

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 16-16850

ANDREA GOGEL,

Plaintiff/Appellant,

v.

KIA MOTORS MANUFACTURING GEORGIA, INC.,

Defendant/Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
HONORABLE TIMOTHY C. BATTEN, SR.
(3:14-CV-00153-TCB)

APPELLANT'S APPENDIX

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**U.S. District Court
Northern District of Georgia (Newnan)
CIVIL DOCKET FOR CASE #: 3:14-cv-00153-TCB**

Gogel v. Kia Motors Manufacturing of Georgia, Inc.
Assigned to: Judge Timothy C. Batten, Sr
Case in other court: USCA - 11th Circuit., 16-16850-C
USCA - 11th Circuit., 16-16850-C
Superior Court of Fulton County,
2014cv247952

Cause: 42:1981 Race Discrimination

Date Filed: 07/24/2014
Date Terminated: 09/27/2016
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Andrea Gogel

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Defendant

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Inc.**

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Date Filed	#	Docket Text
07/24/2014	<u>1</u>	NOTICE OF REMOVAL with COMPLAINT filed by Kia Motors Manufacturing of Georgia, Inc.. (Filing fee \$ 400.00 receipt number 113E-5306875) (Attachments: # <u>1</u> Exhibit - A - Complaint, # <u>2</u> Exhibit - B - Notice of Filing, # <u>3</u> Civil Cover Sheet)(eop) Please visit our website at http://www.gand.uscourts.gov/forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form.

07/25/2014	<u>2</u>	ANSWER to <u>1</u> NOTICE OF REMOVAL by Kia Motors Manufacturing of Georgia, Inc.. Discovery ends on 12/22/2014.(Martin, William) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 07/25/2014)
07/25/2014	<u>3</u>	Certificate of Interested Persons and Corporate Disclosure Statement by Kia Motors Manufacturing of Georgia, Inc. identifying Corporate Parent KIA MOTORS AMERICA, Other Affiliate KIA MOTORS CORPORATION for Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 07/25/2014)
07/25/2014	<u>4</u>	Guidelines for Discovery and Motion Practice. Signed by Magistrate Judge Janet F. King on 4/25/14. (hfm) (Entered: 07/25/2014)
07/25/2014		Clerks Notation re <u>3</u> Certificate of Interested Persons. READ and APPROVED by Magistrate Judge Janet F. King. (kt) (Entered: 07/28/2014)
08/11/2014	<u>5</u>	MOTION to Change Venue with Brief In Support by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 08/11/2014)
08/22/2014	<u>6</u>	Certificate of Interested Persons by Andrea Gogel. (Carter, Meredith) (Entered: 08/22/2014)
08/22/2014		Clerks Notation re <u>6</u> Certificate of Interested Persons. READ and APPROVED by Magistrate Judge Janet F. King. (kt) (Entered: 08/25/2014)
08/25/2014	<u>7</u>	First Initial Disclosures by Andrea Gogel.(Carter, Meredith) (Entered: 08/25/2014)
08/25/2014	<u>8</u>	JOINT PRELIMINARY REPORT AND DISCOVERY PLAN filed by Andrea Gogel. (Carter, Meredith) (Entered: 08/25/2014)
08/26/2014	<u>9</u>	CERTIFICATE OF SERVICE regarding Initial Disclosures by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) Modified on 8/27/2014: Incorrect event used to efile pleading. Entry modified to reflect efiled pleading. (cem) (Entered: 08/26/2014)
08/26/2014	<u>10</u>	CERTIFICATE OF SERVICE of Defendant's First Interrogatories to Plaintiff by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 08/26/2014)
08/26/2014	<u>11</u>	CERTIFICATE OF SERVICE of Defendant's First Requests for Production of Documents to Plaintiff by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 08/26/2014)
08/27/2014		Notification of Docket Correction re <u>9</u> Initial Disclosures. Incorrect event used to efile pleading. Entry modified to reflect efiled pleading. (cem) (Entered: 08/27/2014)
08/28/2014	<u>12</u>	RESPONSE in Opposition re <u>5</u> MOTION to Change Venue filed by Andrea Gogel. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Carter, Meredith) (Entered: 08/28/2014)
08/29/2014	<u>13</u>	SCHEDULING ORDER re <u>8</u> Joint Preliminary Report and Discovery Plan. Signed by Magistrate Judge Janet F. King on 8/29/14. (hfm) (Entered: 08/29/2014)
09/15/2014	<u>14</u>	REPLY to Response to Motion re <u>5</u> MOTION to Change Venue filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 09/15/2014)
09/16/2014		Submission of <u>5</u> MOTION to Change Venue , submitted to Magistrate Judge Janet F.

09/17/2014	15	OBECTION re 14 Reply Brief in Support of 5 MOTION to Change Venue by Andrea Gogel (Attachments: # 1 Exhibit 1-Proposed Surreply)(Carter, Meredith) Modified on 9/18/2014 to edit docket text to accurately reflect e-filed pleading and create document relationships. Multi-part pleading - MOTION to File re-docketed at 16 (hfm). (Entered: 09/17/2014)
09/17/2014	16	MOTION for Leave to File Surreply re 5 MOTION to Change Venue by Andrea Gogel. (Attachments: # 1 Exhibit 1 - Proposed Surreply)(hfm) (Entered: 09/18/2014)
09/18/2014	17	Consent MOTION to Amend <i>the Complaint to Correctly Identify Defendant</i> with Brief In Support by Andrea Gogel. (Attachments: # 1 Exhibit Amended Complaint) (Carter, Meredith) (Entered: 09/18/2014)
09/22/2014		ORAL ORDER granting 16 Motion for Leave to File Surreply; granting 17 Motion to Amend Complaint, by Magistrate Judge Janet F. King on 9/22/14. (hfm) (Entered: 09/22/2014)
09/22/2014	18	SURREPLY re 5 MOTION to Change Venue filed by Andrea Gogel. (hfm) (Entered: 09/22/2014)
09/22/2014	19	AMENDED COMPLAINT against Kia Motors Manufacturing of Georgia, Inc. with Jury Demand, filed by Andrea Gogel.(hfm) Please visit our website at http://www.gand.uscourts.gov/forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 09/22/2014)
09/22/2014	20	CERTIFICATE OF SERVICE of <i>Plaintiff's First Discovery to Defendant</i> by Andrea Gogel.(Carter, Meredith) (Entered: 09/22/2014)
09/29/2014	21	ORDER granting 5 Motion to Change Venue. The Clerk is DIRECTED to TRANSFER this case to the Newnan Division. Signed by Magistrate Judge Janet F. King on 9/29/14. (hfm) (Entered: 09/29/2014)
09/29/2014		Case transferred in from Atlanta Division. Case Number 1:14-cv-2380. Case assigned to Judge Timothy C. Batten, Sr and Magistrate Judge Russell G. Vineyard. (hfm) (Entered: 09/29/2014)
10/06/2014	22	CERTIFICATE OF SERVICE of <i>Plaintiff's Responses to Defendant's First Request for Production and Interrogatories</i> by Andrea Gogel.(Carter, Meredith) (Entered: 10/06/2014)
11/03/2014	23	CERTIFICATE OF SERVICE of <i>Defendant's Responses to Plaintiff's First Requests for Admission, First Interrogatories, and First Requests for Production of Documents and Things</i> by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 11/03/2014)
11/20/2014	24	NOTICE by Kia Motors Manufacturing of Georgia, Inc. of <i>Subpoena to KONE, INC.</i> (Martin, William) (Entered: 11/20/2014)
11/20/2014	25	NOTICE by Kia Motors Manufacturing of Georgia, Inc. of <i>Subpoena to Toyota Motors Manufacturing Kentucky, Inc.</i> (Martin, William) (Entered: 11/20/2014)
12/15/2014	26	Joint MOTION for Extension of Time to Complete Discovery with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 12/15/2014)

12/15/2014	27	ORDER granting 26 Motion for Extension of Time to Complete Discovery. Discovery ends on 3/23/2015. Any motions for summary judgment are due 4/22/2015. If no motions for summary judgment are filed, the Proposed Consolidated Pretrial Order is due 5/4/2015. If neither is filed, the Clerk is to submit the record 5/14/2015. Signed by Magistrate Judge Russell G. Vineyard on 12/15/2014. (pam) (Entered: 12/16/2014)
12/17/2014	28	PROPOSED CONSENT ORDER Proposed Consent Protective Order. (Martin, William) (Entered: 12/17/2014)
12/18/2014	29	CONSENT PROTECTIVE ORDER. See Order for further specific directives. Signed by Magistrate Judge Russell G. Vineyard on 12/18/14. (rsh) (Entered: 12/18/2014)
01/21/2015		Clerks Notation re 3 Certificate of Interested Persons, 6 Certificate of Interested Persons reviewed by TCB (exe) (Entered: 01/21/2015)
02/17/2015	30	CERTIFICATE OF SERVICE of <i>Plaintiff's Second Request for Production of Documents</i> by Andrea Gogel.(Carter, Meredith) (Entered: 02/17/2015)
02/20/2015	31	Joint MOTION to Amend 28 Proposed Consent Order, 29 Protective Order with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 02/20/2015)
02/20/2015	32	CERTIFICATE OF SERVICE of <i>Plaintiff's Second Set of Interrogatories to Defendant</i> by Andrea Gogel.(Carter, Meredith) (Entered: 02/20/2015)
02/20/2015	33	CERTIFICATE OF SERVICE of <i>Plaintiff's Third Request for Production to Defendant</i> by Andrea Gogel.(Carter, Meredith) (Entered: 02/20/2015)
02/20/2015	34	ORDER granting 31 Motion to Amend Protective Order. See Order for specific directives. Signed by Magistrate Judge Russell G. Vineyard on 2/20/15. (rsh) (Entered: 02/20/2015)
02/23/2015	35	NOTICE by Kia Motors Manufacturing of Georgia, Inc. of <i>Subpoena to Goodyear Tire and Rubber Company</i> (Martin, William) (Entered: 02/23/2015)
03/18/2015	36	NOTICE Of Filing Subpoena and Notice of Deposition by Andrea Gogel (Carter, Meredith) (Entered: 03/18/2015)
03/20/2015	37	Joint MOTION for Extension of Time to Complete Discovery with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 03/20/2015)
03/23/2015	38	ORDER granting 37 Motion for Extension of Time to Complete Discovery. Discovery ends on 6/23/2015. Any motions for summary judgment are due 7/23/2015. If no motions for summary judgment are filed, the Proposed Consolidated Pretrial Order is due 8/3/2015. If neither is filed, the Clerk is to submit the record 8/13/2015. Signed by Magistrate Judge Russell G. Vineyard on 3/23/2015. (pam) (Entered: 03/23/2015)
03/23/2015	39	CERTIFICATE OF SERVICE of <i>Defendant's Responses to Plaintiff's Second Requests for Production of Documents and Things</i> by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 03/23/2015)
03/24/2015	40	Joint MOTION to Amend 29 Protective Order with Brief In Support by Kia Motors Manufacturing of Georgia, Inc.. (Murray, Joseph) (Entered: 03/24/2015)
03/24/2015	41	ORDER granting 40 Motion to Amend 29 Protective Order. See Order for amendment to Paragraph 1. Signed by Magistrate Judge Russell G. Vineyard on 3/24/15. (rsh) (Entered: 03/24/2015)

03/26/2015	42	CERTIFICATE OF SERVICE of Defendant's Responses to Plaintiff's Second Interrogatories by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 03/26/2015)
03/26/2015	43	CERTIFICATE OF SERVICE of Defendant's Responses to Plaintiff's Third Request for Production of Documents by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 03/26/2015)
03/27/2015	44	AFFIDAVIT of Service for Subpoena Duces Tecum & Deposition Notice Served 03-21-15 by Tracy Marshall, Louisville, KY, as to Corporate Designee of Toyota Motor Engineering & Mfg, NA. (Carter, Meredith) (Entered: 03/27/2015)
03/31/2015	45	CERTIFICATE OF SERVICE of Plaintiff's Fourth Document Request to Defendant by Andrea Gogel.(Carter, Meredith) (Entered: 03/31/2015)
04/15/2015	46	NOTICE of Change of Address for Meredith J. Carter, counsel for Andrea Gogel (Carter, Meredith) (Entered: 04/15/2015)
04/30/2015	47	NOTICE of Appearance by John Lawrence Mays on behalf of Andrea Gogel (Mays, John) (Entered: 04/30/2015)
05/15/2015	48	Certification of Consent to Substitution of Counsel. Meredith J. Carter replacing attorney Matthew C. Billips. (Carter, Meredith) (Entered: 05/15/2015)
06/02/2015	49	NOTICE of Appearance by Richard J. Valladares on behalf of Kia Motors Manufacturing of Georgia, Inc. (Valladares, Richard) (Entered: 06/02/2015)
06/03/2015	50	NOTICE to Take Deposition of Andrea Gogel filed by Kia Motors Manufacturing of Georgia, Inc. (Martin, William) (Entered: 06/03/2015)
06/03/2015	51	Minute Entry for proceedings held before Magistrate Judge Russell G. Vineyard: Telephone Conference held on 6/3/2015. Discovery Hearing Held (Oral Argument heard) (Court Reporter FTR Gold)(jlm) (Entered: 06/03/2015)
06/23/2015	52	Third MOTION for Extension of Time to Complete Discovery by Plaintiff and Defendant with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 06/23/2015)
06/24/2015	53	ORDER granting 52 Motion for Extension of Time to Complete Discovery. Discovery ends on 8/24/2015. Any motions for summary judgment are due 9/23/2015. If no motions for summary judgment are filed, the Proposed Consolidated Pretrial Order is due 10/5/2015. If neither is filed, the Clerk is to submit the record 10/15/2015. Signed by Magistrate Judge Russell G. Vineyard on 6/24/2015. (pam) (Entered: 06/24/2015)
06/24/2015	54	Amended NOTICE to Take Deposition of Andrea Gogel filed by Kia Motors Manufacturing of Georgia, Inc. (Martin, William) (Entered: 06/24/2015)
07/22/2015	55	Minute Entry for proceedings held before Magistrate Judge Russell G. Vineyard: Discovery Hearing (Telephone Conference) held on 7/22/2015. (Tape #FTR Gold) (rsh) (Entered: 07/22/2015)
07/23/2015	56	CERTIFICATE OF SERVICE filed by Andrea Gogel Notice of Deposition of Ted Arnold (Carter, Meredith) (Entered: 07/23/2015)
07/23/2015	57	CERTIFICATE OF SERVICE filed by Andrea Gogel Notice of Deposition of Stuart Countess (Carter, Meredith) (Entered: 07/23/2015)

07/28/2015	58	CERTIFICATE OF SERVICE filed by Andrea Gogel <i>Notice of Deposition of Chris Miller</i> (Carter, Meredith) (Entered: 07/28/2015)
08/03/2015	59	REDOCKETED as 61 using correct event CERTIFICATE OF SERVICE filed by Andrea Gogel <i>Notice of Deposition of Paul Grimes</i> (Carter, Meredith) Modified on 8/4/2015 (jlm). (Entered: 08/03/2015)
08/03/2015	60	REDOCKETED as 62 using correct event CERTIFICATE OF SERVICE filed by Andrea Gogel <i>Notice of Deposition of Arthur Williams</i> (Carter, Meredith) Modified on 8/4/2015 (jlm). (Entered: 08/03/2015)
08/03/2015	61	NOTICE to Take Deposition of PAUL GIRMES on 8/4/15 filed by Andrea Gogel (jlm) (Entered: 08/04/2015)
08/03/2015	62	NOTICE to Take Deposition of ARTHUR WILLIAMS ON 8/7/15, filed by Andrea Gogel (jlm) (Entered: 08/04/2015)
08/04/2015	63	Amended NOTICE to Take Deposition of Paul Grimes filed by Andrea Gogel (Carter, Meredith) (Entered: 08/04/2015)
08/04/2015	64	Amended NOTICE to Take Deposition of Arthur Williams filed by Andrea Gogel (Carter, Meredith) (Entered: 08/04/2015)
08/06/2015	65	MOTION to Compel Discovery Responses with Brief In Support by Andrea Gogel. (Attachments: # 1 Affidavit Declaration of Meredith Carter, # 2 Exhibit Pl's 1st Disc Reqs, # 3 Exhibit Pl's 2nd Reqs for Prod., # 4 Exhibit Pl's 2nd Interrogs, # 5 Exhibit Pl's 3rd Reqs for Prod., # 6 Exhibit Pl's 4th Reqs for Prod., # 7 Exhibit Jan 28th Em. from Carter, # 8 Exhibit April 22nd Em. from Murray, # 9 Exhibit May 1st Ltr from Kerr, # 10 Exhibit May 6th Ltr from Murray, # 11 Exhibit May 27th Em. from Mays, # 12 Exhibit July 21st Em. Chain re. ESI, # 13 Exhibit Excerpts from Gogel Depo, # 14 Exhibit Def's Resps to Pl's 1st Disc Reqs, # 15 Exhibit Def's Resps to Pl's 2nd Reqs for Prod., # 16 Exhibit Def's Resps to Pl's 2nd Interrogs, # 17 Exhibit Def's Resps to Pl's 3rd Reqs for Prod., # 18 Exhibit Def's Resps to Pl's 4th Reqs for Prod., # 19 Exhibit KMMG Documentation Guidelines, # 20 Exhibit KMMG Records Retention Policy, # 21 Exhibit Ltr from Carter Re Rule 37)(Carter, Meredith) (Entered: 08/06/2015)
08/06/2015	66	MOTION for Leave to File Excess Pages <i>For Plaintiffs Motion to Compel</i> with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 08/06/2015)
08/10/2015	67	ORDER denying without prejudice 65 Motion to Compel; denying as moot 66 Motion for Leave to File Excess Pages. Counsel for the plaintiff is directed to contact opposing counsel and the undersigned's Courtroom Deputy to schedule a conference with the Court regarding the issues raised in plaintiff's motion. If the issues cannot be resolved during the conference, the Court will direct further proceedings, which may include allowing plaintiff to renew her motion. Signed by Magistrate Judge Russell G. Vineyard on 8/10/15. (rsh) (Entered: 08/11/2015)
08/12/2015	68	NOTICE by Andrea Gogel <i>of Subpoena to Testify at a Deposition in a Civil Action to Robert Tyler</i> (Carter, Meredith) (Entered: 08/12/2015)
08/13/2015		ORAL ORDER scheduling a discovery conference for Wednesday, Aug. 19, 2015, at 2:00 p.m., 20th Floor, Courtroom 2022, Atlanta, GA, before Judge Vineyard. Entered by Magistrate Judge Russell G. Vineyard on 8/13/2015. (pam) (Entered: 08/13/2015)

08/19/2015	69	Minute Entry for proceedings held before Magistrate Judge Russell G. Vineyard: Discovery Hearing held on 8/19/2015. Parties to file consent motion to extend discovery. (Tape #FTR Gold)(rsh) (Entered: 08/20/2015)
08/24/2015	70	Joint MOTION for Extension of Time to Complete Discovery with Brief In Support by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 08/24/2015)
08/24/2015	71	ORDER granting 70 Motion for Extension of Time to Complete Discovery. Discovery ends on 10/2/2015. Signed by Magistrate Judge Russell G. Vineyard on 8/24/15. (rsh) (Entered: 08/25/2015)
08/25/2015	72	NOTICE by Andrea Gogel of <i>Subpoena duces tecum on Mercedes-Benz</i> (Carter, Meredith) (Entered: 08/25/2015)
09/07/2015	73	NOTICE to Take Deposition of Kia Motors Manufacturing Georgia, Inc. filed by Andrea Gogel (Carter, Meredith) (Entered: 09/07/2015)
09/07/2015	74	Amended NOTICE to Take Deposition of Kia Motors Manufacturing Georgia, Inc. filed by Andrea Gogel (Carter, Meredith) (Entered: 09/07/2015)
09/09/2015	75	Minute Entry for proceedings held before Magistrate Judge Russell G. Vineyard: Telephone Conference held on 9/9/2015. Oral Argument Hearing. (Court Reporter FTR Gold)(jlm) (Entered: 09/10/2015)
09/21/2015		ORAL ORDER re 71 Order on Motion for Extension of Time to Complete Discovery. Any motions for summary judgment are due 11/2/2015. If no motions for summary judgment are filed, the Consolidated Proposed Pretrial Order is due 11/12/2015. If neither is filed, the clerk is to submit the record 11/23/2015. Entered by Magistrate Judge Russell G. Vineyard on 9/21/2015. (pam) Modified on 9/21/2015 (pam). (Entered: 09/21/2015)
09/21/2015	76	NOTICE to Take Deposition of J. Randy Jackson filed by Andrea Gogel (Carter, Meredith) (Entered: 09/21/2015)
09/23/2015	77	CERTIFICATE OF SERVICE of <i>Defendant's Amended Responses to Plaintiff's First Requests for Admission, First Interrogatories, and First Requests for Production of Documents and Things</i> by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 09/23/2015)
09/23/2015	78	CERTIFICATE OF SERVICE of <i>Defendant's Amended Responses to Plaintiff's Second Requests for Production of Documents and Things</i> by Kia Motors Manufacturing of Georgia, Inc..(Murray, Joseph) (Entered: 09/23/2015)
10/30/2015	79	MOTION for Extension of Time to File a Motion for Summary Judgment with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 10/30/2015)
10/30/2015	80	RESPONSE in Opposition re 79 MOTION for Extension of Time to File a Motion for Summary Judgment filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 10/30/2015)
11/01/2015	81	REPLY to Response to Motion re 79 MOTION for Extension of Time to File a Motion for Summary Judgment filed by Andrea Gogel. (Carter, Meredith) (Entered: 11/01/2015)
11/02/2015	82	ORDER granting 79 Motion for Extension of Time to file summary judgment

		Motions/responses/Replies Filed for Summary Judgment shall be filed by 11/16/15, responses due on 12/10/15, replies due 1/8/16. Signed by Magistrate Judge Russell G. Vineyard on 11/2/15. (rsh) (Entered: 11/02/2015)
11/16/2015	83	MOTION for Summary Judgment with Brief In Support by Kia Motors Manufacturing of Georgia, Inc.. (Attachments: # 1 Brief, # 2 Statement of Material Facts)(Martin, William) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 11/16/2015)
11/16/2015	84	NOTICE by Kia Motors Manufacturing of Georgia, Inc. re 83 MOTION for Summary Judgment <i>Certificate of Need for Filing Discovery</i> (Martin, William) (Entered: 11/16/2015)
11/16/2015	85	NOTICE Of Filing Declaration of Randy Jackson by Kia Motors Manufacturing of Georgia, Inc. re 83 MOTION for Summary Judgment (Martin, William) (Entered: 11/16/2015)
11/16/2015	93	MOTION for Partial Summary Judgment with Brief In Support by Andrea Gogel. (Attachments: # 1 Brief Brief in Support of Partial Summary Judgment, # 2 Statement of Material Facts, # 3 Affidavit Declaration of Andrea Gogel, # 4 Exhibit A, # 5 Exhibit B, # 6 Exhibit C, # 7 Exhibit D, # 8 Exhibit E, # 9 Exhibit F, # 10 Exhibit G, # 11 Exhibit H, # 12 Exhibit I)(Carter, Meredith) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- Modified on 1/19/2016 (jlm). (Entered: 11/16/2015)
11/16/2015	94	MOTION for Leave to File Excess Pages <i>for Plaintiff's Motion for Partial Summary Judgment</i> with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 11/16/2015)
11/17/2015	95	ORDER granting 94 Motion for Leave to File Excess Pages. Signed by Magistrate Judge Russell G. Vineyard on 11/17/15. (jlm) (Entered: 11/17/2015)
11/19/2015	96	NOTICE Of Filing Notice of Filing Original Discovery by Andrea Gogel <i>in Support of Plaintiff's Motion for Partial Summary Judgment</i> (Carter, Meredith) (Entered: 11/19/2015)
12/07/2015	97	Joint MOTION for Extension of Time to File Responses and Replies to Summary Judgment with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 12/07/2015)
12/07/2015	98	ORDER granting 97 Joint Motion for Extension of Time to file responses and replies re 93 MOTION for Summary Judgment. Responses due 12/17/15; Replies due 1/15/16. Signed by Magistrate Judge Russell G. Vineyard on 12/7/15. (jlm) (Entered: 12/08/2015)
12/17/2015	99	RESPONSE in Opposition re 93 MOTION for Summary Judgment filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 12/17/2015)
12/17/2015	100	Response to Statement of Material Facts re 93 MOTION for Summary Judgment filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 12/17/2015)
12/17/2015	101	RESPONSE in Opposition re 83 MOTION for Summary Judgment filed by Andrea

