimed he worked during the December 31, 2018 because Mr. Mayes failed to submit
16 his time card on time. Dkt. #43-1 at 9.

17 Construing these facts in a light most favorable to Plaintiff, nothing in the record supports
18 Mr. Mayes’ prima facie case that Ace unilaterally delayed or withheld his payment. Mr. Mayes
19 provides no evidence of his own to contradict this payroll information. Instead, he claims that
20 summary judgment must be delayed or denied pursuant to Rule 56(d) because of Defendants’
21 failure to produce any payroll information during discovery. Dkt. #36 at 1 (citing Fed. R. Civ. P.
22 56(d)). Federal Rule of Civil Procedure 56(d) allows a court to deny or defer consideration of a
23 motion for summary judgment where the nonmovant shows by affidavit or declaration that it

1 cannot present facts essential to justify its opposition. To obtain such relief, the party requesting
2 such relief must establish: (1) specific reasons why the alleged evidence was not discovered or
3 obtained earlier in the proceedings (“good cause”); (2) specific facts it hopes to elicit from
4 additional discovery; (3) that the facts sought actually exist; and (4) that these sought-after facts
5 would overcome the opposing party’s Motion for Summary Judgment. *Family Home & Fin. Ctr.,*
6 *Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008); *Nidds v. Schindler*
7 *Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996). The purpose of Rule 56(d) relief is to prevent
8 the nonmoving party from being “railroaded” by a summary judgment motion that is filed too soon
9 after the start of a lawsuit for the nonmovant to properly oppose it without additional discovery.
10 *See Celotex Corp.*, 477 U.S. at 326.

11 Mr. Mayes’ unsupported claim that Defendants failed to produce any payroll information
12 during discovery fails to satisfy the requirements of Rule 56(d). Mr. Mayes never specifies what
13 facts he hoped to obtain from these payroll records, nor does he provide a good cause explanation
14 for his failure to obtain the documents earlier in the proceedings. On the contrary, Defendants’
15 Objections and Response to Plaintiff’s First Request for Production show that they agreed to
16 produce Mr. Mayes’ paystubs. *See* Dkt. #38-4 at 4, 7-10. Emails between Defendants’ counsel
17 and Mr. Mayes likewise reflect that despite requesting a discovery conference in February 2020,
18 Mr. Mayes failed to attend. Dkt. #41-2 at 2. Furthermore, after Ace located additional payroll
19 information on March 4, 2020, this information was promptly produced to Plaintiff the following
20 day. Dkt. #43 at ¶3. As of the date of this Order, Mr. Mayes has filed no response addressing
21 these records. Upon review, these records produced March 5, 2020 support Defendants’ argument
22 that payroll discrepancies were a consequence of Mr. Mayes’ own failure to timely submit his time
23

1 cards. For these reasons, the Court declines to delay or deny Defendants’ summary judgment
2 motion to allow additional time for discovery.

3 2. Defendant Had Legitimate Business Reasons for its Actions

4 The record establishes that Defendants had legitimate business reasons for reducing
5 Plaintiff’s hours starting the week of December 31, 2017. First, Ace explains that the cyclical
6 nature of the valet business means that fewer valets are needed after the holidays. Dkt. #35-4 at
7 1. The work schedules reflect this cyclical nature. The number of valets was cut from 22 to 17,
8 and only two valets—Mr. Hartman and Mr. Salvador—were consistently scheduled for more than
9 40 hours after the holidays. *See* Dkt. #35-3 at 8-11. Indeed, even though Mr. Mayes’ hours were
10 reduced over the next two weeks from 43.5 to 30 to 16.5, he was still working more hours than
11 nearly all the other valets. *Id.* at 8-9.

12 To the extent that Ace continued to cut Mr. Mayes’ hours, Ace explains that Mr. Mayes
13 stopped showing up to work after January 3, 2018. Dkt. #35-2 at ¶4. The week of January 3, Mr.
14 Mayes was scheduled to work 30 hours. Dkt. #35-3 at 8. After he stopped coming to work, Ace
15 continued to schedule Mr. Mayes for shifts but for shorter lengths. *See* Dkt. #35-3 at 9-12 (16.5
16 hours for week of January 7; 15 hours for week of January 14, 8 hours for week of January 21,
17 and 16 hours for week of January 28). Mr. Mayes has neither denied that he stopped coming to
18 work after January 3, 2018, nor has he provided any evidence to refute Defendants’ claims.
19 Accordingly, the Court accepts this fact as undisputed. Fed. R. Civ. P. 56(e). Because Mr. Mayes
20 was no longer showing up to his shifts, Defendants had a legitimate reason to reduce his hours.