		Gogel, Andrea Attachments: # 1 Affidavit Declaration of Andrea Gogel, # 2 Affidavit Declaration of Diana Ledbetter, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G, # 10 Exhibit H (Carter, Meredith) (Entered: 12/17/2015)
12/17/2015	102	Response to Statement of Material Facts re 83 MOTION for Summary Judgment filed by Andrea Gogel. (Carter, Meredith) (Entered: 12/17/2015)
12/17/2015	103	Statement of Material Facts re 83 MOTION for Summary Judgment filed by Andrea Gogel. (Carter, Meredith) (Entered: 12/17/2015)
12/17/2015	104	MOTION for Leave to File Excess Pages <i>to Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment</i> with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 12/17/2015)
01/04/2016		Submission of 83 MOTION for Summary Judgment, 93 MOTION for Summary Judgment and 104 MOTION for Leave to File Excess Pages <i>to Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment</i> , submitted to Magistrate Judge Russell G. Vineyard. (jlm) (Entered: 01/04/2016)
01/05/2016	105	ORDER GRANTING 104 Motion for Leave to File Excess Pages. Signed by Magistrate Judge Russell G. Vineyard on 1/5/16. (jlm) (Entered: 01/05/2016)
01/13/2016	106	MOTION for Leave to File Excess Pages with Brief In Support by Kia Motors Manufacturing of Georgia, Inc.. (Attachments: # 1 Text of Proposed Order)(Martin, William) (Entered: 01/13/2016)
01/14/2016	107	ORDER granting 106 Dft's Motion for Leave to File Excess Pages in support of Summary Judgment. Page limit for reply in support of dft's motion for summary judgment is extended to 20 pages. Signed by Judge Timothy C. Batten, Sr on 1/14/16. (rsh) (Entered: 01/14/2016)
01/15/2016	108	MOTION for Leave to File Excess Pages <i>to Plaintiff's Reply Brief</i> with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 01/15/2016)
01/15/2016	109	REPLY to Response to Motion re 93 MOTION for Summary Judgment filed by Andrea Gogel. (Carter, Meredith) (Entered: 01/15/2016)
01/15/2016	110	REPLY BRIEF re 83 MOTION for Summary Judgment filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 01/15/2016)
01/15/2016	111	Response to 103 Statement of Material Facts . (Martin, William) Modified on 1/19/2016 (jlm). (Entered: 01/15/2016)
01/19/2016	112	ORDER granting 108 Motion for Leave to File Excess Pages. Signed by Magistrate Judge Russell G. Vineyard on 1/19/16. (jlm) (Entered: 01/19/2016)
02/16/2016	113	Petition for Leave of Absence for the following date(s): 4/1/16, 4/4/16, 4/5/16, 4/6/16, 4/7/16, 4/8/16, by Joseph M. Murray, Jr. (Murray, Joseph) (Entered: 02/16/2016)
03/22/2016	114	DEPOSITION of Ted Arnold taken on July 27, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	115	DEPOSITION of Latesa Bailey taken on September 10, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	116	DEPOSITION of Stuart Countess taken on July 27, 2015 by Kia Motors

03/22/2016	117	DEPOSITION of Andrea Gogel - Part I taken on July 22, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	118	DEPOSITION of Andrea Gogel - Part II taken on July 22, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	119	DEPOSITION of Paul Grimes taken on August 7, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	120	DEPOSITION of J. Randy Jackson taken on September 25, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	121	DEPOSITION of Robert D. Tyler taken on August 11, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	122	DEPOSITION of Robert Tyler taken on September 3, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
03/22/2016	123	DEPOSITION of Arthur Williams taken on August 20, 2015 by Kia Motors Manufacturing of Georgia, Inc..(Martin, William) (Entered: 03/22/2016)
05/12/2016	124	Petition for Leave of Absence for the following date(s): 6/3/16, 6/6/16, 6/7/16, 6/8/16, 6/9/16, 6/10/16, 6/13/16, 6/14/16, 6/15/16, 6/16/16, 6/17/16, by William M. Clifton, III. (Clifton, William) (Entered: 05/12/2016)
08/05/2016	125	FINAL REPORT AND RECOMMENDATION re 19 Amended Complaint, filed by Andrea Gogel. Court recommends granting KMMG's 83 Motion for Summary Judgment and recommends denying Gogel's 93 Motion for Partial Summary Judgment. Signed by Magistrate Judge Russell G. Vineyard on 8/5/16. (jlm) (Entered: 08/08/2016)
08/05/2016		FINAL REPORT AND RECOMMENDATION recommending denying 93 MOTION for Summary Judgment filed by Andrea Gogel and recommending granting 83 MOTION for Summary Judgment filed by Kia Motors Manufacturing of Georgia, Inc. (Contained in 125 Final R&R). Signed by Magistrate Judge Russell G. Vineyard on 8/5/16. (jlm) (Entered: 08/08/2016)
08/05/2016	126	ORDER for Service of 125 Final Report and Recommendation, by Magistrate Judge Russell G. Vineyard. Each party may file written objections to the Report & Recommendation within 14 days of service. If no objections are filed, the Report & Recommendation may be adopted as the opinion and order of the District Court. Signed by Magistrate Judge Russell G. Vineyard on 8/5/16. (jlm) (Entered: 08/08/2016)
08/22/2016	127	OBJECTIONS to 125 Report and Recommendation filed by Andrea Gogel. (Carter, Meredith) (Entered: 08/22/2016)
09/07/2016	128	REPLY to Objection to Report and Recommendation re 127 Objections to Report and Recommendation filed by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 09/07/2016)
09/08/2016		Submission of 125 FINAL REPORT AND RECOMMENDATION re 19 Amended Complaint, and 93 MOTION for Summary Judgment filed by Andrea Gogel, 83 MOTION for Summary Judgment filed by Kia Motors Manufacturing of Georgia,

09/12/2016	129	NOTICE by Andrea Gogel re 127 Objections to Report and Recommendation of <i>Filing Supplemental Authority</i> (Attachments: # 1 Supplement Ortiz v. Werner Enters., Inc.)(Carter, Meredith) (Entered: 09/12/2016)
09/27/2016	130	ORDER ADOPTING the Magistrate Judge's 125 Final Report and Recommendation; GRANTING Kia's 83 Motion for Summary Judgment and DENYING Gogel's 93 Motion for Summary Judgment. Signed by Judge Timothy C. Batten, Sr on 9/27/16. (jlm) (Entered: 09/27/2016)
09/27/2016	131	CLERK'S JUDGMENT in favor of defendant and against plaintiff for costs of action. (jlm)--Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist-- (Entered: 09/27/2016)
09/27/2016		Civil Case Terminated. (jlm) (Entered: 09/27/2016)
10/26/2016	132	BILL OF COSTS by Kia Motors Manufacturing of Georgia, Inc.. (Martin, William) (Entered: 10/26/2016)
10/27/2016	133	(Re-docketed as 134 using correct event) NOTICE by Andrea Gogel of <i>Appeal</i> (Attachments: # 1 Exhibit Order Adopting R&R, # 2 Exhibit Judgment, # 3 Exhibit Final Report and Recommendation)(Carter, Meredith) Modified on 10/28/2016 (jlm). (Entered: 10/27/2016)
10/27/2016	134	NOTICE OF APPEAL as to 130 Order on Motion for Summary Judgment, Order on Final Report and Recommendation and 131 Clerk's Judgment by Andrea Gogel. Transcript Order Form due on 11/10/2016 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(jlm) (Entered: 10/28/2016)
10/28/2016	135	Transmission of Certified Copy of Notice of Appeal, Judgment, Order, Report and Recommendation, and Docket Sheet to US Court of Appeals re 134 Notice of Appeal, (Attachments: # 1 Notice of Appeal, # 2 Order, # 3 Judgment, # 4 Report and Recommendation)(jlm) (Additional attachment(s) added on 10/28/2016: # 5 Docket Sheet) (jlm). (Entered: 10/28/2016)
11/02/2016	136	USCA Acknowledgment of 134 Notice of Appeal filed by Andrea Gogel. Case Appealed to USCA - 11th Circuit. USCA Case Number 16-16850-C. (kac) (Entered: 11/02/2016)
11/02/2016	137	CERTIFICATE of Counsel to <i>Withdraw as Counsel (with Plaintiff's Consent)</i> by John Lawrence Mays on behalf of Andrea Gogel (Mays, John) (Entered: 11/02/2016)
11/09/2016	138	MOTION to Review Taxation of Costs with Brief In Support by Andrea Gogel. (Carter, Meredith) (Entered: 11/09/2016)
11/11/2016		Payment of Appeal Fees re 134 Notice of Appeal, by Andrea Gogel. Filing fee \$ 505, receipt number 113E-6809444. (Carter, Meredith) (Entered: 11/11/2016)
11/14/2016	139	Forwarded Payment of Appeal Fees to USCA re: 134 Notice of Appeal filed by Andrea Gogel. Case Appealed to USCA - 11th Circuit. USCA Case Number 16-16850-C. (kac) (Entered: 11/14/2016)

Tab 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,

Plaintiff,

V.

**KIA MOTORS MANUFACTURING
OF GEORGIA, INC.,**

Defendant.

Civil Action No. _____

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the
Northern District of Georgia

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1446(a), Defendant Kia Motors Manufacturing Georgia, Inc. (incorrectly identified by Plaintiff as “Kia Motors Manufacturing of Georgia, Inc.” and hereinafter referred to as “Defendant”), hereby files this Notice of Removal of this case to the United States District Court for the Northern District of Georgia, based upon the following grounds:

1. Plaintiff filed the instant action in the Superior Court of Fulton County, Georgia, on June 19, 2014, and the case was assigned Civil Action No. 2014-CV-247952. A Notice of a Lawsuit and Request to Waive Service of a

Summons was signed and dated by Plaintiff's counsel, Meredith J. Carter, on June 24, 2014. Copies of the Notice of a Lawsuit and Request to Waive Service of a Summons and the Complaint, which are attached hereto as Attachment A, were delivered to W. Jonathan Martin II, counsel for Defendant, via email and U.S. Mail on June 24, 2014.

2. The Superior Court in which this action was originally filed lies within the district and division of the United States District Court in which this Notice of Removal is filed.

3. Pursuant to 28 U.S.C. § 1446(b), this notice of removal is filed within 30 days after Defendant's receipt through service or otherwise of the initial pleadings (Notice of a Lawsuit and Request to Waive Service of a Summons and Complaint) setting forth the claims for relief upon which this action is based.

4. This is a civil action as to which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1331 and is thus one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(b), to wit: Plaintiff's Complaint purports to allege claims of race and alienage discrimination, and retaliation in violation of 42 U.S.C. § 1981, and for gender and national origin discrimination and retaliation, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. By virtue of 28 U.S.C. § 1441(c),

upon removal, this Court may exercise jurisdiction over the remaining claims contained in Plaintiff's Complaint.

5. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing of Notice of Removal is today being served upon all parties and delivered to the Clerk of the Superior Court of Fulton County for filing. A copy of said Notice of Filing of Notice of Removal is attached hereto as Attachment B (without duplicative attachments).

WHEREFORE, this case is hereby removed from the Superior Court of Fulton County to the United States District Court for the Northern District of Georgia, Atlanta Division.

*** SIGNATURES ON FOLLOWING PAGE ***

Respectfully submitted this 24th day of July, 2014.

CONSTANGY, BROOKS & SMITH, LLP

/s/ W. Jonathan Martin II
W. JONATHAN MARTIN II
Georgia Bar No. 474590
WILLIAM M. CLIFTON III
Georgia Bar No. 170176

577 Mulberry Street, Suite 710
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(478) 750-8600
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JOSEPH M. MURRAY, JR.
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230 Peachtree St., N.W.
Suite 2400
Atlanta, GA 30303
(404) 525-8622
jmurray@constangy.com

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing NOTICE OF REMOVAL with the Clerk of Court using the CM/ECF system and served same upon the following attorneys of record via U.S. Mail, postage prepaid, addressed as follows:

Matthew C. Billips
Meredith J. Carter
Billips & Benjamin LLP
One Tower Creek, Suite 190
3101 Towercreek Parkway
Atlanta, GA 30339

Dated this 24th day of July, 2014.

CONSTANGY, BROOKS & SMITH, LLP

/s/ W. Jonathan Martin II
W. JONATHAN MARTIN II
Georgia Bar No. 474590

577 Mulberry Street, Suite 710
P.O. Box 1975
Macon, GA 31202-1975
(478) 750-8600
(478) 750-8686 (facsimile)
jmartin@constangy.com

Tab 1-1

ATTACHMENT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ANDREA GOGEL,	:	
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	
vs.	:	NO. 2014-CV-247952
	:	
KIA MOTORS MANUFACTURING OF GEORGIA,	:	JURY TRIAL DEMANDED
INC.	:	
	:	
Defendant.	:	

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

TO: KIA MOTORS MANUFACTURING OF GEORGIA, INC.
c/o Jonathan Martin, Esq.
Constangy, Brooks & Smith, LLP
577 Mulberry Street, Suite 710
Macon, Georgia 31201-8588

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver in accordance with O.C.G.A. Section 9-11-4(d). To avoid these expenses, you must return the signed waiver within 30 days from the date shown below, which is the date this notice was sent. Two copies of the Waiver Form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.


If you return the signed waiver, I will file it with the Court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the Complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 6/24/14


Signature of the attorney or unrepresented party

Meredith J. Carter
Matthew C. Billips
BILLIPS & BENJAMIN LLP
One Tower Creek, Suite 190
3101 Towercreek Parkway
Atlanta, Georgia 30339
(770) 859-0751



IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ANDREA GOGEL,

Plaintiff,

Vs.

KIA MOTORS MANUFACTURING
OF GEORGIA, INC.,

Defendant.

CIVIL ACTION NO.:

2014CV247952

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Plaintiff Andrea Gogel, by and through undersigned counsel, and files her Complaint for Damages against Defendant Kia Motors Manufacturing of Georgia, Inc., hereinafter ("KMMG") or ("Defendant"), and shows the Court as follows:

JURISDICTION

1.

This is a lawsuit brought due to discrimination on the basis of race, alienage, and retaliation in violation of 42 U.S.C. § 1981; and for discrimination based on gender, national origin, and retaliation in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"). This Court has subject matter jurisdiction over this action.

2.

Plaintiff timely filed Charges of Discrimination against Defendant with the Equal Opportunity Commission ("EEOC") on November 10, 2010 for gender and national origin, and on February 8, 2011 for retaliation. On March 21, 2014, the EEOC issued Plaintiff two "Notices of Right to Sue", but Plaintiff did not receive either one until thirty days after issuance for her

initial charge and sixty days after issuance for her retaliation charge. Despite the untimely receipt, Plaintiff files this Complaint within ninety (90) days of the Right to Sue issue date.

VENUE

3.

Venue is appropriate in this Court as Defendant KMMG has its registered agent for service in Fulton County.

PARTIES

4.

Plaintiff is a resident of the State of Georgia and is entitled to bring actions of this type and nature.

5.

Defendant Kia Motors Manufacturing of Georgia, Inc., is a Korean corporation, incorporated in Delaware, which conducts business in Georgia, with its principal office in West Point, Georgia, and is authorized to do business in the State of Georgia.

6.

Defendant KMMG may be served with service of process through its Registered Agent, CT Corporation System, 1201 Peachtree Street, NE, Atlanta, GA 30361.

7.

Defendant KMMG at all times relevant to her claims was Plaintiff's employer.

FACTUAL ALLEGATIONS

8.

Plaintiff is a white American female citizen.

9.

KMMG hired Plaintiff on March 17, 2008 as a Team Relations Manager, which was initially a section within Human Resources. She was recruited from Toyota by her supervisors Randy Jackson and Bob Tyler.

10.

Randy Jackson was Director of Human Resources and at all times relevant to Plaintiff's employment, was Plaintiff's supervisor. Bob Tyler was Manager of Human Resources at the time of Plaintiff's hire and was her peer. It was not until March 2009 when the initial Head of Department (HOD) designations were made that Tyler became Plaintiff's supervisor for the remainder of her employment.

11.

Plaintiff's job duties included management of Human Resources professionals; employee advocate that assisted employees in understanding policies and procedures; investigation of internal American employee complaints; and development of policies and programs.

12.

KMMG's organizational structure included an American and a Korean counterpart in just about all leadership positions. However, KMMG's President and other higher level leaders were all Korean males. During Plaintiff's employment, there were no Americans, male or female, that were in positions of significant power.

13.

When Plaintiff first began working at KMMG, Randy Jackson and Eddie Jin, Korean male, told her she had to understand the Korean culture and adhere to its beliefs. One of those beliefs

was that younger employees were preferred and she should help the Koreans figure out which job candidates were younger so the older candidates could be weeded out.

14.

Ms. Gogel soon learned that the Korean culture and beliefs as exemplified by Defendant's Korean management were contrary to American workplace laws and often violated American laws. In addition, the Korean culture, as exemplified by Defendant's Korean management, held negative stereo-types against women in the workplace and expected American employees to show up to work, do as told, and to not complain about anything they were told to do by a Korean manager, even if it were unlawful.

15.

In June 2008, a Korean male cautioned Ms. Gogel to never disagree or argue with any of the Koreans. If she disagreed with a policy or anything else, she should let him address the situation.

16.

In and around November 2008, Ms. Gogel received numerous complaints about Mr. Ahn, Korean male President of KMMG, and a black American female and Assistant Manager of General Affairs. The complaints alleged they were in a sexual relationship and that the female was using her relationship with Mr. Ahn to threaten subordinates who disagreed with her and to "pad" her work hours in order to receive more pay.

17.

During the same month, Kevin Kim, Korean male, told Ms. Gogel that Head of Department ("HOD") designations would begin happening soon, but only for production and that Human

Resources would not have one named at the time. However, no HOD designations were made at all at this time for production or any other department.

18.

Also in November 2008, Ms. Gogel learned that KMMG only wanted young, pretty women for the General Affairs Department. When Ms. Gogel protested, as this constituted discrimination on the basis of both age and gender, Randy Jackson laughed and said the decision had already been made.

19.

In December 2008, Hyung Sook “Justin” Yoo, Korean male, was hired as Ms. Gogel’s counterpart in Team Relations. He rarely interacted with Ms. Gogel and instead chose to interact primarily with her male subordinate, even on issues which should have been taken to Ms. Gogel.

20.

In February 2009, Kevin Kim asked Ms. Gogel to conduct a “secret” investigation into Mr. Ahn’s and the black female’s relationship, even though Randy Jackson had told Ms. Gogel she could not investigate. Ms. Gogel was instructed not to share anything written because it was supposed to be very “confidential.”

21.

In March 2009, Kevin Kim announced HOD designations would be made at this time for all departments. Prior to the announcement, Kevin Kim showed Ms. Gogel documents that showed Team Relations would now be a separate department instead of a section within Human Resources. The organization chart that was ultimately prepared showed Human Resources and Team

Relations as separate departments, but that Bob Tyler was made HOD over both of them, rather than Ms. Gogel being HOD over Team Relations.

22.

Also, in March 2009, Kevin Kim told Ms. Gogel to immediately stop any investigation into Mr. Ahn's relationship and to destroy any related documents. From March 2009 to June 2009, Ms. Gogel's and Mr. Kim's relationship seemed to change drastically. Mr. Kim was sometimes rude to Ms. Gogel and decreased her resources. Mr. Kim appeared to not want anything at all to do with Ms. Gogel anymore. In addition, it was around this time that Ms. Gogel began to feel as if she were being treated differently than similarly situated men in her Department and other Departments.

23.

More specifically, she began to look at Head of Department ("HOD") designations throughout KMMG and noticed that no HODs were women. When Ms. Gogel confronted Randy Jackson about how the HOD designations had been made, he told her it was automatic and that any American Manager that was in the role when the designations were made was automatically placed in that position.

24.

Ms. Gogel then asked Mr. Jackson about whether the fact that Team Relations had just been made a separate department from Human Relations impacted the HOD designations and he replied "Yes, it was a timing issue." He assured Plaintiff that it was not because of her performance and "they" would take care of her in April 2010.

25.

Soon thereafter, Plaintiff began to feel overly scrutinized by Jackson and Kim. In addition, more and more employees and supervisors complained to her about the way females were being treated at KMMG. Since Ms. Gogel was experiencing much of the same treatment, she began to believe that she was receiving extra criticism and reduced resources for her job because she is woman.

26.

The complaints Ms. Gogel heard included female security guards being hidden when Korean VIPs visited; a female security officer being terminated because she was not pretty; and about a female server being dismissed from a company function because she was pregnant.

27.

In or around September 2009, after a meeting between Randy Jackson, Bob Tyler, Ms. Gogel, Charlie Webb, Kevin Kim and KS Kim, Mr. Jackson told Ms. Gogel that Mr. Kim did not want her to speak so strongly as she did in the meeting. When Ms. Gogel asked for more of an explanation, Jackson told her that she really shouldn't speak at all in meetings. In response, Ms. Gogel asked Jackson if he had a problem with two of her male subordinate employees speaking in meetings and Jackson replied "no".

28.

In October 2009, Ms. Gogel met with Bob Tyler and Randy Jackson to express her concerns about the way she was being treated and that she believed she was being singled out because of her gender. In addition, Ms. Gogel complained about a new male hire coming into KMMG with a HOD designation when she was told that she could not be made a HOD until April.

In response, Jackson asked Ms. Gogel if Toyota might take her back. After the meeting, Jackson told her he was sorry and if he had known what KMMG would be like for her, he would not have ever brought her to KMMG. He said change around KMMG was “very slow.”

29.

In November 2009, Ms. Gogel followed up with Jackson about the October conversation and he acted like he did not know what she was talking about. Ms. Gogel asked him again if there was a plan to designate a HOD for Team Relations and Jackson said he didn’t understand and that Team Relations was just a part of Human Resources, not a department that could have a HOD designation. This explanation was contrary to prior conversations Ms. Gogel had with Jackson when he had confirmed Team Relations was separate from Human Resources. Moreover, on various documents, Justin Yoo, Korean male, was listed as being the HOD for Team Relations.

30.

In January 2010, Ms. Gogel asked Bob Tyler about the HOD designation for Team Relations and he said that it was a separate department with no plans to change that. Again, Ms. Gogel went to Jackson after this conversation and he said he would get the changes made for Ms. Gogel by the end of the year.

31.

Ms. Gogel received her first and only performance appraisal the end of January/beginning of February 2010. Bob Tyler, Randy Jackson and Hyung Sook Yoo “Justin” were the reviewers. Ms. Gogel received an overall rating of a “B” which is “Fully Meets Expectations”.

32.

In April and May 2010, a few American female employees resigned from KMMG citing

treatment towards women as one of the reasons for their resignation. One American female was told by Richard Park, Korean male and Senior Manager of Legal, that mothers should be home with their children and working mothers are “bad moms.” Park’s statement was relayed to Randy Jackson by Bob Tyler for further follow-up. Upon Ms. Gogel’s information and belief, Jackson did nothing. Another white, American female resigned because “work environment was not favorable for women in management positions.”

33.

In or around September 2010, a “Management Workshop” was scheduled, which was supposed to offer the opportunity to review some issues uncovered in a cultural assessment survey and to provide team-building between Korean and American management. However, no one had ever seen the results of the Cultural Assessment, even though KMMG had previously stated that the results would be shared as a team building exercise.

34.

Ms. Gogel did not expect to receive an invitation for the Workshop since she had regularly been left out of management meetings. Ms. Gogel and one other American female, the black female that was allegedly having an affair with Mr. Ahn, were the only females invited to the meeting and were the last two names on the invite. After the meeting was over, Mr. Yoon, Korean male and COO, and KS Kim, Korean male, requested everyone go in the hallway for a picture. Specifically, Yoon and Kim were yelling for Ms. Gogel and the other female to be displayed more prominently in the photographs and continuously kept yelling out their names. Ms. Gogel remained where she was, slightly hidden, because she realized she and the other female had been invited to the predominantly male meeting for this picture. Several days later, Kevin Kim affirmed Ms. Gogel’s suspicions when he pointed out that she was barely visible in the photo.

35.

In addition in September 2010, Ms. Gogel provided a list of her concerns about working at KMMG to Bob Tyler. Mr. Tyler wanted the list in order to include as a compilation of the American Management Team's concerns. In this email, Ms. Gogel provided multiple issues and examples for inclusion. The document was provided to members of management the end of September 2010. The "Report of Concerns" document included several issues regarding gender and national origin discrimination and the manner in which females and Americans are treated vs. males and Koreans.

36.

In October 2010, Ms. Gogel was interviewed by Randy Jackson and Charlie Webb, American in-house lawyer, with Bob Tyler present as well regarding the Report of Concerns document. After the interview, Webb and Jackson portrayed Ms. Gogel to be uncooperative in their "investigation", and expressed regret that her concerns could not be addressed based on the document. Webb and Jackson were the ones that ended the interview, not Ms. Gogel. Webb and Jackson never followed back up with Ms. Gogel again after this meeting.

37.

In or around the beginning of November 2010, Ms. Gogel learned the "investigation" into her concerns was closed. As a follow up to learning this information, she sent an email to Webb, Jackson and Tyler, and carbon copied KS Kim on November 3, 2010. In the email, Ms. Gogel expressed her disappointment that KMMG was not going to investigate her complaints and basically chose to disregard anything she had to say.

38.

On November 10, 2010, Ms. Gogel filed a Charge with the EEOC for Sex and National Origin.

39.

On November 15, 2010, Mr. Ahn invited all managers to the Training Center for a dinner. During the dinner, he stood up and gave a speech. After his speech, he shouted at the Americans in attendance chastising them for complaining about KMMG and attempted to compare loyalty the Americans feel towards veterans and the loyalty Americans should feel towards KMMG.

40.

In or around November 23, 2010, KMMG had received notice of Ms. Gogel's EEOC Charge. Multiple employees overheard Jackson and Webb talking on the phone about her charge.

41.

On December 3, 2010, Ms. Gogel was placed on administrative leave pending her signature on an "acknowledgement" document created by KMMG. Ms. Gogel returned the following Monday after agreeing to sign the document. Ms. Gogel signed the document on December 6, 2010. The document, among other things, asked Ms. Gogel to agree not to discuss her EEOC Charge and not to seek documents in support of her Charge.

42.

On December 22, 2010, Ms. Gogel received a \$12,000 bonus check from Jackson. Jackson told Ms. Gogel she was doing a good job.

43.

On January 7, 2011, Ms. Gogel received a call that morning from Randy Jackson who

asked her to come into work. When she got to work, Jackson and Webb called her into a meeting about Diana Ledbetter, American female, regarding her filing her own EEOC Charge against KMMG. During this meeting, Ms. Gogel reminded Jackson that she had requested from Jackson on numerous occasions to investigate the gender discrimination issues that Ms. Ledbetter had at work and he had ignored her requests. Jackson and Webb then proceeded to interrogate Ms. Gogel about her relationship with Ms. Ledbetter and about meetings she had with Ms. Ledbetter.

44.

Ms. Gogel told them that her meetings were mainly about food service/canteen issues and the reason they went to conference rooms for privacy because of the open floor environment at KMMG. The meetings lasted maybe 30 to 45 minutes at a time, and not the hours and hours she was accused of by Jackson and Webb. In addition, Webb and Jackson accused Ms. Gogel of encouraging Ms. Ledbetter to file a Charge with the EEOC, which Ms. Gogel denied. The meeting ended with Ms. Gogel being put on administrative leave for alleged "collusion" with Ms. Ledbetter with regard to the fact that Ms. Ledbetter had filed a Charge of Discrimination with the EEOC.

45.

On January 20, 2011, Randy Jackson announced to employees at KMMG that Ms. Gogel had been terminated and that they should not have any work-related contact with her.

46.

On January 21, 2011, Ms. Gogel received the termination letter, which was effective as of January 18, 2011.

47.

The letter accused Ms. Gogel of violating the December 6, 2010 document she had signed

by encouraging Ms. Ledbetter to file a Charge of Discrimination with the EEOC.

48.

Ms. Gogel was terminated two months after filing her EEOC Charge.

49.

On February 8, 2011, Ms. Gogel filed another charge with the EEOC for Retaliation.

50.

The termination of Ms. Gogel was sufficiently harmful and intimidating that it could well dissuade a reasonable person in Plaintiff's position from making or supporting a charge of discrimination and was intended to have such effect.

51.

As a result of Defendant's misconduct, Plaintiff has suffered mental and emotional distress in an amount to be determined by the enlightened conscience of an impartial jury.

52.

Defendant's conduct was willful and deliberate and taken in reckless disregard of Plaintiff's protected rights, justifying an award of punitive damages in an amount to be determined by the enlightened conscience of an impartial jury.

CLAIMS FOR RELIEF

COUNT ONE: RACE AND ALIENAGE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981

53.

Plaintiff was discriminated against because of her race, white, and alienage, American citizen, in violation of 42 U.S.C. § 1981.

54.

A reasonable person subjected to such treatment would have found it to be abusive, as did Plaintiff, and to alter the terms or conditions of employment. As a result of Defendant's conduct, Plaintiff suffered damages.

55.

During Plaintiff's employment, Defendant subjected Plaintiff to disparate terms and conditions of employment based on race and alienage, including failing to promote Plaintiff to a Head of Department position because of her race and alienage.

56.

Ms. Gogel was continually led to believe that she would be elevated to the status of HOD up until she filed her Report of Concerns in September 2010, yet it never occurred.

57.

Although the HOD designation was a promotion, it would not have constituted a separate contract of employment, as Ms. Gogel was performing the duties and held the responsibilities of a HOD, without the title or compensation associated therewith.

58.

During Plaintiff's employment, Defendant maintained a culture that subjected other American citizens, both white and non-white to disparate terms and conditions of employment based on their race and alienage, such as the Korean culture's propensity for hiring younger candidates for positions; view that American citizens should be loyal to Koreans whether or not they were treated equally in the workplace; and an overall general dismissive attitude towards American workplace laws.

59.

As Defendant's conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

**COUNT TWO: RETALIATION FOR OPPOSING RACE
AND ALIENAGE DISCRIMINATION IN VIOLATION OF
42 U.S.C. § 1981**

60.

Following Plaintiff's internal complaints of racial and alienage discrimination and her filing of an EEOC Charge, Defendant failed to designate Plaintiff as a HOD; excluded her from management meetings; labeled her as uncooperative; took away her resources; prohibited her from advising employees of their right to file a charge with the EEOC; and ultimately terminated her employment. Defendant's retaliation violated 42 U.S.C. § 1981.

61.

Defendant's proffered reason for terminating Plaintiff was itself protected activity. Plaintiff's termination occurred two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims"; and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC Charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC.

62.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and

violated her right to engage in protected activity.

63.

Defendant's retaliation against Plaintiff was on account of her participation in the EEOC charge filing process and because of her opposition to discrimination to race and alienage discrimination in violation of 42 U.S.C. § 1981. But for her act of filing an EEOC Charge, she would not have been terminated.

64.

As a result of Defendant's unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

COUNT THREE: GENDER DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT, AS AMENDED

65.

Plaintiff is a female who was subjected to disparate terms and conditions of employment because of her gender.

66.

Instances of decisions Defendant made based on gender include failing to promote Plaintiff, or any female to a Head of Department position; excluding Plaintiff from management meetings; asking her to not speak in meetings; maintaining a general dismissive attitude towards women at KMMG, which resulted in several women leaving KMMG because of the way women were treated; and terminating her employment. All of these examples constitute a violation of 42 U.S.C. § 2000e et seq.

67.

As Defendant's conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

68.

As a result of Defendant's unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

COUNT FOUR: NATIONAL ORIGIN DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT

69.

Plaintiff is a female who was subjected to disparate terms and conditions of employment because of her national origin, American in violation of 42 U.S.C. § 2000e et seq.

70.

Instances of decisions Defendant made based on national origin include failing to promote Plaintiff to Head of Department; singling out American employees and questioning their "loyalty" to the Koreans and KMMG; ignorance and indifference to American workplace laws; retaliating against Americans who do not follow the "Korean way"; and terminating her employment.

71.

As Defendant's conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

72.

As a result of Defendant's unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

**COUNT FIVE: RETALIATION FOR OPPOSING GENDER
DISCRIMINATION IN VIOLATION OF TITLE VII**

73.

Defendant KMMG retaliated against Plaintiff for complaining internally about gender discrimination and for filing a charge with the EEOC regarding gender discrimination.

74.

Defendant retaliated against Plaintiff by failing to promote Plaintiff to a HOD position, excluding her from management meetings; labeling her as uncooperative; taking away her resources; prohibiting her from advising employees of their right to file a charge with the EEOC; and ultimately terminating her employment. Defendant's retaliation against Plaintiff violated 42 U.S.C. § 2000e *et seq.*

75.

Defendant's proffered reason for terminating Plaintiff was itself protected activity and violated Title VII's anti-retaliation provision. Plaintiff's termination occurred two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims"; and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC

charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC. But for her act of filing an EEOC Charge, she would not have been terminated.

76.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and violated her right to engage in protected activity.

77.

As a direct result of Defendant's actions, Plaintiff has suffered lost wages, mental and emotional distress, humiliation, outrage, damage to her reputation, the deprivation of her rights under federal law, and is entitled to compensatory and punitive damages.

78.

As a consequence of Defendant's unlawful conduct, Plaintiff has suffered lost wages and other benefits of employment.

**COUNT SIX: RETALIATION FOR OPPOSING NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION OF TITLE VII**

79.

Defendant KMMG retaliated against Plaintiff for complaining internally about national origin and for filing a charge with the EEOC regarding national origin.

80.

Defendant retaliated against Plaintiff by failing to promote Plaintiff to a HOD position, excluding her from management meetings; labeling her as uncooperative; taking away her resources; prohibiting her from advising employees of their right to file a charge with the EEOC; and ultimately terminating her employment. Defendant's retaliation against Plaintiff violated 42

U.S.C. § 2000e et seq.

81.

Defendant's proffered reason for terminating Plaintiff was itself protected activity and violated Title VII's anti-retaliation provision. Plaintiff's termination occurred less than two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims" and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC. But for her act of filing an EEOC Charge, she would not have been terminated.

82.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and violated her right to engage in protected activity.

83.

As a direct result of Defendant's actions, Plaintiff has suffered lost wages, mental and emotional distress, humiliation, outrage, damage to her reputation, the deprivation of her rights under federal law, and is entitled to compensatory and punitive damages.

84.

As a consequence of Defendant's unlawful conduct, Plaintiff has suffered lost wages and other benefits of employment.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) That this Court declare that Defendant's actions, policies and practices complained of herein violate the rights of Plaintiff as secured by federal law;
- (b) Temporarily, preliminarily, and permanently enjoin Defendant from future discriminatory acts relative to discrimination based on race, national origin, alienage and gender and for opposing such discrimination;
- (c) General damages for mental and emotional suffering caused by Defendant's misconduct;
- (d) Punitive damages based on Defendant's willful, malicious, intentional, and deliberate acts, including ratification, condonation and approval of said acts;
- (e) Special damages for lost wages and benefits;
- (f) Reasonable attorneys' fees, costs and expenses of litigation under Title VII;
- (g) Injunctive relief and prohibition of Defendant from engaging in further unlawful conduct of the type described herein;
- (h) Trial by jury as to all issues;
- (i) Prejudgment interest at the rate allowed by law; and
- (j) All other relief to which she may be entitled.

Respectfully submitted, this 19th day of June, 2014.



Matthew C. Billips
Georgia Bar No. 057110
Meredith J. Carter
Georgia Bar No. 325422

 **COPY**

General Civil Case Filing Information Form (Non-Domestic)

Court _____ County FULTON Date Filed _____
☒ Superior MM-DD-YYYY
☐ State Docket # _____

Plaintiff(s)

Gogel Andrea
Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

No. Of Plaintiffs 1

Defendant(s)

KIA Motors Manufacturing of GA, Inc.
Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

No. Of Defendants 1

Plaintiff/Petitioner's Attorney ☐ Pro Se

Carter, Meredith J.
Last First Middle I. Prefix

325422
Bar #

Check Primary Type (Check only ONE)

- ☐ Contract/Account
- ☐ Wills/Estate
- ☐ Real Property
- ☐ Dispossessory/Distress
- ☐ Personal Property
- ☐ Equity
- ☐ Habeas Corpus
- ☐ Appeals, Reviews
- ☐ Post Judgement Garnishment, Attachment, or Other Relief
- ☐ Non-Demestic Contempt
- ☐ Tort (If tort, fill in right column)

☒ Other General Civil

Specify Title VII, Section 1981

If Tort is Case Type

(Check no more than Two)

- ☐ Auto Accident
- ☐ Premises Liability
- ☐ Medical Malpractice
- ☐ Other Professional Negligence
- ☐ Product Liability
- ☐ Other

Specify _____

Are Puntive Damages Pleaded?

- ☒ Yes
- ☐ No



COPY
DISCLOSURE STATEMENT
CLERK OF SUPERIOR COURT

CASE NUMBER _____
Assigned by Clerk

Andrea Gogel
PLAINTIFF

VS.
KIA Motors Manufacturing
of Georgia, Inc.
DEFENDANT

TYPE OF ACTION

1. ☐ Divorce without Agreement Attached
2. ☐ Divorce with Agreement Attached
3. ☐ Domestic Relations
4. ☐ Damages arising out of Contract
5. ☐ Damages arising out of Tort
6. ☐ Condemnation
7. ☐ Equity
8. ☐ Zoning - County Ordinance violations (i.e. Injunctive relief-zoning)
9. ☐ Zoning Appeals (denovo)
10. ☐ Appeal, including denovo appeal - excluding Zoning

11. ☐ URESA
12. ☐ Name Change
13. ☒ Other
14. ☐ Recusal
- ☐ Adoption

* Title VII
Section 1981

PREVIOUS RELATED CASES

Does this case involve substantially the same parties, or substantially the same subject matter, or substantially the same factual issues, as any other case filed in this court? (Whether pending simultaneously or not.)

☒ NO

☐ YES - If yes please fill out the following:

1. Case # _____
2. Parties _____ vs. _____
3. Assigned Judge _____
4. Is this case still pending? ☐ Yes ☐ No
5. Brief description of similarities: _____

Meredith Gogel
Attorney for Andrea Gogel

Tab 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,)	
)	
v.)	
	)	Civil Action No.
KIA MOTORS MANUFACTURING	)	1:14-cv-02380-AT-JFK
OF GEORGIA, INC.,)	
)	
Defendant.)	

ANSWER

COMES NOW Kia Motors Manufacturing Georgia, Inc. (incorrectly identified by Plaintiff as “Kia Motors Manufacturing of Georgia, Inc.” and hereinafter referred to as “Defendant”), by and through the undersigned counsel, Constangy, Brooks and Smith, LLP, and answers the Complaint, as follows:

FIRST DEFENSE

In answer to the specific allegations of the Complaint, Defendant responds as follows:

JURISDICTION

1. In response to the allegations contained in the first sentence of Paragraph 1 of the Complaint, Defendant admits that Plaintiff’s complaint is brought pursuant

to 42 U.S.C. § 1981 and Title VII of the Civil Rights act of 1964 but denies that there has been any discrimination or retaliation on the part of Defendant against Plaintiff. In response to the second sentence in paragraph 1 of the Complaint, Defendant admits that 42 U.S.C. § 2000e gives this Court jurisdiction over actions brought under Title VII of the Civil Rights Act of 1964, as amended and that 42 U.S.C. § 2000e authorizes equitable relief in appropriate cases, but Defendant denies that Plaintiff is entitled to any relief in this case.

2. In response to the allegations contained in Paragraph 2 of the Complaint, Defendant admits only that on or about November 10, 2010, Plaintiff filed an EEOC charge alleging discrimination, that on or about February 8, 2011, Plaintiff filed an EEOC charge alleging retaliation, and that on or about March 21, 2014, the EEOC issued two Notices of Right to sue. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2, and, accordingly, denies same.

VENUE

3. In response to the allegations contained in Paragraph 3 of the Complaint, Defendant admits only that its registered agent for service of process is in Fulton County, but denies that venue is proper in the Superior Court of Fulton County.

PARTIES

4. Upon information and belief, Defendant admits the allegations contained in Paragraph 4 of the Complaint.

5. In response to the allegations contained in Paragraph 5 of the Complaint, Defendant admits only that it is a Delaware Corporation which conducts business in Georgia and has its principal place of business in West Point, Georgia.

Defendant denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

7. In response to the allegations contained in Paragraph 7 of the Complaint, Defendant admits only that Plaintiff was employed from March 17, 2008, to January 19, 2011. Defendant denies the remaining allegations contained in Paragraph 7 of the Complaint.

FACTUAL ALLEGATIONS

8. Upon information and belief, Defendant admits the allegations contained in Paragraph 8 of the Complaint.

9. In response to the allegations contained in Paragraph 9 of the Complaint, Defendant admits only that KMMG hired Plaintiff on March 17, 2008, as a Team Relations Manager and that she was recruited from Toyota by Bob Tyler.

Defendant denies the remaining allegations contained in Paragraph 9 of the Complaint.

10. In response to the allegations contained in Paragraph 10 of the Complaint, Defendant admits only that while Plaintiff was employed by Defendant, Randy Jackson was Director of Human Resources and was Plaintiff's supervisor. For further answer, Defendant admits that Bob Tyler was Manager of Human Resources at the time of Plaintiff's hire, and that, in March 2009, Tyler was made the Head of Department of Human Resources (HOD HR) and became Plaintiff's supervisor. Defendant denies the remaining allegations contained in Paragraph 10 of the Complaint.

11. In response to the allegations contained in Paragraph 11 of the Complaint, Defendant admits only that, as Team Relations Manager, Plaintiff's duties included employee relations, communications, and investigations. Defendant denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. In response to the allegations contained in Paragraph 12 of the Complaint, Defendant admits only that KMMG's organization structure included Korean and American counterparts in many leadership positions. Defendant further admits that KMMG's President was a Korean male. Defendant denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. In response to the allegations contained in Paragraph 13 of the Complaint, Defendant admits only that Randy Jackson and Eddie Jin (Korean male) told Plaintiff that it would be beneficial for her to understand the “KIA Way” which is a unique business model based on Korean and American cultures. Defendant denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. In response to the allegations contained in Paragraph 15 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same.

16. In response to the allegations contained in Paragraph 16 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same.

17. In response to the allegations contained in Paragraph 17 of the Complaint, Defendant admits only that no Head of Department designations were made in November 2008. Defendant denies the remaining allegations contained in Paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. In response to the allegations contained in Paragraph 19 of the Complaint, Defendant admits only that, in December 2008, Hyung Sook “Justin” Yoo (Korean male) was hired as Plaintiff’s counterpart in Team Relations. Defendant denies the remaining allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. In response to the allegations contained in Paragraph 21 of the Complaint, Defendant admits only that in March 2009, Bob Tyler was made Head of Department for Human Resources, which included Team Relations. Defendant denies the remaining allegations contained in Paragraph 21 of the Complaint.

22. Defendant denies the allegations contained in first sentence on Paragraph 22 of the Complaint. In response to the remaining allegations in Paragraph 22, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same.

23. In response to the allegations contained in the first sentence of Paragraph 23 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same. Defendant denies the allegations contained in the second sentence of Paragraph 23 of the Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25. In response to the allegations contained in Paragraph 25 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same.

26. In response to the allegations contained in Paragraph 26 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same.

27. In response to the allegations contained in Paragraph 27 of the Complaint, Defendant admits only that in or around September 2009, a meeting was held with Randy Jackson, Bob Tyler, Charlie Webb, Kevin Kim, KS Kim, and Plaintiff. Defendant denies the remaining allegations contained in Paragraph 27 of the Complaint.

28. In response to the allegations contained in Paragraph 28, Defendant admits only that on one occasion, Plaintiff asked Randy Jackson if a HOD designation would be made for Team Relations, and that Randy Jackson told Plaintiff that, as with any start up operation, changes would be made slowly. Defendant denies the remaining allegations contained in Paragraph 28 of the Complaint.

29. In response to the allegations contained in Paragraph 29, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the “various documents” to which Plaintiff is referring in the last sentence of Paragraph 29, and accordingly denies same. Defendant denies the remaining allegations contained in Paragraph 29 of the Complaint.

30. In response to the allegations contained in the first sentence of Paragraph 30 of the Complaint, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of those allegations, and accordingly denies same. Defendant denies the allegations contained in the second sentence of Paragraph 30 of the Complaint.

31. In response to the allegations contained in Paragraph 31 of the Complaint, Defendant admits only that Plaintiff’s 2010 performance evaluation speaks for itself. Defendant denies the remaining allegations contained in Paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33. In response to the allegations contained in Paragraph 33 of the Complaint, Defendant admits only that in September 2010, a management workshop was scheduled to provide team building between Korean and American management.

Defendant denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. In response to the allegations contained in Paragraph 34 of the Complaint, Defendant admits only that Plaintiff was invited to the September 2010 management workshop. Defendant denies the remaining allegations contained in Paragraph 34 of the Complaint.

35. In response to the allegations contained in Paragraph 35 of the Complaint, Defendant admits only that Plaintiff purported to have provided information to Bob Tyler for his “Report of Concerns.” Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 35 of the Complaint, and accordingly denies same.

36. In response to the allegations contained in Paragraph 36 of the Complaint, Defendant admits only that in October 2010, Randy Jackson and Charlie Webb interviewed Plaintiff in response to Bob Tyler’s “Report of Concerns.” Defendant denies the remaining allegations contained in Paragraph 36 of the Complaint.

37. In response to the allegations contained in Paragraph 37 of the Complaint, Defendant admits only that Plaintiff expressed disappointment regarding the

manner in which the “Report of Concerns” was investigated. Defendant denies the remaining allegations contained in Paragraph 37 of the Complaint

38. Upon information and belief, Defendant admits the allegations contained in Paragraph 38 of the Complaint.

39. In response to the allegations contained in Paragraph 39 of the Complaint, Defendant admits only that on or about November 15, 2010, Mr. Ahn invited managers to the training center for a dinner where he gave a motivational speech to the managers. Defendant denies the remaining allegations contained in Paragraph 39 of the Complaint.

40. In response to the allegations contained in Paragraph 40 of the Complaint, Defendant admits only that in November 2012, Defendant received Plaintiff’s EEOC charge. Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 40, and accordingly denies same.

41. Defendant denies the allegations contained in the first sentence of Paragraph 41 of the Complaint. Defendant states that the document Plaintiff signed on December 6, 2010, speaks for itself. Defendant denies the remaining allegations contained in Paragraph 41 of the Complaint.

42. In response to the allegations in Paragraph 42 of the Complaint, Defendant admits only that Plaintiff received a \$12,0000 bonus check on December 22, 2010. Defendant denies the remaining allegations contained in Paragraph 42 of the Complaint.

43. In response to the allegations contained in Paragraph 43 of the Complaint, Defendant admits only that on January 7, 2011, Randy Jackson and Charlie Webb met with Plaintiff to discuss an EEOC Charge filed by Diana Ledbetter (an American female). Defendant denies the remaining allegations contained in Paragraph 43 of the Complaint.

44. In response to the allegations contained in Paragraph 44 of the Complaint, Defendant admits only that Charlie Webb and Randy Jackson placed Plaintiff on administrative leave for, *inter alia*, failing to fulfill her job responsibilities. Defendant denies the remaining allegations contained in Paragraph 44 of the Complaint.

45. In response to the allegations contained in Paragraph 45 of the Complaint, Defendant admits only that employees were told that Plaintiff no longer worked for Defendant. Defendant denies the remaining allegations contained in Paragraph 45 of the Complaint.