21 3. Defendants’ Reasons are Not Pretext for Unlawful Discrimination

22 With Defendants articulating legitimate business reasons for cutting Mr. Mayes’ hours,
23 the burden shifts back to Mr. Mayes to present evidence establishing that those reasons are merely

1 a pretext masking intentional discrimination. Pretext can be established by showing “that a
2 discriminatory reason more likely motivated the employer” or “that the employer's proffered
3 explanation is unworthy of credence.” *Burdine*, 450 U.S. at 256. A plaintiff may rely on direct
4 evidence which proves discriminatory animus on its own—typically discriminatory statements or
5 actions—or circumstantial evidence which “requires an additional inferential step to demonstrate
6 discrimination.” *Coghlan v. American Seafoods Co. LLC*, 413 F.3d 1090, 1095 (9th Cir. 2005).
7 “[V]ery little’ direct evidence of [a] discriminatory motive is sufficient.” *Winarto v. Toshiba*
8 *America Elecs. Components, Inc.*, 274 F.3d 1276, 1284 (9th Cir. 2001). But where circumstantial
9 evidence is used, “a plaintiff must put forward specific and substantial evidence challenging the
10 credibility of the employer’s motives.” *Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 641 (9th
11 Cir. 2003) (citations omitted).

12 On this record, a reasonable jury could not conclude that Ace intentionally discriminated
13 against Plaintiff. Mr. Mayes has presented no evidence to demonstrate a genuine dispute as to
14 pretext. He has offered no direct evidence of a discriminatory motivation by Ace, nor has he
15 provided circumstantial evidence that would allow a reasonable jury to find that Defendant’s
16 otherwise legitimate business reasons were merely a pretext for intentional discrimination. In
17 response to Defendants’ motion, he claims that the work schedule hours on the time sheets are
18 “incorrect” and reiterates that his hours were cut down to four per week. Dkt. #36 at 1-2. Mr.
19 Mayes’ conclusory statements, without any factual support, are insufficient to survive summary
20 judgment. *Keenan*, 91 F.3d at 1278–79.

21 Lastly, the Court notes that under the WLAD, a plaintiff is only required to show “that a
22 reasonable jury could find that discrimination was a *substantial factor* in the employer’s adverse
23 employment action.” *Scrivener v. Clark*, 181 Wash.2d 439, 334 P.3d 541, 544 (2014) (citing *Riehl*

1 *v. Foodmaker, Inc.*, 152 Wash.2d 138, 94 P.3d 930 (2004)) (emphasis added). However, because
2 Plaintiff cannot demonstrate unlawful discrimination on the record, the Court does not need to
3 consider the differences between the WLAD and his federal discrimination claims under Section
4 1981 and Title VII. *Shokri*, 311 F. Supp. 3d at 1221. For these reasons, Mr. Mayes’ disparate
5 treatment claims fail as a matter of law.

6 **C. Retaliation**

7 In addition to his disparate treatment claims, Plaintiff claims that Ace retaliated against
8 him for reporting discriminatory conduct in violation of Title VII and the WLAD. Dkt. #5 at 3.
9 Retaliation claims are also considered under the burden shifting framework of *McDonnell*
10 *Douglas*. See *Surrell v. Cal. Water Service Co.*, 518 F.3d 1097 (9th Cir. 2008). To make out a
11 prima facie case of retaliation, an employee must show that (1) he engaged in a protected activity;
12 (2) his employer subjected him to an adverse employment action; and (3) a causal link exists
13 between the protected activity and the adverse action.” *Ray v. Henderson*, 217 F.3d 1234, 1240
14 (9th Cir. 2000). Title VII retaliation actions prohibit employers from discriminating against
15 employees who “opposed any practice made an unlawful employment practice by [Title VII].”
16 42 U.S.C. § 2000e-3(a). The plaintiff must establish that his or her protected activity “was a but
17 for cause of the alleged adverse action by the employer.” *Univ. of Tex. Sw. Med. Ctr. v. Nassar*,
18 570 U.S. 338, 362 (2013). “Because Washington courts look to interpretations of federal law
19 when analyzing retaliation claims,” the Court examines Mr. Mayes’ retaliation claim under
20 federal law. *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 969 (9th Cir. 2002) (citing
21 *Graves v. Dept. of Game*, 76 Wash. App. 705, 887 P.2d 424 (1994)).

22 Like his disparate treatment claims, the record does not support a prima facie case of
23 retaliation as to Mr. Mayes’ delayed or withheld paychecks. Defendants have provided evidence

1 to show that any payroll errors were promptly corrected, thereby refuting Mr. Mayes' claims that
2 Ace refused to pay him for his hours. *See* Dkts. #38-1 at 2; #38-4 at 9; #38-2 at 2. To the extent
3 any paychecks were delayed, Defendants have likewise produced evidence reflecting that delays
4 were owed to Mr. Mayes' own failure to timely submit his time cards. Dkt. #43-1 at 9. Mr.
5 Mayes has provided no evidence to rebut Defendants' claims and merely repeats his claim that
6 he "worked for about 112 hours and wasn't paid for it until at least a month later" and then "wasn't
7 paid for all the hours [he] worked for." Dkt. #36 at 1. Again, conclusory statements, with no
8 supporting evidence, are insufficient to defeat summary judgment. Finally, to the extent Mr.
9 Mayes requests that the Court defer or deny summary judgment because Defendants withheld
10 payroll records during discovery, he has failed to meet the required standard under Rule 56(d) for
11 the same reasons set forth above regarding his disparate treatment claim.