46. In response to the allegations contained in Paragraph 46 of the Complaint, Defendant admits only that on January 19, 2011, Plaintiff was sent a termination letter. Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46 of the Complaint, and accordingly denies same.

47. Defendant denies the allegations contained in Paragraph 47 of the Complaint, as stated. For further answer, Defendant states that the January 19, 2011, document speaks for itself.

48. Defendant denies the allegations contained in Paragraph 48 of the Complaint, as stated. For further answer, Defendant states that the dates on the relevant documents speak for themselves.

49. Upon information and belief, Defendant admits the allegations contained in Paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

CLAIMS FOR RELIEF

COUNT ONE: RACE AND ALIENAGE DISCRIMINATION
IN VIOLATION OF 42 U.S.C. § 1981

53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

**COUNT TWO: RETALIATION FOR OPPOSING RACE AND ALIENAGE
DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.

62. Defendant denies the allegations contained in Paragraph 62 of the Complaint.

63. Defendant denies the allegations contained in Paragraph 63 of the Complaint.

64. Defendant denies the allegations contained in Paragraph 64 of the Complaint.

**COUNT THREE: GENDER DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT, AS
AMENDED**

65. Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in Paragraph 66 of the Complaint.

67. Defendant denies the allegations contained in Paragraph 67 of the Complaint.

68. Defendant denies the allegations contained in Paragraph 68 of the Complaint.

COUNT FOUR: NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT

69. Defendant denies the allegations contained in Paragraph 69 of the Complaint.

70. Defendant denies the allegations contained in Paragraph 70 of the Complaint.

71. Defendant denies the allegations contained in Paragraph 71 of the Complaint.

72. Defendant denies the allegations contained in Paragraph 72 of the Complaint.

COUNT FIVE: RETALIATION FOR OPPOSING GENDER DISCRIMINATION IN VIOLATION OF TITLE VII

73. Defendant denies the allegations contained in Paragraph 73 of the Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of the Complaint.

75. Defendant denies the allegations contained in Paragraph 75 of the Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of the Complaint.

77. Defendant denies the allegations contained in Paragraph 77 of the Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of the Complaint.

**COUNT SIX: RETALIATION FOR OPPOSING NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION OF TITLE VII**

79. Defendant denies the allegations contained in Paragraph 79 of the Complaint.

80. Defendant denies the allegations contained in Paragraph 80 of the Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of the Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Complaint.

83. Defendant denies the allegations contained in Paragraph 83 of the Complaint.

84. Defendant denies the allegations contained in Paragraph 84 of the Complaint.

PRAYER FOR RELIEF

85. Defendant denies any and all allegations which may be contained in Plaintiff's prayer for relief, including subparagraphs (a) – (j), and further denies that Plaintiff is entitled to the relief prayed for, or to any other relief.

86. Defendant denies any and all allegations that are not expressly admitted herein.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

To the extent Defendant has suffered prejudices as a result of Plaintiff's failure to timely and/or diligently pursue claims against Defendant, said claims should be barred or limited by the doctrine of laches.

FOURTH DEFENSE

Defendant's actions with respect to Plaintiff's employment were premised upon legitimate, nondiscriminatory reasons.

FIFTH DEFENSE

Defendant's actions with respect to Plaintiff's employment were based upon reasonable factors other than race, gender, national origin, or alienage.

SIXTH DEFENSE

To the extent that Plaintiff's race, gender, national origin, or any other impermissible factor played any part in the decisions about which Plaintiff complains, which Defendant expressly denies, the same decisions would have been reached regardless of Plaintiff's race, gender, national origin, or other impermissible factors. Defendant acted in good faith and for legitimate non-discriminatory reasons.

SEVENTH DEFENSE

To the extent that Plaintiff alleges acts or omissions occurring more than 180 days prior to the date on which Plaintiff filed her Charge of Discrimination with the EEOC, her Title VII claims are barred.

EIGHTH DEFENSE

To the extent that Plaintiff's claims are premised upon the provisions of 42 U.S.C. § 1981, such claims are barred, in whole or in part, by the applicable statute of limitations.

NINTH DEFENSE

Any claims under Title VII which may be stated in the Complaint are barred to the extent that Plaintiff failed to exhaust her administrative remedies before the EEOC as required by 42 U.S.C. § 2000e-5.

TENTH DEFENSE

Plaintiff's damages are limited to the extent that after-acquired evidence demonstrates wrongdoing that would otherwise have led to termination of her employment.

ELEVENTH DEFENSE

Plaintiff's claims are barred by her failure to report alleged incidents of racial discrimination to Defendant, to cooperate in the investigation of the claims, and/or to exhaust administrative procedures and policies.

TWELFTH DEFENSE

Plaintiff cannot establish a *prima facie* case of discrimination.

THIRTEENTH DEFENSE

Plaintiff fails to state a claim in that many of the acts and omissions of which she complains do not constitute ultimate employment decisions protected by Title VII or § 1981, and they do not shock the conscience of a reasonable person.

FOURTEENTH DEFENSE

Plaintiff suffered no damages.

FIFTEENTH DEFENSE

Plaintiff failed to mitigate any damages she may have suffered.

SIXTEENTH DEFENSE

Plaintiff is not entitled to compensatory or punitive damages arising from her federal claims because Defendant did not intentionally discriminate or retaliate against Plaintiff nor act with malice or reckless disregard for Plaintiff's federally-protected rights, regardless of the ultimate lawfulness of its actions.

SEVENTEENTH DEFENSE

At all times relevant hereto, Defendant had a specific policy against unlawful discrimination and harassment in the workplace and such policy was well-known to employees.

EIGHTEENTH DEFENSE

To the extent that Plaintiff complained adequately of alleged discriminatory action, Defendant undertook prompt investigation and responded appropriately.

NINETEENTH DEFENSE

At all times, Defendant acted in good faith and without malice or ill-will toward Plaintiff.

TWENTIETH DEFENSE

Plaintiff's claims are barred to the extent that there was no causal connection between the events alleged and any damages she allegedly suffered.

TWENTY-FIRST DEFENSE

All Title VII claims based on allegations that are beyond the scope of Plaintiff's charges of discrimination filed with the EEOC are barred and fail to state a claim upon which relief may be granted.

TWENTY-SECOND DEFENSE

Defendant is not liable for any alleged wrongful conduct by its employees to the extent that Defendant did not acquiesce, approve, or ratify such conduct.

TWENTY-THIRD DEFENSE

Some or all of Plaintiff's claims for relief are barred by the doctrine of unclean hands.

TWENTY-FOURTH DEFENSE

Assuming *arguendo* that Plaintiff was subjected to any adverse employment action due in part to discriminatory or retaliatory animus, which Defendant expressly denies, Plaintiff would have been subject to such adverse employment action in any event for reasons unrelated to discrimination or retaliation.

TWENTY-FIFTH DEFENSE

Any claim for punitive damages is barred because of the provisions of the Georgia Constitution and the Constitution of the United States as set out more specifically below:

- a. Any claim for punitive damages in this case would amount to a denial of substantive due process and procedural due process in violation of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, because damages might be imposed based upon a burden of proof which does not rise to the level of clear, cogent or convincing evidence.
- b. Plaintiff's claim for punitive damages violates Defendant's rights to access to the courts guaranteed by the Seventh and Fourteenth Amendments of the United States Constitution, since the threat of an award of unlimited punitive damages chills Defendant's exercise of rights to free access to the courts and violates Article I, Section 1, Paragraph XII of the Georgia Constitution requiring that all courts shall be open.
- c. Any claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution in that the standard for determining the requisite mental state of the defendant or imposition of punitive damages is void for vagueness. There are no objective guidelines on which the finder of fact may base its award, and the tests or standards for which punitive damages are awarded differ from state to state such that a specific act or omission of a given defendant may or may not result in the imposition of punitive damages, and may result in different amounts of punitive

damages, depending upon the state in which the suit is filed, thereby resulting in disparate treatment of similarly situated defendants because economic advantage or disadvantage and, thus denies defendant due process and equal protection of law.

d. Any award of punitive damages in this case would be excessive and disproportionate to the award of compensatory damages thus violating principles of due process and equal protection of the laws.

e. Any award of punitive damages in this case would constitute an excessive fine in violation of Article I, Section 1, Paragraph XVII of the Georgia Constitution.

TWENTY-SIXTH DEFENSE

Defendant made a good faith effort to comply with Title VII and Section 1981 and therefore cannot be held liable for punitive damages.

TWENTY-SEVENTH DEFENSE

Plaintiff failed to file this case in the proper venue, and this case should be transferred to the Northern District of Georgia Newnan Division.

TWENTY-EIGHTH DEFENSE

Defendant reserves the right to plead other affirmative defenses which may become known during its continuing investigation and during discovery in this case.

WHEREFORE, Defendant respectfully requests that:

- (a) The Complaint be dismissed;
- (b) Judgment be entered for Defendant;
- (c) Plaintiff takes nothing;
- (d) Defendant be awarded its costs in defending this matter; and
- (e) Defendant be awarded such other and further relief as this Court deems proper.

*** SIGNATURES ON FOLLOWING PAGE ***

This 25th day of July, 2014.

CONSTANGY, BROOKS & SMITH, LLP

/s/ W. Jonathan Martin II

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing ANSWER with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Matthew C. Billips
Meredith J. Carter
Billips & Benjamin LLP
One Tower Creek, Suite 190
3101 Towercreek Parkway
Atlanta, GA 30339

Dated this 25th day of July, 2014.

CONSTANGY, BROOKS & SMITH, LLP

/s/ W. Jonathan Martin II
W. JONATHAN MARTIN II
Georgia Bar No. 474590

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Tab 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	1:14-cv-02380-AT-JFK
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
OF GEORGIA, INC.,)	
)	
Defendant.)	

**CONSENT MOTION FOR LEAVE TO AMEND
THE COMPLAINT TO CORRECTLY IDENTIFY
DEFENDANT AS KIA MOTORS MANUFACTURING GEORGIA, INC.**

COMES NOW Plaintiff Andrea Gogel, with consent from Defendant, and hereby files this Consent Motion for Leave to Amend the Complaint to Correctly Identify Defendant as Kia Motors Manufacturing Georgia, Inc., pursuant to Federal Rules of Civil Procedure, Rule 15(a)(2) showing as follows:

INTRODUCTION

Plaintiff filed her Complaint on June 19, 2014 in Fulton Superior Court, asserting claims for gender discrimination, national origin discrimination and retaliation pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”) and for discrimination on the basis of race, alienage, and retaliation in violation of 42 U.S.C. § 1981. Defendant removed the

Complaint to the Northern District of Georgia, Atlanta Division on July 24, 2014. (Docs. 1 and 1-1). During the Rule 26(f) Conference on August 7, 2014, Defendant's counsel informed Plaintiff that she had incorrectly identified Defendant in the Complaint. Plaintiff agreed to amend the Complaint to correctly identify Defendant and Defendant consented. (Doc. 8). Thus, Plaintiff respectfully requests permission for leave to amend the Complaint to reflect the proper Defendant in this matter.

ARGUMENT AND CITATION TO AUTHORITY

Pursuant to Fed. R. Civ. P. 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." *Id.* Here, Plaintiff has obtained Defendant's written consent to correct the identification of Defendant. (Doc. 9). Thus, in accordance with Rule 15, Plaintiff should be able to amend the Complaint. In addition, the amendment will "relate back" to the original filed Complaint, as long as the misnamed party has received notice of the action and will not be prejudiced in defending the action on the merits and "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1).

Here, Plaintiff's amendment of the Complaint will relate back to the original

filed Complaint because Kia Motors Manufacturing Georgia, Inc. (“KMMG”) was involved during the investigation of Plaintiff’s Charges filed with the Equal Opportunity Commission (“EEOC”); KMMG was represented by counsel during the EEOC investigation of Plaintiff’s allegations; and KMMG, through undersigned Defense counsel, has been involved in the instant litigation. Moreover, the allegations in Plaintiff’s Complaint remain the same and the misnamed Defendant has received actual notice of the institution of this action and, know, that even with Plaintiff’s mistake in identification, the action would have been brought against it. Lacewell v. Greyhound Bus Lines, 24 Fed. R. Serv. 2d 264, *4 (M.D. Nc. 1977). Therefore, the amendment to the Complaint will “relate back” to the date of the original filing of the Complaint. Lacewell, 24 Fed. R. Serv. 2d at *5.

Accordingly, due to there being no opposition from Defendant to Plaintiff’s Motion to Amend the Complaint and correctly name Defendant, Plaintiff respectfully requests that her motion be granted. See, Watwood v. Barber, 70 F.R.D. 1, *3 & 4 (N.D. Ga. 1975) (granting the plaintiffs’ motions to amend the complaint to name correct parties due to no opposition to the plaintiffs’ motions).

CONCLUSION

WHEREFORE Plaintiff requests that the Court grant this Motion and direct the Clerk to file the proposed Amended Complaint as set forth in Exhibit A to this

Motion. Plaintiff also seeks an Order from the Court adopting the new style of the case both in hard copy and in the ECF system.

Respectfully submitted this 18th day of September, 2014.

/s/ Meredith J. Carter
Meredith J. Carter
Georgia Bar No. 325422
Matthew C. Billips
Georgia Bar No. 057110

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By:

/s/ Meredith J. Carter
Meredith J. Carter
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	1:14-cv-02380-AT-JFK
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
OF GEORGIA, INC.,)	
)	
Defendant.)	

CERTIFICATE OF FONT COMPLIANCE
REQUIRED BY LOCAL RULE 7.1D AND SERVICE

In accordance with Local Rule 7.1D, I hereby certify that the foregoing was prepared with one of the font and point selections approved by the Court in Local Rule 5.1B. Specifically, it was prepared with Times New Roman, 14 point.

I further certify that I electronically filed CONSENT MOTION TO AMEND THE COMPLAINT with the Clerk of Court using the CM/ECF system which will automatically send email or other notification of such filing to the following attorneys of record:

W. Jonathan Martin II
William M. Clifton III
Joseph M. Murray, Jr.
Constangy, Brooks & Smith, LLP
577 Mulberry Street, Suite 710

P.O. Box 1975
Macon, GA 31202

This 18th day of September, 2014.

/s/ Meredith J. Carter
Meredith J. Carter
Georgia Bar No. 325422

Tab 19

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	1:14-cv-02380-AT-JFK
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
GEORGIA, INC.,)	
)	
Defendant.)	

AMENDED COMPLAINT

COMES NOW, Plaintiff Andrea Gogel, by and through undersigned counsel, and files her Amended Complaint for Damages against Defendant Kia Motors Manufacturing Georgia, Inc., hereinafter (“KMMG”) or (“Defendant”), and shows the Court as follows:

JURISDICTION

1.

This is a lawsuit brought due to discrimination on the basis of race, alienage, and retaliation in violation of 42 U.S.C. § 1981; and for discrimination based on gender, national origin, and retaliation in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”). This Court has subject matter jurisdiction over this action.

2.

Plaintiff timely filed Charges of Discrimination against Defendant with the Equal Opportunity Commission (“EEOC”) on November 10, 2010 for gender and national origin, and on February 8, 2011 for retaliation. On March 21, 2014, the EEOC issued Plaintiff two “Notices of Right to Sue”, but Plaintiff did not receive either one until thirty days after issuance for her initial charge and sixty days after issuance for her retaliation charge. Despite the untimely receipt, Plaintiff files this Complaint within ninety (90) days of the Right to Sue issue date.

VENUE

3.

Venue is appropriate in this Court as Defendant KMMG has its registered agent for service in Fulton County.

PARTIES

4.

Plaintiff is a resident of the State of Georgia and is entitled to bring actions of this type and nature.

5.

Defendant Kia Motors Manufacturing Georgia, Inc., is a Korean corporation, incorporated in Delaware, which conducts business in Georgia, with its principal

office in West Point, Georgia, and is authorized to do business in Georgia.

6.

Defendant KMMG may be served with service of process through its Registered Agent, CT Corporation System, 1201 Peachtree Street, NE, Atlanta, GA 30361.

7.

Defendant KMMG at all times relevant to her claims was Plaintiff's employer.

FACTUAL ALLEGATIONS

8.

Plaintiff is a white American female citizen.

9.

KMMG hired Plaintiff on March 17, 2008 as a Team Relations Manager, which was initially a section within Human Resources. She was recruited from Toyota by her supervisors Randy Jackson and Bob Tyler.

10.

Randy Jackson was Director of Human Resources and at all times relevant to Plaintiff's employment, was Plaintiff's supervisor. Bob Tyler was Manager of Human Resources at the time of Plaintiff's hire and was her peer. It was not until

March 2009 when the initial Head of Department (“HOD”) designations were made that Tyler became Plaintiff’s supervisor for the remainder of her employment.

11.

Plaintiff’s job duties included management of Human Resources professionals; employee advocate that assisted employees in understanding policies and procedures; investigation of internal American employee complaints; and development of policies and programs.

12.

KMMG’s organizational structure included an American and a Korean counterpart in just about all leadership positions. However, KMMG’s President and other higher level leaders were all Korean males. During Plaintiff’s employment, there were no Americans, male or female, that were in positions of significant power.

13.

When Plaintiff first began working at KMMG, Randy Jackson and Eddie Jin, Korean male, told her she had to understand the Korean culture and adhere to its beliefs. One of those beliefs was that younger employees were preferred and she should help the Koreans figure out which job candidates were younger so the older candidates could be weeded out.

14.

Ms. Gogel soon learned that the Korean culture and beliefs as exemplified by Defendant's Korean management were contrary to American workplace laws and often violated American laws. In addition, the Korean culture, as exemplified by Defendant's Korean management, held negative stereo-types against women in the workplace and expected American employees to show up to work, do as told, and to not complain about anything they were told to do by a Korean manager, even if it were unlawful.

15.

In June 2008, a Korean male cautioned Ms. Gogel to never disagree or argue with any of the Koreans. If she disagreed with a policy or anything else, she should let him address the situation.

16.

In and around November 2008, Ms. Gogel received numerous complaints about Mr. Ahn, Korean male President of KMMG, and a black American female and Assistant Manager of General Affairs. The complaints alleged they were in a sexual relationship and that the female was using her relationship with Mr. Ahn to threaten subordinates who disagreed with her and to "pad" her work hours in order to receive more pay.

17.

During the same month, Kevin Kim, Korean male, told Ms. Gogel that Head of Department (“HOD”) designations would begin happening soon, but only for production and that Human Resources would not have one named at the time. However, no HOD designations were made at all at this time for production or any other department.

18.

Also in November 2008, Ms. Gogel learned that KMMG only wanted young, pretty women for the General Affairs Department. When Ms. Gogel protested, as this constituted discrimination on the basis of both age and gender, Randy Jackson laughed and said the decision had already been made.

19.

In December 2008, Hyung Sook “Justin” Yoo, Korean male, was hired as Ms. Gogel’s counterpart in Team Relations. He rarely interacted with Ms. Gogel and instead chose to interact primarily with her male subordinate, even on issues which should have been taken to Ms. Gogel.

20.

In February 2009, Kevin Kim asked Ms. Gogel to conduct a “secret” investigation into Mr. Ahn’s and the black female’s relationship, even though Randy

Jackson had told Ms. Gogel she could not investigate. Ms. Gogel was instructed not to share anything written because it was supposed to be very “confidential.”

21.

In March 2009, Kevin Kim announced HOD designations would be made at this time for all departments. Prior to the announcement, Kevin Kim showed Ms. Gogel documents that showed Team Relations would now be a separate department instead of a section within Human Resources. The organization chart that was ultimately prepared showed Human Resources and Team Relations as separate departments, but that Bob Tyler was made HOD over both of them, rather than Ms. Gogel being HOD over Team Relations.

22.

Also, in March 2009, Kevin Kim told Ms. Gogel to immediately stop any investigation into Mr. Ahn’s relationship and to destroy any related documents. From March 2009 to June 2009, Ms. Gogel’s and Mr. Kim’s relationship seemed to change drastically. Mr. Kim was sometimes rude to Ms. Gogel and decreased her resources. Mr. Kim appeared to not want anything at all to do with Ms. Gogel anymore. In addition, it was around this time that Ms. Gogel began to feel as if she were being treated differently than similarly situated men in her Department and other Departments.

23.

More specifically, she began to look at Head of Department designations throughout KMMG and noticed that no HODs were women. When Ms. Gogel confronted Randy Jackson about how the HOD designations had been made, he told her it was automatic and that any American Manager that was in the role when the designations were made was automatically placed in that position.

24.

Ms. Gogel then asked Mr. Jackson about whether the fact that Team Relations had just been made a separate department from Human Relations impacted the HOD designations and he replied “Yes, it was a timing issue.” He assured Plaintiff that it was not because of her performance and “they” would take care of her in April 2010.

25.

Soon thereafter, Plaintiff began to feel overly scrutinized by Jackson and Kim. In addition, more and more employees and supervisors complained to her about the way females were being treated at KMMG. Since Ms. Gogel was experiencing much of the same treatment, she began to believe that she was receiving extra criticism and reduced resources for her job because she is woman.

26.

The complaints Ms. Gogel heard included female security guards being

hidden when Korean VIPs visited; a female security officer being terminated because she was not pretty; and about a female server being dismissed from a company function because she was pregnant.

27.

In or around September 2009, after a meeting between Randy Jackson, Bob Tyler, Ms. Gogel, Charlie Webb, Kevin Kim and KS Kim, Mr. Jackson told Ms. Gogel that Mr. Kim did not want her to speak as strongly as she did in the meeting. When Ms. Gogel asked for more of an explanation, Jackson told her that she really shouldn't speak at all in meetings. In response, Ms. Gogel asked Jackson if he had a problem with two of her male subordinate employees speaking in meetings and Jackson replied "no".

28.

In October 2009, Ms. Gogel met with Bob Tyler and Randy Jackson to express her concerns about the way she was being treated and that she believed she was being singled out because of her gender. In addition, Ms. Gogel complained about a new male hire coming into KMMG with a HOD designation when she was told that she could not be made a HOD until April. In response, Jackson asked Ms. Gogel if Toyota might take her back. After the meeting, Jackson told her he was sorry and

if he had known what KMMG would be like for her, he would not have ever brought her to KMMG. He said change around KMMG was “very slow.”

29.

In November 2009, Ms. Gogel followed up with Jackson about the October conversation and he acted like he did not know what she was talking about. Ms. Gogel asked him again if there was a plan to designate a HOD for Team Relations and Jackson said he didn’t understand and that Team Relations was just a part of Human Resources, not a department that could have a HOD designation. This explanation was contrary to prior conversations Ms. Gogel had with Jackson when he had confirmed Team Relations was separate from Human Resources. Moreover, on various documents, Justin Yoo, Korean male, was listed as being the HOD for Team Relations.

30.

In January 2010, Ms. Gogel asked Bob Tyler about the HOD designation for Team Relations and he said that it was a separate department with no plans to change that. Again, Ms. Gogel went to Jackson after this conversation and he said he would get the changes made for Ms. Gogel by the end of the year.

31.

Ms. Gogel received her first and only performance appraisal the end of

January/beginning of February 2010. Bob Tyler, Randy Jackson and Hyung Sook Yoo “Justin” were the reviewers. Ms. Gogel received an overall rating of a “B” which is “Fully Meets Expectations”.

32.

In April and May 2010, a few American female employees resigned from KMMG citing treatment towards women as one of the reasons for their resignation. One American female was told by Richard Park, Korean male and Senior Manager of Legal, that mothers should be home with their children and working mothers are “bad moms.” Park’s statement was relayed to Randy Jackson by Bob Tyler for further follow-up. Upon Ms. Gogel’s information and belief, Jackson did nothing. Another white, American female resigned because “work environment was not favorable for women in management positions.”

33.

In or around September 2010, a “Management Workshop” was scheduled, which was supposed to offer the opportunity to review some issues uncovered in a cultural assessment survey and to provide team-building between Korean and American management. However, no one had ever seen the results of the Cultural Assessment, even though KMMG had previously stated that the results would be shared as a team building exercise.

34.

Ms. Gogel did not expect to receive an invitation for the Workshop since she had regularly been left out of management meetings. Ms. Gogel and one other American female, the black female that was allegedly having an affair with Mr. Ahn, were the only females invited to the meeting and were the last two names on the invite. After the meeting was over, Mr. Yoon, Korean male and COO, and KS Kim, Korean male, requested everyone go in the hallway for a picture. Specifically, Yoon and Kim were yelling for Ms. Gogel and the other female to be displayed more prominently in the photographs and continuously kept yelling out their names. Ms. Gogel remained where she was, slightly hidden, because she realized she and the other female had been invited to the predominantly male meeting for this picture. Several days later, Kevin Kim affirmed Ms. Gogel's suspicions when he pointed out that she was barely visible in the photo.

35.

In addition in September 2010, Ms. Gogel provided a list of her concerns about working at KMMG to Bob Tyler. Mr. Tyler wanted the list in order to include as a compilation of the American Management Team's concerns. In this email, Ms. Gogel provided multiple issues and examples for inclusion. The document was provided to members of management the end of September 2010. The "Report of

Concerns” document included several issues regarding gender and national origin discrimination and the manner in which females and Americans are treated vs. males and Koreans.

36.

In October 2010, Ms. Gogel was interviewed by Randy Jackson and Charlie Webb, American in-house lawyer, with Bob Tyler present as well regarding the Report of Concerns document. After the interview, Webb and Jackson portrayed Ms. Gogel to be uncooperative in their “investigation”, and expressed regret that her concerns could not be addressed based on the document. Webb and Jackson were the ones that ended the interview, not Ms. Gogel. Webb and Jackson never followed back up with Ms. Gogel again after this meeting.

37.

In or around the beginning of November 2010, Ms. Gogel learned the “investigation” into her concerns was closed. As a follow up to learning this information, she sent an email to Webb, Jackson and Tyler, and carbon copied KS Kim on November 3, 2010. In the email, Ms. Gogel expressed her disappointment that KMMG was not going to investigate her complaints and basically chose to disregard anything she had to say.

38.

On November 10, 2010, Ms. Gogel filed a Charge with the EEOC for Sex and National Origin.

39.

On November 15, 2010, Mr. Ahn invited all managers to the Training Center for a dinner. During the dinner, he stood up and gave a speech. After his speech, he shouted at the Americans in attendance chastising them for complaining about KMMG and attempted to compare loyalty the Americans feel towards veterans and the loyalty Americans should feel towards KMMG.

40.

In or around November 23, 2010, KMMG had received notice of Ms. Gogel's EEOC Charge. Multiple employees overheard Jackson and Webb talking on the phone about her charge.

41.

On December 3, 2010, Ms. Gogel was placed on administrative leave pending her signature on an "acknowledgement" document created by KMMG. Ms. Gogel returned the following Monday after agreeing to sign the document. Ms. Gogel signed the document on December 6, 2010. The document, among other things,

asked Ms. Gogel to agree not to discuss her EEOC Charge and not to seek documents in support of her Charge.

42.

On December 22, 2010, Ms. Gogel received a \$12,000 bonus check from Jackson. Jackson told Ms. Gogel she was doing a good job.

43.

On January 7, 2011, Ms. Gogel received a call that morning from Randy Jackson who asked her to come into work. When she got to work, Jackson and Webb called her into a meeting about Diana Ledbetter, American female, regarding her filing her own EEOC Charge against KMMG. During this meeting, Ms. Gogel reminded Jackson that she had requested from Jackson on numerous occasions to investigate the gender discrimination issues that Ms. Ledbetter had at work and he had ignored her requests. Jackson and Webb then proceeded to interrogate Ms. Gogel about her relationship with Ms. Ledbetter and about meetings she had with Ms. Ledbetter.

44.

Ms. Gogel told them that her meetings were mainly about food service/canteen issues and the reason they went to conference rooms for privacy because of the open floor environment at KMMG. The meetings lasted maybe 30

to 45 minutes at a time, and not the hours and hours she was accused of by Jackson and Webb. In addition, Webb and Jackson accused Ms. Gogel of encouraging Ms. Ledbetter to file a Charge with the EEOC, which Ms. Gogel denied. The meeting ended with Ms. Gogel being put on administrative leave for alleged “collusion” with Ms. Ledbetter with regard to the fact that Ms. Ledbetter had filed a Charge of Discrimination with the EEOC.

45.

On January 20, 2011, Randy Jackson announced to employees at KMMG that Ms. Gogel had been terminated and that they should not have any work-related contact with her.

46.

On January 21, 2011, Ms. Gogel received the termination letter, which was effective as of January 18, 2011.

47.

The letter accused Ms. Gogel of violating the December 6, 2010 document she had signed by encouraging Ms. Ledbetter to file a Charge of Discrimination with the EEOC.

48.

Ms. Gogel was terminated two months after filing her EEOC Charge.

49.

On February 8, 2011, Ms. Gogel filed another charge with the EEOC for Retaliation.

50.

The termination of Ms. Gogel was sufficiently harmful and intimidating that it could well dissuade a reasonable person in Plaintiff's position from making or supporting a charge of discrimination and was intended to have such effect.

51.

As a result of Defendant's misconduct, Plaintiff has suffered mental and emotional distress in an amount to be determined by the enlightened conscience of an impartial jury.

52.

Defendant's conduct was willful and deliberate and taken in reckless disregard of Plaintiff's protected rights, justifying an award of punitive damages in an amount to be determined by the enlightened conscience of an impartial jury.

CLAIMS FOR RELIEF

COUNT ONE: RACE AND ALIENAGE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981

53.

Plaintiff was discriminated against because of her race, white, and alienage,

American citizen, in violation of 42 U.S.C. § 1981.

54.

A reasonable person subjected to such treatment would have found it to be abusive, as did Plaintiff, and to alter the terms or conditions of employment. As a result of Defendant's conduct, Plaintiff suffered damages.

55.

During Plaintiff's employment, Defendant subjected Plaintiff to disparate terms and conditions of employment based on race and alienage, including failing to promote Plaintiff to a Head of Department position because of her race and alienage.

56.

Ms. Gogel was continually led to believe that she would be elevated to the status of HOD up until she filed her Report of Concerns in September 2010, yet it never occurred.

57.

Although the HOD designation was a promotion, it would not have constituted a separate contract of employment, as Ms. Gogel was performing the duties and held the responsibilities of a HOD, without the title or compensation associated therewith.

58.

During Plaintiff's employment, Defendant maintained a culture that subjected other American citizens, both white and non-white to disparate terms and conditions of employment based on their race and alienage, such as the Korean culture's propensity for hiring younger candidates for positions; view that American citizens should be loyal to Koreans whether or not they were treated equally in the workplace; and an overall general dismissive attitude towards American workplace laws.

59.

As Defendant's conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

**COUNT TWO: RETALIATION FOR OPPOSING RACE
AND ALIENAGE DISCRIMINATION IN VIOLATION OF
42 U.S.C. § 1981**

60.

Following Plaintiff's internal complaints of racial and alienage discrimination and her filing of an EEOC Charge, Defendant failed to designate Plaintiff as a HOD; excluded her from management meetings; labeled her as uncooperative; took away her resources; prohibited her from advising employees of their right to file a charge

with the EEOC; and ultimately terminated her employment. Defendant's retaliation violated 42 U.S.C. § 1981.

61.

Defendant's proffered reason for terminating Plaintiff was itself protected activity. Plaintiff's termination occurred two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims"; and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC Charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC.

62.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and violated her right to engage in protected activity.

63.

Defendant's retaliation against Plaintiff was on account of her participation in the EEOC charge filing process and because of her opposition to discrimination to

race and alienage discrimination in violation of 42 U.S.C. § 1981. But for her act of filing an EEOC Charge, she would not have been terminated.

64.

As a result of Defendant's unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

COUNT THREE: GENDER DISCRIMINATION
IN VIOLATION OF TITLE VII
OF THE CIVIL RIGHTS ACT, AS AMENDED

65.

Plaintiff is a female who was subjected to disparate terms and conditions of employment because of her gender.

66.

Instances of decisions Defendant made based on gender include failing to promote Plaintiff, or any female to a Head of Department position; excluding Plaintiff from management meetings; asking her to not speak in meetings; maintaining a general dismissive attitude towards women at KMMG, which resulted in several women leaving KMMG because of the way women were treated; and terminating her employment. All of these examples constitute a violation of 42

U.S.C. § 2000e et seq.

67.

As Defendant's conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

68.

As a result of Defendant's unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

**COUNT FOUR: NATIONAL ORIGIN DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT**

69.

Plaintiff is a female who was subjected to disparate terms and conditions of employment because of her national origin, American in violation of 42 U.S.C. § 2000e et seq.

70.

Instances of decisions Defendant made based on national origin include failing to promote Plaintiff to Head of Department; singling out American employees and questioning their "loyalty" to the Koreans and KMMG; ignorance

and indifference to American workplace laws; retaliating against Americans who do not follow the “Korean way”; and terminating her employment.

71.

As Defendant’s conduct was willful and deliberate, Plaintiff is entitled to all relief afforded under the statute, including an award of punitive damages.

72.

As a result of Defendant’s unlawful conduct, Plaintiff has suffered mental and emotional distress in an amount to be determined at trial by the enlightened conscience of an impartial jury. Plaintiff has also suffered lost wages and the benefits of employment, which she seeks to recover from Defendant.

**COUNT FIVE: RETALIATION FOR OPPOSING GENDER
DISCRIMINATION IN VIOLATION OF TITLE VII**

73.

Defendant KMMG retaliated against Plaintiff for complaining internally about gender discrimination and for filing a charge with the EEOC regarding gender discrimination.

74.

Defendant retaliated against Plaintiff by failing to promote Plaintiff to a HOD position, excluding her from management meetings; labeling her as uncooperative; taking away her resources; prohibiting her from advising employees of their right to

file a charge with the EEOC; and ultimately terminating her employment. Defendant's retaliation against Plaintiff violated 42 U.S.C. § 2000e et seq.

75.

Defendant's proffered reason for terminating Plaintiff was itself protected activity and violated Title VII's anti-retaliation provision. Plaintiff's termination occurred two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims"; and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC. But for her act of filing an EEOC Charge, she would not have been terminated.

76.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and violated her right to engage in protected activity.

77.

As a direct result of Defendant's actions, Plaintiff has suffered lost wages,

mental and emotional distress, humiliation, outrage, damage to her reputation, the deprivation of her rights under federal law, and is entitled to compensatory and punitive damages.

78.

As a consequence of Defendant's unlawful conduct, Plaintiff has suffered lost wages and other benefits of employment.

**COUNT SIX: RETALIATION FOR OPPOSING NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION OF TITLE VII**

79.

Defendant KMMG retaliated against Plaintiff for complaining internally about national origin and for filing a charge with the EEOC regarding national origin.

80.

Defendant retaliated against Plaintiff by failing to promote Plaintiff to a HOD position, excluding her from management meetings; labeling her as uncooperative; taking away her resources; prohibiting her from advising employees of their right to file a charge with the EEOC; and ultimately terminating her employment. Defendant's retaliation against Plaintiff violated 42 U.S.C. § 2000e et seq.

81.

Defendant's proffered reason for terminating Plaintiff was itself protected

activity and violated Title VII's anti-retaliation provision. Plaintiff's termination occurred less than two months after she filed a Charge of discrimination with the EEOC and was causally connected to the filing of her EEOC Charge, in that (a) because she filed a Charge, she was forced to sign an agreement not to discuss her pending Charge or "similar claims" and (b) Defendant fired her because they believed she had "colluded" with another employee with regard to that employee filing an EEOC charge, in violation of an agreement that was imposed on her solely because she had filed a Charge with the EEOC. But for her act of filing an EEOC Charge, she would not have been terminated.

82.

Defendant's reason for terminating Plaintiff's employment was itself retaliation for protected activity under the participation clause of Title VII's anti-retaliation provisions and violated her right to engage in protected activity.

83.

As a direct result of Defendant's actions, Plaintiff has suffered lost wages, mental and emotional distress, humiliation, outrage, damage to her reputation, the deprivation of her rights under federal law, and is entitled to compensatory and punitive damages.

84.

As a consequence of Defendant's unlawful conduct, Plaintiff has suffered lost wages and other benefits of employment.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) That this Court declare that Defendant's actions, policies and practices complained of herein violate the rights of Plaintiff as secured by federal law;
- (b) Temporarily, preliminarily, and permanently enjoin Defendant from future discriminatory acts relative to discrimination based on race, national origin, alienage and gender and for opposing such discrimination;
- (c) General damages for mental and emotional suffering caused by Defendant's misconduct;
- (d) Punitive damages based on Defendant's willful, malicious, intentional, and deliberate acts, including ratification, condonation and approval of said acts;
- (e) Special damages for lost wages and benefits;
- (f) Reasonable attorneys' fees, costs and expenses of litigation under Title VII;

- (g) Injunctive relief and prohibition of Defendant from engaging in further unlawful conduct of the type described herein;
- (h) Trial by jury as to all issues;
- (i) Prejudgment interest at the rate allowed by law; and
- (j) All other relief to which she may be entitled.

Respectfully submitted, this 18th day of September, 2014.

/s/ Meredith J. Carter
Meredith J. Carter
Georgia Bar No. 325422
Matthew C. Billips
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	1:14-cv-02380-AT-JFK
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
GEORGIA, INC.,)	
)	
Defendant.)	

**CERTIFICATE OF FONT COMPLIANCE
REQUIRED BY LOCAL RULE 7.1D AND SERVICE**

In accordance with Local Rule 7.1D, I hereby certify that the foregoing was prepared with one of the font and point selections approved by the Court in Local Rule 5.1B. Specifically, it was prepared with Times New Roman, 14 point.

I further certify that I electronically filed PLAINTIFF’S AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which will automatically send email or other notification of such filing to the following attorneys of record:

W. Jonathan Martin II
William M. Clifton III
Joseph M. Murray, Jr.
Constangy, Brooks & Smith, LLP
577 Mulberry Street, Suite 710

P.O. Box 1975
Macon, GA 31202

This 18th day of September, 2014.

/s/ Meredith J. Carter
Meredith J. Carter
Georgia Bar No. 325422

Tab 125

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ANDREA GOGEL,

Plaintiff,

v.

KIA MOTORS MANUFACTURING
GEORGIA, INC.,

Defendant.

CIVIL ACTION NO.

3:14-cv-00153-TCB-RGV

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

Plaintiff Andrea Gogel ("Gogel") brings this action against defendant Kia Motors Manufacturing Georgia, Inc. ("KMMG"), alleging discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), and 42 U.S.C. § 1981 ("§ 1981"). See [Doc. 19].¹ KMMG has filed a motion for summary judgment, [Doc. 83], which Gogel opposes, [Doc. 101]. Gogel has filed a motion for partial summary judgment on the prima facie case of her retaliation claims under Title VII and § 1981 and certain defenses offered by KMMG, [Doc. 93], which KMMG opposes, [Doc. 99]. For the reasons that follow, it is **RECOMMENDED** that KMMG's motion for summary judgment, [Doc.

¹ The listed document and page numbers in citations to the record refer to the document and page numbers shown on the Adobe file reader linked to the Court's electronic filing database, CM/ECF, except that citations to deposition transcripts are also cited according to the transcript page number.

83], be **GRANTED** and that Gogel's motion for partial summary judgment, [Doc. 93], be **DENIED**.

I. FACTUAL BACKGROUND

A. Preliminary Procedural Issues

"In this District, the process for separating disputed from undisputed material facts is governed by Local Rule 56.1(B)." Brandon v. Lockheed Martin Aeronautical Sys., 393 F. Supp. 2d 1341, 1347 (N.D. Ga. 2005), adopted at 1346. In compliance with Local Rule 56.1B, both parties have submitted statements of undisputed material facts, [Doc. 83-2; Doc. 93-2], and responses thereto [Doc. 102; Doc. 100]. Gogel also has submitted a statement of disputed material facts, [Doc. 103], to which KMMG has responded, [Doc. 111]. The Court accepts as undisputed those facts which Gogel admits or has failed to properly dispute or deny, see [Doc. 102, admitting of failing to properly dispute ¶¶ 1-3, 5, 7, 9-11, part of 12, 13-18, part of 19, 20, 22-23, part of 24, 28, part of 29, 30-31, 34, 36-48, part of 49, 50-62, 64-65, 67-70, 72, 76-77, 79-81, 83-94, 96, part of 97, 98, part of 99, 100-07, 110-12, part of 114, 116-23, 125, part of 126, 127-29, part of 131, 132-34, 138-42, 146-50, part of 152, 153-56, 158-64, part of 165, 166-70, and 173 of KMMG's statement, Doc. 83-2], as well as those facts which KMMG admits or has failed to properly dispute or deny, see [Doc. 100, admitting or failing to properly dispute ¶¶ 1-18, 20, part of 21, 25, part of 26, 28-34, part of 36, 37, part of 38, 39-40, 47, part of 49, part of 53, 54, part of 57, 59, 63, 65, 67-

69, 73, 91, 93-94, 103, 124-25, 127-28, 130-31, 136, 151-52, 155-56, 163, part of 164, 165-67, part of 168-69, 171-74, 177, 179, part of 181, 183-85, 188-90, 192-94, 196, 198, 200-01, 204, 207, 209, 215-16, 218, 221, 226, 229-30, and 232 of Gogel's statement, Doc. 93-2]; see also [Doc. 111, admitting or failing to properly dispute ¶¶ 1-2, 4-13, part of 14, 15-16, part of 18, 20-22, 27, part of 28, 32, 35-38, 41-43, 48, part of 49, part of 50, 51, 58, part of 60, part of 68, 69, part of 74, 75-76, part of 77, 81, 83, 93, 95, 97-99, 103-06, 111, 130, 132, 140, 153, 185-86, 188-90, 199, 201-02, 207, 224-26, 231-32, 242, part of 245, 246, 248, part of 249, part of 250, 252, 254-56, 262, 265, 271-72, 274, 277, 282, 284, part of 285, part of 286, 288-90, 293-95, 297-99, 301, 319, 321, 334, 337-38, and 340 of Gogel's statement, Doc. 103].² However, the Court has disregarded those facts

² KMMG objects that Paragraph 159 of Gogel's statement of disputed facts and the portion of her declaration used to support the aforementioned paragraph are contradicted by Gogel's own testimony and thus should be stricken from the record. See [Doc. 111 at 46 ¶ 159]; see also [Doc. 103 at 35 ¶ 159; Doc. 101-1 (Pl.'s Decl.) at 14 ¶ 48]. "An affidavit may be considered a 'sham' affidavit 'when a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact . . . [and that party attempts] thereafter [to] create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.'" White v. Crystal Mover Servs., Inc., Civil Action No. 1:13-CV-1452-WSD-JSA, 2014 WL 4662371, at *19 (N.D. Ga. June 24, 2014), adopted as modified by 2014 WL 4662379, at *10 (N.D. Ga. Sept. 18, 2014) (alterations in original) (citation omitted) (quoting Tippens v. Celotex Corp., 805 F.2d 949, 954 (11th Cir. 1986)). The Eleventh Circuit has cautioned that the sham affidavit rule "should be used sparingly, and the affidavit and deposition must contain inherent inconsistencies before the affidavit can be disregarded." Wolk v. Seminole Cty., 276 F. App'x 898, 900 (11th Cir. 2008) (per curiam) (unpublished) (citation omitted). Additionally, "an affidavit may only be disregarded as a sham when a party has given clear answers to unambiguous questions which negate the existence of any

that are not material, are supported by citation to a pleading rather than to evidence, or are stated as issues or legal conclusions. See LR 56.1B(1)-(2), NDGa.

genuine issue of material fact.” nVision Global Tech. Solutions, Inc. v. Cardinal Health 5, LLC, 887 F. Supp. 2d 1240, 1259 (N.D. Ga. 2012) (citations and internal marks omitted). “A court presented with such an inconsistency in a party’s testimony may disregard the later ‘sham affidavit’ in favor of the earlier deposition testimony.” White, 2014 WL 4662371, at *19 (citations omitted) (citing Van T. Junkins & Assocs. v. U.S. Indus., Inc., 736 F.2d 656, 658 (11th Cir. 1984)). However, a “court must be careful to distinguish between discrepancies which create transparent shams and discrepancies which create an issue of credibility or go to the weight of the evidence.” nVision Global Tech. Solutions, Inc., 887 F. Supp. 2d at 1260 (citation and internal marks omitted). “In considering a motion for summary judgment, a district court must consider all the evidence before it and cannot disregard a party’s affidavit merely because it conflicts to some degree with an earlier deposition.” See Kennett-Murray Corp. v. Bone, 622 F.2d 887, 893 (5th Cir. 1980) (citations omitted). Indeed, “[e]very discrepancy contained in an affidavit does not justify a district court’s refusal to give credence to such evidence,” and “[i]n light of the jury’s role in resolving questions of credibility, a district court should not reject the content of an affidavit even if it is at odds with statements made in an early deposition.” Tippens, 805 F.2d at 954 (citations omitted). Here, Gogel testified that she told Diana Ledbetter (“Ledbetter”) that she “didn’t feel like [she] could trust the people internally to listen to or deal with any concerns that [she] had and that [she] was going to seek outside assistance. And [Ledbetter] asked [her] if [she] had an attorney. And [she] [] believe[d] at that time, [she] didn’t . . . but [she] had chosen an attorney, and was going to meet with that attorney. And [she] told [Ledbetter] that attorney’s name.” [Doc. 117 (Pl.’s Dep. Vol. I) at 52-53 pp. 208-09]. In her affidavit, Gogel states, “I did not solicit others to further my own agenda, and deny I had an agenda except to protect myself from further discrimination at KMMG.” [Doc. 101-1 at 14 ¶ 48]. The Court finds that Gogel’s affidavit is not inconsistent and does not directly contradict her deposition testimony. See Phillips v. Tacala, LLC, 883 F. Supp. 2d 1138, 1145 (N.D. Ala. 2012) (finding deposition and declaration testimony were not inconsistent). Therefore, the Court **OVERRULES** KMMG’s objection to the challenged portion of Gogel’s affidavit as a “sham.”

Furthermore, the facts will be construed in the light most favorable to the non-moving party, as required on a motion for summary judgment, Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Knight v. Baptist Hosp. of Miami, Inc., 330 F.3d 1313, 1316 (11th Cir. 2003) (per curiam) (citation omitted), and “the filing of cross-motions for summary judgment does not give rise to any presumption that no genuine issues of material fact exist,” Glenn v. Brumby, 724 F. Supp. 2d 1284, 1295 (N.D. Ga. 2010). “Rather, ‘[c]ross-motions must be considered separately, as each movant bears the burden of establishing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.’” Id. (alteration in original) (quoting Shaw Constructors v. ICF Kaiser Eng’rs, Inc., 395 F.3d 533, 538-39 (5th Cir. 2004)); see also Adega v. State Farm Fire & Cas. Ins. Co., No. 07-20696-CIV, 2009 WL 3387689, at *3 (S.D. Fla. Oct. 16, 2009) (citation omitted) (“When evaluating cross-motions for summary judgment, the Court analyzes each individual motion on its own merits and thus views the facts on each motion in the light most favorable to the respective nonmovant.”). Thus, “the denial of one does not require the grant of another.” Perez-Santiago v. Volusia Cty., No. 6:08-cv-1868-Orl-28KRS, 2010 WL 917872, at *2 (M.D. Fla. Mar. 11, 2010) (citation and internal marks omitted). “Even where the parties file cross motions pursuant to Rule 56, summary judgment is

inappropriate if disputes remain as to material facts.” Id. (citations and internal marks omitted).³

B. Factual and Procedural Background

After graduating with a Bachelor of Arts in 1991, Gogel’s first paid human resources position was as the human resources coordinator at a small hospital in Indiana. [Doc. 117 at 8 p. 29, 9 p. 36, 110]. Thereafter, she held the job titles of human resources manager, employee relations specialist, team member relations specialist, and assistant human resources manager at various companies between 1995 and 2004, before being employed as an assistant human resources manager at Toyota Motors Manufacturing Indiana (“Toyota”) in 2004. [Id. at 110]. In 2004, she also obtained a Senior Professional in Human Resources (“SPHR”) certification, which she held “between three and five years.”⁴ [Id. at 8 p. 31, 9 p. 33]. At the time Gogel left Toyota, she had four employees who directly reported to her.⁵ [Id. at 110].