12 The record, construed in the light most favorable to Plaintiff, does support a prima facie
13 case of retaliation as to Mr. Mayes' cut hours. It is undisputed that Mr. Mayes engaged in
14 protected activity on December 16, 2017 when he reported discrimination to Mr. Ohashi. On one
15 hand, the record plainly contradicts Mr. Mayes' claims that Ace started cutting his hours three
16 days after he texted Mr. Ohashi. For the pay period starting December 17, 2017, Mr. Mayes was
17 scheduled for 36.6 hours, Dkt. #35-3 at 6, and the following week, starting December 24, 2017,
18 he was scheduled for 41.5 hours—the most he had worked to date. *Id.* at 7. Nevertheless,
19 construing the facts in the light most favorable to Plaintiff, Mr. Mayes engaged in his protected
20 activity on December 16, 2017, and the week of December 31, 2017, Ace started to reduce his
21 hours. *See id.* at 8-12. Although the adverse employment actions were two weeks delayed from
22 the protected activity, the causal element is construed broadly at the prima facie stage. *Shokri*,

1 311 F. Supp. 3d at 1222 (citing *Poland v. Chertoff*, 494 F.3d 1174, 1180 n. 2 (9th Cir. 2007)
2 (citation omitted)). For these reasons, the record supports a prima facie case.

3 However, like his disparate treatment claims, Mr. Mayes’ retaliation claims do not survive
4 beyond the prima facie stage. Mr. Mayes has not argued that Defendants lacked legitimate
5 business reasons for the reduced hours or the paycheck issues. Conversely, Defendants have
6 explained that due to the cyclical nature of the holidays and the fact that Mr. Mayes stopped
7 showing up to work after January 3, 2018, his hours were cut starting December 31, 2017. Dkt.
8 #35-4 at 1; Dkt. #35-2 at ¶4.

9 Mr. Mayes presents no evidence that any of these incidents were driven by retaliatory
10 intent following his December 16, 2017 text to Mr. Ohashi. Instead, as described above with
11 respect to his disparate treatment claims, he repeats conclusory allegations with no factual
12 support. See Dkt. #36 at 1-2. Again, Plaintiff’s case cannot survive summary judgment with
13 unsupported allegations. Without any evidence, a reasonable jury cannot find in his favor, and
14 summary judgment is warranted. See *Univ. of Tex. Sw. Med. Ctr.*, 570 U.S. at 338 (plaintiff’s
15 ultimate burden is to show that the adverse employment action would not have occurred but for
16 the protected activity); *Allison v. Housing Authority of the City of Seattle*, 118 Wash.2d 79, 821
17 P.2d 34, 37 (1991) (under the WLAD, plaintiff must show that protected activity was a substantial
18 factor in the adverse employment action).

19 Without any evidence, Mr. Mayes’ case is built purely upon inference. While the non-
20 movant at summary judgment is entitled to all reasonable inferences from the evidence, “at some
21 point, the reasonable jury cannot continue inferring without actual evidence.” *Shokri*, 311 F.
22 Supp. 3d at 1233; see also *Nelson v. Pima Cmty. Coll.*, 83 F.3d 1075, 1081–82 (9th Cir. 1996)
23 (“[M]ere allegation and speculation do not create a factual dispute for purposes of summary

1 judgment.”). Accordingly, summary judgment dismissal of his discrimination and retaliation
2 claims is appropriate.

3 **IV. PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

4 Plaintiff’s Motion for Summary Judgment is also pending before the Court. Dkt. #39.
5 Plaintiff appears to seek summary judgment on all his claims. Because the Court has determined
6 that Defendants are entitled to summary judgment, the Court denies Plaintiff’s Motion for
7 Summary Judgment as moot.

8 **V. CONCLUSION**

9 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
10 and the remainder of the record, the Court hereby finds and ORDERS that:

- 11 (1) Defendant’s Motion for Summary Judgment (Dkt. #35) is GRANTED. All of
12 Plaintiff’s claims are DISMISSED.
13 (2) Plaintiff’s Motion for Summary Judgment (Dkt. #39) is DENIED.
14 (3) This case is CLOSED.

15
16 DATED this 20th day of March 2020.

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18 

19 **RICARDO S. MARTINEZ**
20 **CHIEF UNITED STATES DISTRICT JUDGE**