³ Accordingly, what follows is a summary of the undisputed material facts, and the Court will note those occasions in which Gogel or KMMG offer additional or conflicting factual statements that are supported by the evidence of record. J.D.P. v. Cherokee Cty., Ga. Sch. Dist., 735 F. Supp. 2d 1348, 1350 (N.D. Ga. 2010). Finally, the Court has taken additional facts from the pleadings and supporting exhibits in order to fully describe Gogel’s allegations.

⁴ Gogel points out that the SPHR designation is “preferred, but [] not required[.]” [Doc. 120 (Jackson Dep.) at 27 p. 104].

⁵ Gogel submits that “[f]our people would have been the least number of people [she] ha[d] supervised since 2001.” [Doc. 101-1 at 4 ¶ 13].

Before beginning her employment at KMMG, Gogel had never held the titles of senior human resources manager or manager of team relations. [*Id.* at 36 pp. 143-44].

In July of 2007, KMMG hired Randy Jackson (“Jackson”) as its Director of Human Resources.⁶ [Doc. 85 (Jackson Decl.) at 2 ¶ 3; Doc. 120 at 19-20 pp. 72-73]. As part of KMMG’s organizational structure, Korean coordinators, who were hired by Kia Motors Corporation (“KMC”) in South Korea, would be temporarily assigned to work at KMMG for three to four years. [Doc. 115 (Bailey Dep.) at 22 pp. 81-84]. The coordinators partnered with the senior manager, assisting with the senior manager’s responsibilities and communications between KMMG and KMC.⁷ [*Id.* at 23-24 pp. 88-89]. Tyler had previously worked with Gogel at Toyota and referred Gogel to KMMG.⁸ [Doc. 117 at 17-18 pp. 68-72, 25 p. 97, 107, 110; Doc. 121 at 14 pp.

⁶ Jackson was the highest ranking American at KMMG during Gogel’s employment. [Doc. 93-3 (Pl.’s Decl.) at 7 ¶ 23].

⁷ Gogel points to the testimony of Bob Tyler (“Tyler”), who at the time was KMMG’s Manager of Human Resources, that the senior manager could not make decisions without the coordinator, as the “ultimate decision was with the coordinator.” [Doc. 122 (Tyler Dep.) at 16 p. 60]. KMMG maintains that, with respect to the decisions at issue in this case, Jackson made the decisions and was the sole decision-maker. [Doc. 120 at 36 p. 139, 48 p. 188, 70 p. 273, 71 p. 279].

⁸ Tyler graduated in 1983 with a bachelor’s degree with a concentration in human resources. [Doc. 121 (Tyler Dep.) at 6 pp. 23-24]. After graduating, Tyler started as a divisional manager at a retail department store where he supervised and led retail employees. [*Id.* at 7 pp. 26-27, 8 p. 29, 65]. In 1986, Tyler began his

54-55, 15 p. 57]. Gogel applied for employment at KMMG on January 25, 2008, [Doc. 117 at 106-09], and the following month, Jackson, whom she also knew from her employment at Toyota, hired her to be KMMG's Manager of Team Relations, [Doc. 115 at 25 p. 95; Doc. 117 at 21 p. 83, 22 pp. 85-87, 111-12; Doc. 120 at 49 p. 190], and she officially started at KMMG on March 17, 2008, [Doc. 115 at 60 p. 235; Doc. 117 at 17 p. 68, 24 p. 95]; see also [Doc. 117 at 111-12].⁹ At the time she was hired, Gogel reported directly to Jackson. [Doc. 117 at 25 p. 97].

According to Gogel, the overall purpose of Team Relations was "to create and support an environment of positive team relations," to develop standards and policies, and "to help people understand [] the rules and guidelines of the

employment with Chevron Chemical Company, and during his tenure there, he began as a process operator and was promoted to supervisor of human resources safety and training. [*Id.* at 8 pp. 30-32, 65]. From 1991 until 1993, he was employed with Eaton Corporation as a human resources manager. [*Id.* at 10 pp. 37-38, 64-65]. In 1993, Tyler began his employment at Toyota as a human resources specialist in the team member relations section. [*Id.* at 10 p. 40, 11 p. 41, 64]. In 1997, Tyler obtained his SPHR certification and still holds this designation. [*Id.* at 6-7 pp. 24-25]. He was promoted to assistant manager of human resources, team member relations in 1997 and human resources manager, team member relations in 1999. [*Id.* at 11 p. 44, 12 p. 46, 64]. While at Toyota, six assistant managers directly reported to Tyler and twenty-nine human resources representatives reported to him indirectly through the assistant managers. [*Id.* at 13 p. 49, 64]. In 2002, Tyler joined Calsonic Kansei North America as the manager of human resources, and in 2004, he was promoted to the senior manager of human resources. [*Id.* at 13 pp. 49-51, 63].

⁹ Gogel testified that when she joined KMMG, it was the first time that she held a position as a "manager without the word assistant in front of it." [Doc. 117 at 17 p. 68].

workplace[,]" which "included doing training and development as people came into the organization, as well as supporting similar activities with [KMMG's] suppliers" through "training opportunities and systems that were appropriate for [KMMG's] suppliers to also maintain positive employee relations, positive team relations within their environment." [Id. at 22 pp. 87-88]. As Manager of Team Relations, Gogel's "primary job duty was to resolve employment conflicts[or] any type of disputes[and] to try to resolve them before they got out to an outside party, such as an attorney or the [United States Equal Employment Opportunity Commission ('EEOC')]." [Doc. 115 at 26 p. 98; Doc. 121 at 7 pp. 27-28]. In fact, "she was hired to investigate complaints, resolve conflicts, [and] to be an advocate for the team member in the best interest of [KMMG]."¹⁰ [Doc. 115 at 12 p. 44]. The Team Relations Department's investigations included policy violations, treatment of individuals by others, attendance and tardiness issues, and investigations into

¹⁰ Gogel acknowledges that she was responsible for resolving team relations issues, but maintains that this was not her primary duty. [Doc. 101-1 at 1-2 ¶ 2; Doc. 101-9 at 2]. Gogel submits that her position included additional duties beyond investigating and resolving complaints, [Doc. 101-9 at 2], and that she was not hired to investigate all complaints, as the Legal Department handled and investigated EEOC charges, [Doc. 115 at 40 p. 156]. She claims that she was "responsible for creating process, policies and systems to maintain high morale at KMMG [which] included hiring and guiding Team Relations personnel," and that she was also responsible for knowing "federal and state labor laws" in order to "advise employees accordingly within the guidelines of the[] laws." [Doc. 101-1 at 2 ¶ 3]. KMMG disputes that Gogel's duties included advising non-management employees within the guidelines of federal and state laws. [Doc. 101-9].

allegations of discrimination and harassment. [Doc. 117 at 26 p. 101]. Investigations of EEO (“Equal Employment Opportunity”) matters were conducted by Team Relations under the direction of KMMG’s Legal Department.¹¹ [*Id.* at 25-26 pp. 100-02]; see also [*id.* at 10 p. 38; Doc. 119 (Grimes Dep.) at 18 p. 65]. Team Relations assisted Jackson in resolving potential discrimination problems. [Doc. 117 at 26 p. 103]. As Manger of Team Relations, Gogel reviewed the investigative results and was involved in providing the facts to Jackson and making recommendations as to the disposition of the investigation.¹² [*Id.* at 26-27 pp. 102-06; Doc. 119 at 39 p. 150]. A summary of the results of the investigation would then be provided to Jackson and the Legal Department. [Doc. 123 (Williams Dep.) at 42 pp. 162-63]. When investigating management, Jackson provided the overall direction, depending on the level and severity involved, and determined the level to which the investigation escalated, [Doc. 117 at 26 p. 104], and Gogel generally was involved and provided

¹¹ Gogel admits that Team Relations investigated internal complaints regarding discrimination and harassment, but she maintains that the majority of the investigations “included attendance problems, falsification of documents, and leaves of absences” and that if the investigation “had the slightest appearance that it could have legal implications, it was done under the direction of [the] Legal [Department],” [Doc. 101-1 at 3 ¶ 7], and that any EEOC charges were handled in the Legal Department, [Doc. 115 at 40 p. 156].

¹² Gogel adds that the recommendations were made in conjunction with her team, [Doc. 117 at 26 p. 102], and she contends that she did not always provide recommendations to Jackson, [*id.* at 26-27 pp. 104-06].

the facts discovered, advice, and recommendations to Jackson, [id. at 27 pp. 105-06]. However, for non-management employees, members of Team Relations conducted the investigation, then made recommendations to Gogel, who would then provide a recommendation to Jackson. [Id. at 26 pp. 103-04].

Gogel also was “responsible for team-member morale.”¹³ [Doc. 115 at 12 p. 44]. Her position as Manager of Team Relations put Gogel “in a position of trust and confidence[.]” [Id. at 12 p. 44]. According to a 2010 job description, the Manager of Team Relations was “[r]esponsible for leading and directing the Team Member Relations and Supplier Support programs and functions” and “[p]lan[ning] and implement[ing] key activities to promote high team member morale and prevent unwelcomed activity within both KMMG and KMMG Suppliers.”¹⁴ [Doc. 117 at 113]; see also [id. at 27 pp. 106-07]. The essential duties and responsibilities of a Manager of Team Relations, as listed in the 2010 job description, included:

- Pro-actively monitor and assess outcomes of investigations, working conditions, corrective actions, and team members concerns, and make recommendations for policy and procedure enhancements to address such concerns[; and]

¹³ Gogel asserts that others were also responsible for team-member morale. [Doc. 101-1 at 2 ¶ 4].

¹⁴ Gogel asserts that “unwelcomed activity” was “a term that was used for union organizing activity, not EEO and legal activity.” [Doc. 101-1 at 2 ¶ 5]. KMMG disputes that anyone at KMMG, including Jackson, understood “unwelcomed activity” to mean what Gogel avers. [Doc. 111 at 6 ¶ 19].

- Develop plan/strategy and timelines on how to resolve Team Relations issues and keep all appropriate parties informed of status[.]

[Id. at 113]. As Manager of Team Relations, Gogel had three “direct reports” – Paul Grimes (“Grimes”),¹⁵ Bryan Rathert (“Rathert”), and Arthur Williams (“Williams”), who at the time were all Assistant Managers of Team Relations.¹⁶ [Id. at 21 pp. 83-84]; see also [Doc. 119 at 15 p. 52; Doc. 123 at 20 p. 76]. Williams testified that his role in Team Relations was to “hope [sic] team members stay out of legal situations and try to resolve problems prior to them getting bad,” while protecting both the team member and KMMG.¹⁷ [Doc. 123 at 34-35 pp. 132-33].

In the fall of 2008, Gogel received complaints pertaining to B.M. Ahn, KMMG’s President during the relevant time period, and Kisha Tarver (“Tarver”),¹⁸ who worked in KMMG’s General Affairs Department, and Gogel was concerned

¹⁵ Grimes had applied for Manager of Team Relations, but Jackson selected Gogel for the position. [Doc. 119 at 14 pp. 51-52].

¹⁶ Gogel also had “multiple [team relations] specialists indirectly reporting to [her] at KMMG.” [Doc. 101-1 at 3 ¶ 8]; see also [Doc. 117 at 21 pp. 83-84].

¹⁷ Gogel contends that Team Relations did not handle legal situations, which were reserved for KMMG’s Legal Department, [Doc. 101-1 at 2 ¶ 2], and that “[i]f a team member fe[lt] that their complaint’s not being addressed by [KMMG], then it[was] up to the team member to find other options,” [Doc. 123 at 35 p. 133].

¹⁸ Tarver’s last name, at the time Gogel worked at KMMG, was Morris. [Doc. 123 at 59 p. 231].

that they “were engaged in a quid pro quo relationship that was affecting others at KMMG,” so she asked Jackson if she could investigate the relationship.¹⁹ [Doc. 101-1 at 4 ¶ 14]; see also [Doc. 117 at 30 p. 120, 42-43 pp. 168-70, 50 p. 200; Doc. 119 at 22 pp. 82-83; Doc. 120 at 116]. Jackson told Gogel that she could not investigate the matter. [Doc. 117 at 31 p. 121]. Within two to three weeks, Kevin Kim, the Korean Coordinator for Human Resources and Team Relations, asked Gogel to investigate Tarver, but not to inform Jackson of her investigation. [Id. at 30-31 pp. 120-22]; see also [Doc. 101-1 at 5 ¶ 15; Doc. 122 at 17 p. 61]. After Gogel started the investigation, Kevin Kim asked her to “stop the investigation, [] not to gather any more information, and destroy all information related to [the investigation].” [Doc. 117 at 31 p. 122].

In March of 2009, KMMG released an organizational announcement with new titles and designations, including Head of Department (“HOD”) designations.²⁰ [Id.

¹⁹ KMMG’s harassment policy “prohibit[ed] romantic or sexual relationships between any KMMG member of management and any subordinate Team Member.” [Doc. 93-11 at 4; Doc. 101-7 at 4].

²⁰ “In cooperation with their Korean Coordinator, [the HOD] shares full responsibility and authority for leading departmental initiatives and activities and making important decisions to ensure organizational and department goals and objectives are met.” [Doc. 117 at 121]. “Prior to making decisions or actions that impact the [d]epartment, the HOD must take steps to advise, consult, and reach agreement with the [Korean] Coordinator.” [Id.]. Senior Manager is a recognized level in KMMG’s organization, and the HOD designation deals more with roles and responsibilities (i.e., work content). [Doc. 114 (Arnold Dep.) at 21 p. 77; Doc. 117 at

at 29 pp. 113-14, 116-22]. Two separate departments at KMMG—Human Resources and Team Relations—handled personnel matters. [Doc. 115 at 34 p. 131; Doc. 117 at 28 p. 111]. Due to his significant responsibilities regarding construction of KMMG, Jackson wished to reduce the number of managers that reported directly to him, so he decided to designate one individual as the HOD for two departments—Human Resources and Team Relations. [Doc. 85 at 2-3 ¶¶ 7-8]. Thus, in March of 2009, Jackson designated Tyler as the first HOD of Team Relations and Human Resources.²¹ [*Id.* at 2 ¶ 6; Doc. 115 at 34 p. 132; Doc. 117 at 25 p. 97, 25 p. 110, 29 p.

117].

²¹ Jackson testified that he alone made the decision to promote Tyler to HOD of both Team Relations and Human Resources. [Doc. 120 at 48 p. 188, 71 p. 279]. Gogel denies that Jackson was the sole decisionmaker, pointing to Jackson's testimony that he and K.S. Kim, KMMG's Senior President of Human Resources and Administration, would have discussed making Tyler HOD for Team Relations and Human Resources, [*id.* at 36 pp. 139-40; Doc. 115 at 22 p. 82], and Tyler's testimony that Jackson "in conjunction with the Korean coordinators for [Human Resources] and [T]eam [R]elations" made the decision to designate him as HOD, [Doc. 122 at 43 pp. 165-66]. While Tyler was designated as HOD of Team Relations and Human Resources in 2009, along with other managers' HOD designations as part of an organizational structure, these "were designations, not promotions," and these designations did not include a raise in pay. [Doc. 115 at 46 p. 179]; see also [Doc. 117 at 117-22]. No one has since been designated as HOD of Team Relations and Human Resources. [Doc. 115 at 32 p. 123; Doc. 120 at 49 p. 189]. Gogel submits that she was the only American manager that did not have a higher level American manager above them who was not designated as HOD for her particular department, [Doc. 93-3 at 7 ¶ 24; Doc. 101-1 at 5 ¶ 16, 6 ¶ 21; Doc. 117 at 32 pp. 125-26], and that only American males were designated as HODs in 2009, [Doc. 117 at 32 pp. 125-26]. However, Jackson testified that "[n]ot all Managers received the HOD designation," including Robert Marzan. [Doc. 85 at 2 ¶ 5]. Gogel maintains

115, 116-18; Doc. 119 at 18 p. 66; Doc. 120 at 116-18]. Jackson based his decision on Tyler's many years of experience and on his being at KMMG "from the beginning." [Doc. 120 at 36 p. 140]. Gogel understood the HOD designation as an attempt "to streamline the reporting mechanisms within the organization." [Doc. 117 at 28 p. 111]. Gogel began reporting directly to Tyler at this time. [Id. at 29 p. 115]; see also [Doc. 19 at 3-4 ¶ 10]. Gogel asserts that she should have been designated as the HOD of Team Relations and that she "immediately voiced [her dissatisfaction] to [] Jackson," but he responded that it was a timing issue,²² and she further contends that she brought it up again in October 2009, expressing her concern that "there was

that his position in KMMG's organizational structure was different than hers. [Doc. 117 at 50 p. 197].

²² In particular, Gogel explained to Jackson that she understood that the significance of the separation of Team Relations and Human Resources was that they were two separate departments and that the manager in place "immediately slid up into [the HOD] position." [Doc. 117 at 29-30 pp. 116-17]. Gogel states that Jackson informed her that she was not designated as HOD for Team Relations because Human Resources and Team Relations had just been separated into two separate departments and that the HOD designations had been automatic. [Id. at 29-30 pp. 116-17, 32 pp. 126-28]; see also [Doc. 122 at 96]. Jackson described it as a timing issue and told her it was not because of anything else and explained he would take care of Gogel in April. [Doc. 117 at 30 p. 117, 32 pp. 126-27]; see also [Doc. 122 at 91]. KMMG points out that Gogel understood that not all managers were automatically designated as HODs, [Doc. 117 at 32 pp. 125-26]; see also [Doc. 85 at 2 ¶ 5], and that Jackson testified that he never told Gogel he would promote her later or "take care of her" in April, [Doc. 120 at 41 pp. 157-58].

a bigger issue at work than simply timing[.]”²³ [Doc. 117 at 29-30 pp. 115-18, 45 pp. 179-80; Doc. 120 at 41 p. 157].

²³ Gogel testified that she was concerned that it was more than just a timing issue because Steve Thompson, hired as the Manager of General Affairs, told her that he was going to be named HOD of General Affairs, despite the fact that she had been told that such designations were made only one time each year. [Doc. 117 at 45 p. 180, 47 pp. 185-86]; see also [Doc. 122 at 96]. Gogel maintains that “multiple factors” went into to her not being designated HOD in 2009, including her request to conduct an investigation regarding KMMG’s President, [Doc. 117 at 31 p. 123], cultural differences and her being female, [*id.* at 30 pp. 118-19, 47 p. 185]; see also [Doc. 101-1 at 6 ¶ 20], and the fact that “the Korean [c]oordinators did not want to work closely with [her],” [Doc. 101-1 at 5 ¶ 17]; see also [Doc. 117 at 30 pp. 118-20]. Gogel submits that Williams told her that he felt bad for her because the Koreans did not treat her right, [Doc. 101-1 at 15 ¶ 52; Doc. 117 at 31 pp. 123-24]; however, Williams denies ever saying this to Gogel, [Doc. 123 at 54 pp. 210-11]. Gogel claims that when she expressed her concerns to Jackson in October 2009, she told him that there was a “gender issue” at KMMG, pointing to the “requirement to ‘hide’ female security officers when Korean expatriates visited” as an example, and that she felt her performance was “looked at very differently than [her] male counterparts.” [Doc. 101-1 at 6 ¶ 20]. Gogel asserts that after she expressed her concerns, Jackson asked her if Toyota would take her back and said that he “wouldn’t have brought [her] [to KMMG] if [he] had known what it was going to be like.” [Doc. 117 at 47 p. 186]; see also [Doc. 101-1 at 6-7 ¶ 21]. However, Jackson denies ever saying this to Gogel. [Doc. 120 at 41 p. 158]. When Gogel again followed up with Jackson sometime in the fall of 2009 regarding her concerns about the HOD designation, she maintains that Jackson stated that Team Relations was a part of Human Resources, which Gogel submits is contrary to the timing reason that Jackson had expressed to her earlier. [Doc. 117 at 47 p. 187]; see also [Doc. 122 at 91]. Based on Jackson’s explanation, Gogel testified that she asked Tyler and he informed her that Team Relations was a separate department. [Doc. 117 at 47 pp. 187-88]; see also [Doc. 122 at 97]. Gogel also testified that at the end of 2008, Kevin Kim briefly showed her an organizational chart depicting that Team Relations and Human Resources were “two distinct departments” with “two different HODs” and he told her that in the future there would be HODs made for each department and that the current managers “would go into those HOD positions.” [Doc. 117 at 28 p. 111, 29 pp. 115-16].

In June of 2009, Gogel asked Tyler if she could attend a Society for Human Resources Management (“SHRM”) meeting, but Tyler informed her that Jackson wanted to send an assistant manager to the meeting. [Doc. 117 at 6 p. 23; Doc. 120 at 42 pp. 163-64, 124; Doc. 122 at 27-28 p. 104]. At some point during “the late summer of 2009,” Gogel went to Jackson about her concern regarding an incident in which a female security guard who was “not pretty” was “hidden during a visit of [KMMG’s] higher level executives from Korea,” while Ledbetter was made to sit up front because “she’s pretty.” [Doc. 117 at 45-46 pp. 180-81].²⁴

On August 14, 2009, Jackson sent an email requesting information from KMMG’s managers in order to develop a training session to bring American managers and Korean coordinators closer together in working relationships. [Doc. 120 at 121-22]; see also [id. at 41-42 pp. 160-61]. In particular, Jackson asked for information regarding problems that American managers were having in their working relationships with the Koreans. [Id. at 41-42 pp. 160-61]. Gogel submitted the requested information to Bonnie Colley, Jackson’s administrative assistant. [Id. at 42 p. 161].

²⁴ At some point in 2009, Gogel traveled to Korea with approximately 400 employees. [Doc. 117 at 41-42 pp. 164-66]. Gogel claims that she was abandoned during this trip because she was left at the hotel for the weekend with “very limited food” and was “the only Caucasian woman” left at the hotel. [Id. at 40 p. 159, 42 p. 165].

In the fall of 2009, Kevin Kim requested that Gogel investigate Terren Bonkowski (“Bonkowski”), a Manager of KMMG’s Stamping Department, whom Kevin Kim described as a “very bad woman.”²⁵ [Doc. 117 at 46 pp. 181-82]. Gogel informed Jackson of Kevin Kim’s request. [Doc. 93-3 at 7 ¶ 22; Doc. 101-1 at 15 ¶ 53]. During her investigation, two male managers in the Stamping Department

²⁵ Sometime “after the fall of 2009,” Gogel submits that following a meeting regarding an employee’s termination where both Korean and American management were present, Jackson asked that she not speak so strongly in review meetings and sometimes other meetings. [Doc. 117 at 43-44 pp. 171-75, 47 pp. 185-86]. Gogel asked Jackson if it was okay for two of her subordinates, Williams and Tim Wilbanks, to voice opinions and facts in those meetings, and she maintains that Jackson responded in the affirmative. [*Id.* at 44 pp. 175-76]. Gogel further maintains that Jackson informed her that “KS [Kim] ha[d] concerns” and that Jackson “really [didn’t] want [her] to speak at all.” [*Id.* at 44 p. 176]. Gogel did not recall if Jackson ever told anyone else not to speak during a meeting, and she did not recall how many times Jackson asked her not to speak and could only remember this “particular instance.” [*Id.* at 45 p. 177]. Jackson stated that he “may have told [Gogel] not to ‘speak so strongly,’” but that his “point in talking to her was to encourage her not to interrupt the presenters with continued questions about their investigations, which she had a tendency to do,” and “to let her know that all issues about the termination decision or the manner in which the investigation was conducted should be done before the meeting started” as the “termination meetings included executives who expected everything to have been fully vetted before the meeting, not during the meeting,” [Doc. 85 at 5 ¶ 15], and that other female Team Relations members attended and presented at these meetings, [*id.* at 4 ¶ 11, 5 ¶¶ 14, 16]. Gogel maintains that she did not continually interrupt presentations, but that she offered her opinions at the conclusion of the presentations. [Doc. 101-1 at 4 ¶ 10].

expressed their concerns to Gogel regarding the way Bonkowski was treated and their thoughts that it was based on her gender.²⁶ [Doc. 117 at 46 pp. 182-84].

In January 2010, Tyler completed a Performance Appraisal and Competency Assessment of Gogel for the 2009 calendar year. [Doc. 117 at 123-29]; see also [*id.* at 33 p. 129; Doc. 121 at 68-74]. As part of the self-assessment portion of the performance appraisal, Gogel indicated that she needed improvement in the areas of multi-tasking, performance management, and routine job duties. [Doc. 117 at 33 pp. 130-31, 127]. Tyler agreed with Gogel's self-evaluation.²⁷ [Doc. 121 at 72]; see

²⁶ Gogel testified that Kevin Kim also screamed at her and told her she was a bad person who was telling rumors about Koreans, [Doc. 117 at 41 pp. 162-63], and that K.S. Kim yelled at her and told her that "he didn't understand what [she] was explaining to him" and "asked for someone else to explain it to him," [*id.* at 40 pp. 158-59]. She further testified that once she brought her male subordinate in to explain it to him, he would then understand. [*Id.*]. However, Gogel testified that she also believed K.S. Kim yelled at male employees. [*Id.* at 41 pp. 161-62]. Gogel complained to Jackson regarding K.S. Kim's behavior. [Doc. 101-1 at 13 ¶ 41]; see also [Doc. 93-3 at 4 ¶ 12]. Gogel also complained that she was excluded from meetings and that she was excluded from conversations on many occasions with Williams, Grimes, Jackson, Justin Yoo, a Korean coordinator, and K.S. Kim, and that she relied on Williams and Grimes to relay the information to her. [Doc. 101-1 at 11 ¶ 35]; see also [Doc. 117 at 40 p. 160].

²⁷ Although the appraisal indicated that Tyler agreed with Gogel's self-evaluation, Tyler testified that he was "asked [by Jackson] to change the final result" because her "score was too high," but he could not remember whether he agreed or disagreed with Gogel's self-evaluation on his first draft. [Doc. 121 at 24-25 pp. 96-100]. Tyler further testified that he understood why "there was a needs improvement" under performance management as "she was asked to better manage her two assistant managers who essentially were unmanageable." [*Id.* at 25 pp. 97-98].

also [id. at 24-25 pp. 95-98]. On March 3, 2010, Jackson sent Gogel an email telling her she did a “good job” in a meeting that took place the previous day and that he would “keep working with KS [Kim] as we go forward.” [Doc. 93-4 at 2]. Also in March of 2010, Tyler completed a Forecast of Potential on Gogel, the purpose of which was “to help guide KMMG Leadership in the succession, planning, promotion, and development.” [Doc. 122 at 101-04]; see also [id. at 37 p. 143]. Tyler indicated that Gogel’s likely next position was Senior Manager, but that such a promotion would not occur for 24 months, explaining that Gogel “needs more time in current Manager role to display leadership skills and readiness for Senior [Manager] position.”²⁸ [Id. at 102, 104].

Tyler was promoted to Senior Manager of Human Resources and Team Relations effective April 12, 2010, and he received a raise at this time in conjunction with his promotion.²⁹ [Doc. 120 at 39 p. 150, 119-20; Doc. 122 at 19 pp. 70-71, 49 p.

²⁸ Tyler testified that Jackson told him to give Gogel a different rating than the one he had given her and that the statement on the form that Gogel needed to wait two years until being promoted “didn’t come from [him],” but he could not remember if Jackson specifically told him to say that. [Doc. 122 at 37-38 pp. 144-46]; see also [Doc. 121 at 22 p. 87]. Tyler also testified that although these forms were completed, they were “never evaluated” as he was “given the promotional list prior to the full review of these documents,” [Doc. 121 at 22 p. 88], and that while “this document [] was intended to be reviewed to make those decisions[, it] in fact, [was] not reviewed,” [id. at 23 p. 89]; see also [Doc. 122 at 37 p. 143].

²⁹ Gogel submits that Tyler was also promoted to HOD at this time. [Doc. 122 at 20 p. 74]; see also [Doc. 93-2 at 13 ¶¶ 55-56]. KMMG disputes this contention and

190]; see also [Doc. 117 at 45 pp. 178-79, 140]. He was the only one promoted to Senior Manager of two departments in 2010. [Doc. 122 at 20 p. 74]. At this time, two females were also promoted into lower management positions. [Doc. 93-3 at 5 ¶ 14; Doc. 101-1 at 13 ¶ 43]; see also [Doc. 117 at 140 (listing Tarver as being promoted to Manager of General Affairs and Dama Smith (“Smith”) as promoted to Assistant Manager of Human Resources)].³⁰ Jackson explained that Gogel was not promoted in 2010 to HOD of Team Relations because there was no opening as Tyler was HOD of both departments. [Doc. 120 at 47 p. 184]; see also [Doc. 119 at 50 p. 196]. Gogel maintains that the position of Senior Manager was the same as HOD and that the

maintains that Tyler had already received this designation in 2009. [Doc. 117 at 29 p. 115, 118]. Gogel asserts that she “was the only American [m]anager that was not promoted to HOD of [her] particular department in 2010,” [Doc. 101-1 at 5 ¶ 18], and that all of those promoted in 2010 to HOD were male, [Doc. 122 at 20 p. 74, 90; Doc. 117 at 140]. KMMG contends that HOD was a designation not a promotion, but admits that no women were designated HOD or promoted to Senior Manager in April 2010. [Doc. 117 at 140]. When Gogel was not promoted to HOD of Team Relations in 2010, she submits that Jackson’s reason was that Team Relations was part of Human Resources and that he repeated his statement that he would take care of her in April. [Doc. 117 at 62 pp. 247-48]. She again submits that contrary to Jackson’s reason, Team Relations and Human Resources were separate departments. [Doc. 115 at 34 p. 131; Doc. 117 at 62 p. 245; Doc. 122 at 85]. Jackson, however, testified that he never told Gogel that he would take care of her in April. [Doc. 120 at 41 p. 158].

³⁰ According to Gogel, she informed Jackson and Tyler that she “believed the only reason [Smith] was promoted was based on the fact she was of the Korean race.” [Doc. 101-1 at 13 ¶ 43]. Tarver, who was also promoted at the same time as Smith, is African-American. [Id.].

title was sometimes referred to as Senior Manager/HOD. [Doc. 122 at 19 p. 71]. However, Gogel believed that being designated as HOD was a prerequisite to receiving the title of Senior Manager. [Doc. 117 at 45 p. 179]. Thus, Gogel testified that she was “[n]ot necessarily” contending that she should have received the promotion of Senior Manager.³¹ [Id.]. At this time, it became clear to her that she would not be designated HOD of Team Relations in 2010.³² [Id.]. On April 28, 2010, Gogel received a merit adjustment, which was paid as a lump sum in the amount of \$4,138.65.³³ [Doc. 117 at 47 p. 188, 141].

³¹ Gogel submits that she “was confused and misunderstood how the promotions were being announced at KMMG during that time,” and that she “fully expected to be promoted.” [Doc. 101-1 at 6 ¶ 19]. She points to a promotion received by Regina Farmer (“Farmer”), in which Gogel contends Farmer was promoted to Senior Manager without first receiving the designation of HOD. [Doc. 123 at 129]. However, KMMG asserts that HOD designations are not necessarily reflected on the organizational announcements when a Manager is promoted to Senior Manager. [Doc. 117 at 140 (listing Tyler as being promoted to Senior Manager of Human Resources and Team Relations but not listing his prior designation of HOD)].

³² Gogel disputes that it was clear she would not be promoted in 2010, as a new hire had been designated HOD in September 2009, even though the organizational announcements had already been made earlier in the year. [Doc. 117 at 47 pp. 185-86].

³³ Amanda Modling (“Modling”) resigned on May 20, 2010, explaining that the “environment [she] faced when returning from [maternity] leave gave [her] the perception of a company culture stating if you are a woman you will only climb so far in the organization, and if you are a woman with children your place is at home.” [Doc. 93-6 at 2; Doc. 101-6 at 2]. Gogel informed Jackson about Modling’s resignation and her reasons for resigning. [Doc. 93-3 at 4 ¶ 13; Doc. 101-1 at 13 ¶ 42].

Williams testified that he and Grimes arranged to have lunch with Jackson away from KMMG in mid-2010 to express concerns regarding Gogel and the Team Relations Department, but Jackson did not believe them.³⁴ [Doc. 123 at 79 p. 310]; see also [*id.* (Williams Decl.) at 151 ¶ 27; Doc. 119 at 39 pp. 151-52]. On June 23, 2010, Jackson responded to an email from Tyler, explaining that Team Relations reports to Human Resources and that “mud slinging [was] not the answer[.]” [Doc. 122 at 91]. Tyler forwarded the aforementioned email to Gogel, stating he did not know that Team Relations reported to Human Resources and that “reporting policy violations and potential hostile work environment situations involving members of management was considered ‘mudslinging.’” [*Id.*]. Gogel responded to the email, expressing her frustration that she was not designated HOD and reiterating the reasons given to her by Jackson. [*Id.*]. On August 11, 2010, Gogel sent an email to Jackson telling him that she believed she has “no say in decisions” that are made, that she is not supposed to speak at all during meetings, that she does not believe the Koreans listen to what she had to say, and that she feels ignored, disrespected, undermined, and degraded. [Doc. 93-5 at 2-3; Doc. 101-5 at 2-3]. Jackson testified

Jackson did not look into complaints made during exit interviews by females in management, including Modling and Bonkowski, regarding treatment by Koreans. [Doc. 120 at 44-45 pp. 172-73]; see also [Doc. 115 at 118-24].

³⁴ Gogel contests that this occurred in mid-2010, pointing to Grimes’ testimony that the lunch may not have been that early. [Doc. 119 at 39 p. 152].

that he received Gogel's email, but he did not feel that he should step in and try to resolve it. [Doc. 120 at 49-50 pp. 192-94].

Gogel was invited to the September 2010 Management Workshop. [Doc. 101-1 at 11-12 ¶ 36]. During the taking of a photograph at the workshop, K.S. Kim asked her and Tarver, the other female manager present, to make sure they were clearly shown in the photograph. [Id.]. Instead, Gogel testified that she "purposely hid behind another person when the photo was taken," and that Kevin Kim "chastised [her] for not being visible in the photo" several weeks later. [Id. at 12 ¶ 37]. Gogel testified that she believes she was selected for this photo because she is a woman. [Id. at 11-12 ¶¶ 36-38; Doc. 117 at 40 p. 159].

In September of 2010, Gogel contributed to a document entitled "Report of Concerns," which was compiled by Tyler with input from American managers, detailing KMMG's allegedly discriminatory and unethical business practices.³⁵ [Doc.

³⁵ Gogel testified that Jackson had requested that Tyler gather concerns from American management, and when asked by Tyler, Gogel provided him with her concerns. [Doc. 117 at 37-38 pp. 148-49, 48 pp. 190-91, 50 p. 198]; see also [id. at 143]. In particular, Gogel points to the following portions of the Report of Concerns that she contributed:

- a) Page 2, paragraph 7. Entire paragraph based on an invitation to a workshop.
- b) Page 6, first bullet under item 17. Gary Langswager (safety & security) both made that complaint.
- c) Page 7, Paragraph 19.
- d) Page 11, item 9. [She] was one of several who complained about

117 at 48-49 pp. 190-93]; see also [id. at 143-58; Doc. 101-1 at 8 ¶ 24]. In fact, it referenced the Koreans' alleged unlawful and unethical acts 29 times. [Doc. 117 at 145-58]. The Report of Concerns was given to KMMG at the end of September of 2010. [Id. at 50 p. 198]. On October 1, 2010, Tyler sent an email to Jackson

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- e) unethical bid processes.
 - e) Page 12, item 13. That was all [her] complaint regarding females leaving based on treatment.
 - f) Page 13, items 4 & 5. [She] was one of several with that complaint.

[Doc. 93-3 at 3-4 ¶ 8; Doc. 101-1 at 7 ¶ 22]; see also [Doc. 117 at 48-49 pp. 191-93, 145-58]. KMMG contends that Gogel's testimony indicates that she contributed only to Paragraph 7 on Page 2. [Doc. 117 at 48 p. 192]. A portion in the Report of Concerns stated:

There is a day of reckoning coming for the Koreans for their repeated racial/gender discrimination, hostile work environment, unethical practices, and other legal/legislative violations. Therefore, there are many Americans in this organization who are taking steps to protect their career, future, and financial security accordingly. We dread this day, because we know it is coming. It will swallow all of us up if we don't act quickly. Each of us has the necessary professional ethics and integrity to not allow anyone to knowingly break the law, even if requested to do so by the Koreans (which occurs regularly but is often cloaked in smoke, mirrors, deceptive tactics, so-called Korean English, or claims of miscommunication because of the language barrier).

[Doc. 117 at 157]. Gogel maintains that she did not contribute to this portion of the Report of Concerns, but that she did "share that Korean Management had repeatedly engaged in racial/gender discrimination and hostile work environments and unethical business practices." [Doc. 101-1 at 7-8 ¶ 23]. Jackson testified that after he read the Report of Concerns it was "pretty" obvious who some of the contributors were. [Doc. 120 at 53 p. 208].

explaining that Team Relations had difficulties completing tasks when Kevin Kim and Justin Yoo do not communicate with Gogel.³⁶ [Doc. 122 at 94]. During an investigation into the Report of Concerns, Jackson, Charlie Webb (“Webb”), KMMG’s counsel, and Tyler interviewed Gogel on October 14, 2010, regarding her contributions to the report.³⁷ [Doc. 118 at 1; Doc. 120 at 125]; see also [Doc. 101-1 at

³⁶ Jackson testified that he remembered talking to Kevin Kim with regard to Gogel and he “asked him one day why he wasn’t talking to [her], and he said that every time he talked to her, he made her cry. And he didn’t want to make her cry, and it made him feel bad. And that he was going to start asking her to start talking to Justin [Yoo] in the future.” [Doc. 120 at 45 pp. 175-76].

³⁷ When Jackson had contacted Gogel prior to October 14, 2010, to set up a meeting, Gogel claims she told Jackson that, since she had already told him her concerns earlier, she would “feel more comfortable talking to an independent or outside investigator/counsel.” [Doc. 118 (Pl.’s Dep. Vol. II) at 1]. Also prior to the October 14, 2010, meeting, Gogel submits that Webb told her that she did not have a claim and that her “insistence on bringing up not being promoted might make the powers that be believe that [she] was only complaining to get something for [her]self.” [Doc. 93-3 at 1-2 ¶ 2; Doc. 101-1 at 8 ¶ 26]. Gogel submits that the purpose of the meeting was for her to reiterate her concerns that she had expressed in 2009 and 2010. [Doc. 93-3 at 2 ¶ 3; Doc. 101 at 8-9 ¶ 27]. However, Gogel sent Jackson, Tyler, and Webb an email on the morning of the October 14 meeting, explaining that she would like to meet with them “to discuss recent requests for [her] participation in an investigation.” [Doc. 120 at 125]. Gogel maintains that she reiterated her concerns during the interview, which included “a quid pro quo relationship” between KMMG’s president and Tarver, her failure to be promoted when similarly situated men were promoted, Caucasian men and women’s bad treatment by KMMG’s Korean management, and the poor treatment of other American females. [Doc. 93-3 at 2-3 ¶¶ 3-6; Doc. 101-1 at 9-10 ¶¶ 28-31]. In particular, Gogel pointed to a female manager in training that she claims Kevin Kim treated badly and another female receptionist let go because she was “unattractive.” [Doc. 93-3 at 3 ¶ 6; Doc. 101-1 at 10 ¶ 31]. Gogel also stated that she was worried about retaliation and wanted an independent investigator to look into her concerns.

10 ¶ 30]. Following the meeting, on November 3, 2010, Gogel sent an email to Jackson, Webb, and Tyler and copied K.S. Kim, in which she affirmed her contributions to the Report of Concerns, reiterated parts of the conversation that took place in the meeting on October 14, 2010, and expressed her disappointment that the investigation into the concerns raised had been closed. [Doc. 118 at 1]; see also [Doc. 101-1 at 8 ¶ 24; Doc. 117 at 49 p. 195, 50 p. 198]. In fact, the investigation concluded that “there were no . . . legal violations.”³⁸ [Doc. 115 at 37 p. 141].

[Doc. 93-3 at 4 ¶ 9; Doc. 101-1 at 10 ¶ 30]. The Report of Concerns was also discussed at this meeting. [Doc. 93-3 at 3 ¶ 7]. Jackson ended the meeting after approximately 45 minutes, as he had another meeting to attend, but Gogel claims she had not finished discussing her concerns. [*Id.* at 4 ¶ 10; Doc. 101-1 at 10-11 ¶ 33; Doc. 117 at 59 pp. 233-34]. Jackson testified that the meeting lasted one hour and that he did not follow-up with Gogel again as he and Webb did not get any direct answers or facts from Gogel with which Jackson could work. [Doc. 120 at 46 pp. 177-80]. On October 29, 2010, Tyler replied to Jackson in an email, stating that “Kevin [Kim] and KS [Kim] still don’t listen to [Gogel]” and that he thought it was because she was believed to be “too emotional” and “ha[d] a bad mindset for a Manager.” [*Id.* at 128 (internal marks omitted)]; see also [*id.* at 50 pp. 194-95].

³⁸ Gogel submits that “Jackson’s typical response to [her] complaints about discrimination at KMMG was to give [her] a lecture about blending the two cultures, and that change was slow.” [Doc. 93-3 at 5 ¶ 15; Doc. 101-1 at 13-14 ¶ 44]. KMMG admits that Jackson counseled American managers about the importance and time required to forge good working relationships between colleagues from two different cultures. [Doc. 120 at 41-42 pp. 159-61, 50-51 pp. 196-97]. Jackson testified that Gogel “didn’t come to [him] directly too much about her concerns.” [Doc. 120 at 66 p. 260].

On November 10, 2010, Gogel filed a charge of discrimination with the EEOC against KMMG, alleging discrimination based on her sex and national origin.³⁹ [Doc. 117 at 137]; see also [*id.* at 38 pp. 149-51]. In particular, she claimed that she “ha[d] been discriminated against based on [her] sex (female) and [n]ational [o]rigin (American), in violation of Title VII” because her position “was not upgraded to a [HOD] position” between July 23, 2009, and June 30, 2010. [*Id.* at 137]; see also [*id.* at 38 pp. 151-52]. On November 19, 2010, Tyler filed a charge of discrimination with the EEOC, alleging discrimination based on national origin and retaliation. [Doc. 120 at 132-33]; see also [Doc. 117 at 52 p. 207].⁴⁰

³⁹ Gogel maintains that she filed her EEOC charge because she “had witnessed several women throughout KMMG experiencing significant damage to their careers because of discrimination at KMMG, and saw the same damage coming for [her]self, and realized [she] couldn’t protect them and couldn’t protect [her]self, and the people [she] reported to wouldn’t protect [her] either.” [Doc. 101-1 at 14 ¶ 45]; see also [Doc. 93-3 at 5 ¶ 16; Doc. 117 at 52 p. 208]. Gogel also maintains that during a management dinner held at KMMG in November of 2010, President Ahn chastised American management for complaining and questioned their loyalty. [Doc. 117 at 167-68]; see also [Doc. 122 at 35 p. 134].

⁴⁰ KMMG’s harassment policy and EEO policy prohibited retaliation and discrimination, specifically stating that it was against KMMG policy “to harass or retaliate against any Team Member due to the Team Member filing a complaint of discrimination / harassment or due to the Team Member’s cooperation in [KMMG’s] investigation of a complaint” and instructed employees to report violations of the policies, including discrimination, harassment, and retaliation, to their immediate supervisor or “Team Relations Manager or any other member of KMMG management . . . with whom he/she feels comfortable.” [Doc. 123 at 123-28]; see also [*id.* at 36 pp. 137-38, 37 p. 142; Doc. 93-9 at 2-3; Doc. 101-8 at 2-3; Doc. 119 at 37 p. 142]. Gogel, Tyler, and Jackson signed the harassment policy, which was

KMMG received Gogel's EEOC charge on November 22, 2010.⁴¹ [Doc. 120 at 127]; see also [Doc. 117 at 50 p. 198; Doc. 120 at 47 pp. 181-82]. On December 3, 2010, Gogel was asked to sign an agreement that provided:

- A. I will not discuss my EEOC charge or similar claims against [KMMG] with Team Members and will not use my position to solicit or influence Team Members to make claims against KMMG;
- B. I will not put any Team Members, including my reports, in any conflict of interest by seeking their assistance in any fact finding or any information gathering related to my claim against KMMG;
- C. I will not make any written or verbal statements to Team Members that malign the company; and
- D. I will not seek access to any files or documents that relate in any way to the merits of my claim or similar claims against KMMG.

[Doc. 118 at 9]; see also [Doc. 93-7 at 2; Doc. 117 at 53 pp. 209-10; Doc. 120 at 131].

However, Gogel refused to sign it, and she was thereafter placed on administrative

adopted on October 27, 2008. [Doc. 123 at 36 pp. 137-38, 123].

⁴¹ Gogel testified that after KMMG received her EEOC charge, Williams and Ledbetter reported to her that Jackson was talking about her charge "in a very loud way in the open office environment." [Doc. 117 at 50 pp. 198-99]. Jackson denied making an announcement after receiving Gogel's charge or mentioning it to any of her co-workers. [Doc. 120 at 51 p. 199]. Latesa Bailey ("Bailey"), a KMMG employee designated to testify under Rule 30(b)(6) of the Federal Rules of Civil Procedure, testified that she was unsure who specifically was interviewed regarding Gogel's November 2010 EEOC charge as the Legal Department handled her charge. [Doc. 115 at 41 p. 158].

leave.⁴² [Doc. 117 at 53 pp. 209-10]; see also [Doc. 115 at 39 p. 151]. On the same day, Tyler also was asked to sign the agreement, and he did so that day. [Doc. 122 at 35 p. 136]; see also [Doc. 115 at 42 p. 161]. Gogel signed the aforementioned agreement on December 6, 2010, and returned to work the same day.⁴³ [Doc. 117 at 53 pp. 209-10; Doc. 118 at 9].

On December 16, 2010, Gogel requested four days off, January 4-7, 2011, following KMMG's semi-annual plant shut down, which Jackson approved. [Doc. 85 at 6 ¶ 19, 11]; see also [Doc. 120 at 67 p. 263]. Jackson provided Gogel with a \$12,000 discretionary bonus during a meeting held on December 22, 2010, at which Jackson informed Gogel that she was doing a good job. [Doc. 117 at 47-48 pp. 188-89, 142; Doc. 120 at 59 p. 229]. On December 22, 2010, Stuart Countess ("Countess"), who at the time was KMMG's Director of Quality, held a Christmas party, to which he invited production employees and senior management. [Doc. 116 (Countess Dep.) at 3 p. 8, 31 pp. 119-20]. Gogel, Tyler, and Kevin Kim were not invited to the

⁴² Gogel testified that she refused to sign as she "did not feel comfortable signing the document until [her] legal counsel had an opportunity to review the document." [Doc. 117 at 53 p. 210].

⁴³ Gogel submits that Jackson would have fired her had she not agreed to sign the agreement. [Doc. 120 at 58 p. 227]. KMMG disputes this assertion and claims Jackson testified that it would have been his decision whether to fire Gogel if she refused to sign the agreement, if such a decision needed to be made. [Id.].

Christmas party.⁴⁴ [*Id.* at 31 p. 119; Doc. 117 at 40 p. 158; Doc. 121 at 36 pp. 143-44].

At the time of the party, Countess was not aware that Gogel had filed an EEOC charge against KMMG. [Doc. 116 at 16 p. 60].

On December 23, 2010, Jackson received Ledbetter's December 10, 2010, EEOC Charge. [Doc. 120 at 59-60 pp. 232-33, 62 pp. 241-42, 134-36]. The EEOC charge showed that it had been faxed from the law firm of Barrett & Farahany. [*Id.* at 134-35]; see also [*id.* at 60 p. 233]. Jackson thereafter emailed K.S. Kim to inform him of Ledbetter's EEOC charge. [*Id.* at 63 pp. 246-47, 136]. In the email, Jackson stated that he was trying to call President Ahn to let him know about Ledbetter's charge and that "[i]t look[ed] like [Tyler] and [Gogel] [were] recruiting others." [*Id.* at 136]. Ledbetter, Tyler, and Gogel were all initially represented by the same firm—Barrett & Farahany, [Doc. 117 at 52 p. 207; Doc. 120 at 60 p. 233], and this concerned Jackson because as he testified Gogel was "paid to prevent lawsuits" and he did not "want [his] manager of [his] team relations group out soliciting and encouraging other people to file lawsuits," [Doc. 120 at 66 pp. 258-59].⁴⁵ On or about December 23,

⁴⁴ Gogel claims that other employees outside of production and senior management were invited and that Tyler and Kevin Kim were, in fact, invited. [Doc. 101-10 at 2].

⁴⁵ Gogel maintains that she "did not have the power to prevent any team members from filing a lawsuit against [KMMG], as [her] duties included problem solving, but not preventing lawsuits." [Doc. 101-1 at 2 ¶ 2]; see also [Doc. 101-9 at 2-4]. She further maintains that she did not solicit others to file charges or lawsuits

2010, KMMG shut down until January 4, 2011.⁴⁶ [Doc. 115 at 39 pp. 151-52, 52 p. 203; Doc. 120 at 58-59 pp. 228-29, 63 p. 248].

On January 4, 2011, Williams met with Jackson to report his concerns about Gogel and Tyler. [Doc. 85 at 6 ¶ 20; Doc. 120 at 63-65 pp. 248-53, 72 p. 283, 137; Doc. 123 at 50 pp. 193-94]. In particular, Williams relayed that they had “repeated meetings” with Ledbetter and they had stated that they “‘hate’ the Koreans.”⁴⁷ [Doc.

against KMMG, [Doc. 101-1 at 14-15 ¶¶ 48-50], that she “did not know whether [Ledbetter] was going to file a charge [with the EEOC],” [Doc. 117 at 50 pp. 199-200]; see also [Doc. 101-2 (Ledbetter Decl.) at 4 ¶ 11 (“I didn’t tell [Gogel] I was filing a [c]harge before I filed one.”)], and that she “first found out [Ledbetter] filed an EEOC [c]harge when [] Williams told [her] around December 2010,” [Doc. 101-1 at 15-16 ¶ 54]. KMMG submits that Gogel had external knowledge about Ledbetter’s EEOC charge and knew that she was going to file it. [Doc. 115 at 51 pp. 198-200]; see also [Doc. 123 at 34 pp. 131-32]. Ledbetter testified that Gogel “did not solicit [her] to do anything against KMMG,” that Gogel “did not encourage [her] nor solicit [her] to get an attorney and sue [KMMG] or file an EEOC [c]harge,” and that she “decided for [her]self to . . . file a [c]harge with the EEOC.” [Doc. 101-2 at 3-4 ¶¶ 8-9]. Ledbetter never filed a lawsuit against KMMG. [Doc. 115 at 13 p. 45].

⁴⁶ Gogel submits that KMMG did not shut down until the close of business on December 23, 2010. [Doc. 120 at 58 pp. 227-28].

⁴⁷ Williams testified that Gogel said on more than one occasion that she did not like the Koreans, that she did not like Kevin Kim or K.S. Kim because they were Korean, and that he believed she was racist towards Koreans. [Doc. 123 at 78 pp. 306-07]. Grimes likewise testified that he believed Gogel and Tyler hated Koreans based on comments that were made. [Doc. 119 at 56 pp. 219-20]. Gogel denies that she said she hates Koreans or that she ever heard Tyler say that he hates Koreans, [Doc. 101-1 at 17 ¶¶ 59-60]; see also [Doc. 101-2 at 7 ¶ 18], and Tyler testified that he had never heard Gogel say that she hates Koreans, [Doc. 122 at 29 p. 108]. Rather, Gogel testified that she was concerned that “there stopped being an interest in understanding and following American laws.” [Doc. 117 at 64-65 pp. 256-57]. In

85 at 6 ¶ 20]; see also [Doc. 120 at 63-65 pp. 248-53, 137]. Prompted by Williams' concerns, Jackson and Webb conducted an investigation. [Doc. 85 at 6 ¶ 21]. Williams and Grimes each met separately with Jackson and Webb on January 5, 2011, to explain their concerns pertaining to Gogel and Tyler. [Doc. 119 at 98-100; Doc. 123 at 153-54]. Williams reported that in the fall of 2010, Ledbetter had told him that she, Gogel, and Tyler were going to use the same attorney and file charges against KMMG. [Doc. 123 at 34 p. 130-31, 153]. Williams testified that Ledbetter was "saying that [] Gog[el] was the leader," [Doc. 123 at 34 p. 131]; see also [*id.* at 153 (In notes from the January 5, 2011, meeting with Williams, Webb indicated that Williams "felt that [Gogel] was the catalyst for the trio of charges but said [Ledbetter] was most swayed by [Tyler]")), and that Ledbetter "kept telling [him] that something in the form of a lawsuit was coming," [*id.* at 50 p. 194].⁴⁸ Both

particular, Kevin Kim would not allow additional intercultural competency training for Koreans who came to work at KMMG to help them understand American laws, and he became angry if Gogel attempted to educate him on American laws. [*Id.*]. Gogel also testified that "Jackson told [her] that [she] had a responsibility to understand and respect the Korean culture by supporting the 'Patriarchal' culture of the Koreans." [Doc. 93-3 at 6 ¶ 21; Doc. 101-1 at 18 ¶ 65]. Jackson testified that he took steps to address the cultural differences, educate Korean management, and foster respect towards both cultures. [Doc. 120 at 41-42 pp. 160-61, 50-51 pp. 196-97, 52 p. 203, 54 p. 211, 130].

⁴⁸ Gogel points out that Williams testified that he did not recall saying that she was the leader of filing the EEOC charges, [Doc. 123 at 34 p. 130], and that Ledbetter stated she "never told [] Williams that [Gogel] was the 'leader' of [her] and [Tyler] in filing a [c]harge with the EEOC," or that "all three of [them] were going to sue

Williams and Grimes signed written statements that summarized their concerns pertaining to Gogel.⁴⁹ [Doc. 119 at 59 pp. 229-30, 98-100; Doc. 123 at 79 pp. 311-12, 153-54].

Gogel testified that she “met with [] Ledbetter multiple times throughout [her] employment [at KMMG], for different reasons,” with the first meeting occurring in the fall of 2008 regarding her complaints about Tarver and President Ahn, and that she was “aware that [Ledbetter] had concerns” regarding her employment at KMMG.⁵⁰ [Doc. 117 at 50 pp. 199-200]. On one occasion, Williams met with Ledbetter, and he reported Ledbetter’s concerns to Gogel. [*Id.* at 51 p. 201]. The concerns that Ledbetter brought to the attention of Team Relations included a request to remove a pregnant server from an event she was planning, an alleged relationship between President Ahn and Tarver, not being hired for Team Relations,

[KMMG] and had the same attorney,” [Doc. 101-2 at 4 ¶ 10]. Gogel also submits that Williams did not know that she had been complaining or for how long she had been complaining or whether she was trying to “work it out.” [Doc. 123 at 50 pp. 195-96].

⁴⁹ Jackson testified that neither Grimes or Williams had complained to him about Gogel before January 2011. [Doc. 120 at 74 p. 292].

⁵⁰ Gogel asserts that this was one of her responsibilities as Manager of Team Relations, [Doc. 101-9 at 2-4], and that she “didn’t have a lot of meetings with [Ledbetter] about [her] complaints,” but she did have “a lot of meetings with [her] about work related things,” [Doc. 117 at 51 p. 203].

and “things that upset [Ledbetter] about her job duties.”⁵¹ [*Id.* at 51 pp. 201-03]; see also [Doc. 101-1 at 16 ¶ 56]. Gogel testified that she explained to Ledbetter that “many of the things that she was doing were very important,” that KMMG “had strides to make in culture,” and that she should “just be patient” as “[c]hange is very slow.” [Doc. 117 at 51 p. 203].

In the summer of 2010, Ledbetter approached Gogel to express her concern that her pregnancy would impact her ability to be promoted. [Doc. 117 at 51 pp. 203-04]. Gogel explained that her “pregnancy should not impact [her] ability to be promoted,” and she encouraged her to stay at KMMG. [*Id.* at 51 p. 204]. Gogel took notes during her meetings with Ledbetter.⁵² [*Id.* at 51-52 pp. 204-05]; see also [Doc. 118 at 2-8]. Gogel kept these notes until her termination, despite the instruction to destroy the notes related to her investigation into the relationship between President Ahn and Tarver, and made copies for her attorney.⁵³ [Doc. 117 at 51 p. 204, 53-54 pp. 211-13]; see also [*id.* at 31 p. 122]. Also, Gogel occasionally met with both Tyler and

⁵¹ Gogel maintains that Jackson was aware of some of Ledbetter’s complaints, including her complaint about a relationship between President Ahn and Tarver. [Doc. 101-2 at 2 ¶¶ 3-4].

⁵² Gogel explains that she did not take notes for general meetings and that she only took notes when a team member made a complaint to her. [Doc. 101-1 at 4 ¶ 12].

⁵³ Gogel maintains that it would have been improper for her to destroy her notes pertaining to an investigation. [Doc. 122 at 3-4 pp. 8-9].

Ledbetter.⁵⁴ [*Id.* at 52 pp. 205-06]. The meetings between Ledbetter and Gogel and between Ledbetter, Gogel, and Tyler usually took place in one of KMMG's conference rooms. [*Id.* at 51 p. 203, 52 p. 206]. Most of KMMG's conference rooms had glass doors.⁵⁵ [*Id.* at 52 p. 206].

On January 7, 2011, while Gogel was on leave, Jackson requested she come into work to discuss the allegations that had been raised against her.⁵⁶ [Doc. 85 at 6-7 ¶¶ 22-23]; see also [Doc. 117 at 66 pp. 261, 264; Doc. 118 at 26]. Because she had to come in on her scheduled day off, Jackson requested the Payroll Department credit Gogel for half a day of PTO. [Doc. 85 at 7 ¶ 23, 12; Doc. 120 at 67 pp. 263-64]. After the meeting, Gogel was put on paid administrative leave pending further

⁵⁴ Gogel testified that meetings between the three of them "absolutely could have" happened, but "[n]ot very often." [Doc. 117 at 52 pp. 205-06].

⁵⁵ Tyler was terminated on January 6, 2011, after having been placed on administrative leave on December 16, 2010. [Doc. 115 at 42 pp. 161-62; Doc. 122 at 3 p. 6]

⁵⁶ In particular, Jackson and Webb informed her that they were investigating "an allegation that [she] had been colluding with [] [Ledbetter]," [Doc. 117 at 66 p. 264], asked her when she had met with Ledbetter and what the meetings were about, [*id.* at 66 pp. 261-62], and said that she had violated the agreement she had signed on December 6, 2010, [*id.* at 66 p. 261]. Gogel testified that she informed Jackson and Webb that her conversations with Ledbetter were about "cafeteria coverage during the shutdown and a holiday meal" and a misunderstanding with Justin Yoo about food, [*id.* at 66 p. 262, 42 p. 166], and went over Ledbetter's complaints with them, [Doc. 101-1 at 16 ¶ 58].

investigation,⁵⁷ [Doc. 85 at 6 ¶ 22; Doc. 115 at 39 p. 151; Doc. 117 at 66 pp. 263-64; Doc. 120 at 69 p. 270, 142], and escorted out of KMMG, [Doc. 117 at 66 p. 264]. KMMG concluded that there was enough information at that time to show that Gogel did solicit Ledbetter and that Gogel, Ledbetter, and Tyler had used the same attorney. [Doc. 115 at 13 p. 45]. Gogel testified that she explained to Ledbetter that she “didn’t feel like [she] could trust the people internally [at KMMG] to listen to or deal with any concerns that [Gogel] had and that [she] was going to seek outside assistance,” and that Ledbetter asked her if she had an attorney, and Gogel testified that she did not at the time, but she provided Ledbetter the name of the attorney that she “had chosen” and “was going to meet[.]”⁵⁸ [Doc. 117 at 52-53 pp. 208-09].

By letter dated January 19, 2011, Jackson terminated Gogel’s employment with KMMG.⁵⁹ [Doc. 115 at 41 p. 159, 95-96; Doc. 117 at 54 pp. 214-15; Doc. 118 at 26-27].

⁵⁷ Gogel maintains that she asked how long it would be before she received feedback from them and Webb said he would contact her, [Doc. 117 at 66 pp. 263-64], and that she asked Jackson if she was being replaced, and he said no, [Doc. 101-1 at 17 ¶ 58].

⁵⁸ Gogel submits that this conversation with Ledbetter occurred after Ledbetter heard from others that Gogel had filed an EEOC charge, and she approached Gogel to ask her about her charge, [Doc. 101-1 at 14 ¶ 47], and that Ledbetter decided on her own to retain an attorney, [Doc. 101-2 at 4 ¶ 11].

⁵⁹ Gogel testified that she actually found out that she had been terminated prior to receiving the letter of termination when other KMMG employees contacted her to express their sympathies regarding her termination, [Doc. 117 at 54 p. 215], and that from the time KMMG received notice of her EEOC charge, she only worked

In particular, the letter referenced the agreement that Gogel signed on December 6, 2010, and provided:

As you know, your position as Manager of Team Relations in Human Resources is critically important to KMMG. One of your primary duties is to investigate potential discrimination or harassment claims, either personally or by directly supervising those conducting the investigations, in order to protect KMMG by taking prompt action when warranted. You and KMMG previously recognized the potential for conflict of interest in the discharge of your duties, and on December 6, 2010, you signed the attached document. In this document you agreed that you would not solicit or influence team members to make claims against KMMG, you would not put any team members in a conflict of interest, you would not make any written or verbal statements to team members that malign the company, and that you would not seek to access files or documents that relate in any way to the merits of your claims.

As we discussed on January 7, 2011, [] Ledbetter filed a cha[r]ge of discrimination against KMMG on December 10, 2010. Part of this charge alludes to claims that [KMMG], including Human Resources, did not properly investigate her complaints against KMMG. In investigating this charge, KMMG received credible reports that [Ledbetter] discussed her intent to file a claim with you in advance of doing so, that you did not attempt to encourage the individual to internalize the complaint (rather than to externalize the complaint), and that you did not notify [KMMG] about the likely filing of a charge by another individual. You were seen by multiple people having numerous, lengthy private conferences with [] Ledbetter during the last two-three months, yet you denied having any significant recent interaction with her. Based on our investigation, one could conclude

17 days until she was terminated and that she was placed on administrative leave twice, [*id.* at 63 pp. 251-52]. KMMG adds that Gogel was off work from December 23, 2010, through January 3, 2011, for the shutdown and then took off the 4 days following the shutdown. [Doc. 85 at 6 ¶ 19, 11; Doc. 115 at 39 pp. 151-52; Doc. 120 at 67 p. 263].

that you encouraged or even solicited the filing of the charge. At the very least, there is an appearance of a conflict of interest sufficient to cause [KMMG] to lose confidence in the loyalty and trust that is required by your position.

Also, since your administrative leave began, we have received additional reports from within your department and elsewhere which caused KMMG to lose faith in you as a manager. Team Members fear retaliation from you, find inappropriate your stated and demonstrated personal dislike for many of the managers at KMMG, and are concerned by your demonstrated animus toward the Korean culture at KMMG. Finally, some of the Team Members you supervise perceive that you do not support KMMG's positive conciliatory approach to dealing with issues, but instead prefer a combative win-lose approach which often escalates issues unnecessarily.

Therefore, KMMG has no alternative but to discharge you immediately.

[Doc. 115 at 95-96 (internal citation omitted)].⁶⁰ Jackson testified that he was "totally convinced that [Gogel] had solicited and encouraged other team members to file a lawsuit against [KMMG]" and that he "had lost total confidence and trust in her to perform her jobs, her job duties that she was hired to do, and [he] could not continue her employment with [KMMG]." [Doc. 120 at 69-70 pp. 272-73]; see also [Doc. 115 at 13 p. 46 (Bailey's testimony that Gogel's planning with others to file a lawsuit

⁶⁰ Gogel submits that she reported numerous complaints to Jackson and that he did nothing to rectify those complaints. [Doc. 115 at 37 p. 141, 53 pp. 205-07, 97]. In particular, she asserts that Jackson knew about Ledbetter's complaints, but did nothing about them. [*Id.* at 49-50 pp. 190-94, 51 p. 199]; see also [Doc. 101-2 at 2-3 ¶¶ 3-5, 8]. She also points out that Jackson testified that he did not remember any additional people who provided "additional reports" aside from Grimes and Williams. [Doc. 120 at 74 p. 291].

against KMMG was “in direct contradiction to what she was actually hired for”). He further testified that he “had a major concern with [his] manager of Team Relations soliciting and encouraging other team members to file a lawsuit against [KMMG]” as she was paid “to help people and prevent lawsuits from being filed, not to encourage and solicit lawsuits to be filed” and “to do everything possible to keep—or basically not to encourage other team members to file lawsuits against [KMMG].”⁶¹ [Doc. 120 at 67 pp. 262-63]; see also [Doc. 115 at 52 pp. 201-02, 56 p. 217, 129].

On January 24, 2011, Jackson completed Gogel’s Separation Notice, which stated that she was terminated for “Violation of Rules (Other).” [Doc. 120 at 140]; see also [*id.* at 70 p. 274]. On February 3, 2011, someone at KMMG completed the Department of Labor’s form that requested KMMG’s information on Gogel’s discharge and Jackson approved the content and signed the form. [Doc. 120 at 70 p. 276, 141-42]. In response to questions on the form that sought the reason for Gogel’s termination and any effect she had on KMMG, Jackson stated that the reason for her termination was provided in full detail in the attached termination letter and that she “[e]xposed KMMG to potential liability by failing to properly

⁶¹ Gogel points to Bailey’s testimony, on behalf of KMMG, that “[i]t’s beyond [] belief that someone in [a manger role in HR] would file a charge.” [Doc. 115 at 52 p. 201].

investigate claims and fail[ing] to properly record efforts to investigate/resolve problems.” [Id. at 141]. When asked to explain the policy or rule that Gogel failed to follow and when the violation occurred, Jackson provided that one of her “main duties was to investigate internal complaints of discrimination and harassment,” and “[a]s detailed in the attached letter of termination, [she] failed to discharge her duties properly” from October through December of 2010. [Id.]. When asked how Gogel would have known about the rule or policy, Jackson stated that her “primary duty was to investigate claims and protect the company’s interest[] since the time of her hire in March of 2008.” [Id.]. The form also asked whether Gogel received any warnings, and Jackson explained that “[d]ue to [the] extreme nature of [the] offense, progressive discipline was not applicable.” [Id.]. Finally, Jackson provided that Gogel’s discharge occurred promptly after the discovery of her inappropriate behavior on January 5, 2011, and an investigation into said behavior. [Id.].

Gogel filed a second charge of discrimination with the EEOC on February 8, 2011, alleging retaliation. [Doc. 117 at 54-55 pp. 216-17; Doc. 118 at 28; Doc. 120 at 143]. In particular, she alleged that KMMG terminated her employment on January 19, 2011, after she filed her EEOC charge on November 10, 2010. [Doc. 118 at 28]. In its March 14, 2011, Position Statement, [Doc. 120 at 144-49], KMMG provided:

[Gogel] was terminated for a legitimate non-retaliatory reason. Put simply, her actions caused KMMG to lose all trust and confidence in

her and her ability to perform her job. She was intentionally dishonest with the company and she failed to perform her job duties, essentially externalizing a complaint for work place discrimination which was her duty to handle internally. Instead, she referred a team member to an outside party without informing KMMG.

[Id. at 148].

After Gogel was terminated, Williams was promoted to Manager of Team Relations, effective April 11, 2011. [Doc. 120 at 114; Doc. 123 at 129]. At the same time, Farmer was promoted to Senior Manager of Quality Control, becoming the first Caucasian American female HOD at KMMG. [Doc. 119 at 21 p. 79, 45 p. 173; Doc. 120 at 48 p. 188, 114; Doc. 123 at 54 pp. 211-12, 129]. In April 2012, Williams was designated as Acting HOD of Team Relations and was promoted to Senior Manager of Team Relations one year later.⁶² [Doc. 123 at 132, 134]. Also in April of 2012, Tarver was promoted to Acting HOD of General Affairs, and in April of 2013, she was promoted to Senior Manager of General Affairs. [Doc. 119 at 45 p. 173; Doc. 123 at 59 p. 231, 132, 134]; see also [Doc. 114 at 16 p. 59, 49-50]. Farmer was promoted by Jackson to Senior Manager of General Affairs after the position was

⁶² Williams does not and has never held the SPHR certification. [Doc. 123 at 16 p. 60, 61 p. 240]. After Williams was promoted to Senior Manger of Team Relations, Grimes was promoted to Manager of Team Relations. [Doc. 119 at 17 p. 63].

vacated by Tarver.⁶³ [Doc. 116 at 13 p. 47, 14 pp. 50-51; Doc. 120 at 40 p. 156]. In January 2014, Bailey, who at the time was Manager of Legal, became Acting HOD of Human Resources, and in April 2015, she was designated as HOD of Human Resources. [Doc. 115 at 5 p. 13, 10-11 pp. 35-37, 94].

On March 21, 2014, the EEOC mailed two Notices of Right to Sue to Gogel. [Doc. 93-12 at 2-3]. On June 19, 2014, Gogel filed this action against KMMG in the Superior Court of Fulton County, asserting discrimination and retaliation claims in violation of Title VII and § 1981. See [Doc. 1-1]. KMMG removed Gogel's complaint to this Court on July 24, 2014, see [Doc. 1], and thereafter moved to transfer the case to the Newnan Division of the United States District Court for the Northern District of Georgia, see [Doc. 5]. On September 18, 2014, Gogel, with KMMG's consent, moved to amend her complaint to correctly identify KMMG. [Doc. 17]. United States Magistrate Judge Janet F. King granted Gogel's motion to amend her complaint on September 22, 2014, see [Docket entry dated 09/22/2014], and Gogel filed her amended complaint on the same day, correctly identifying KMMG, see [Doc. 19]. On September 29, 2014, Judge King granted KMMG's motion to transfer the case to the Newnan Division. See [Doc. 21]. KMMG has now moved for

⁶³ Gogel contends that Farmer does not have experience in general affairs. [Doc. 116 at 14 pp. 51-52].

summary judgment, [Doc. 83], which Gogel opposes, [Doc. 101]. Gogel has moved for partial summary judgment, [Doc. 93], which KMMG opposes, [Doc. 99].

II. SUMMARY JUDGMENT STANDARD

In deciding a motion for summary judgment, the Court views all evidence in the light most favorable to and draws all reasonable inferences in the favor of the non-moving party. Gray v. City of Jacksonville, 492 F. App'x 1, 3 (11th Cir. 2012) (per curiam) (unpublished) (citations omitted). "Summary judgment shall be granted if the movant shows that there is 'no genuine issue as to any material fact', such that the movant is entitled to judgment as a matter of law."⁶⁴ Jerome v. Barcelo Crestline, Inc., 507 F. App'x 861, 863 (11th Cir. 2013) (per curiam) (unpublished) (quoting Fed. R. Civ. P. 56(a)); see also Holmes v. Ga. ex rel. Strickland, 503 F. App'x 870, 872 (11th Cir. 2013) (per curiam) (unpublished) (citations omitted); Young v. FedEx Express, 432 F. App'x 915, 916 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted).

The party moving for summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material facts, upon which the non-moving party must then submit specific facts showing a genuine issue for trial.

⁶⁴ "A fact is material only if it might affect the outcome of the suit under governing law." Bostic v. Lauragina Prof'l Transp., LLC, No. CV 414-083, 2015 WL 3650731, at *2 (S.D. Ga. June 5, 2015) (citation omitted).

Fed. R. Civ. P. 56(e); see also Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Premier Assocs., Inc. v. EXL Polymers, Inc., No. 1:08-cv-3490-WSD, 2010 WL 2838497, at *8 (N.D. Ga. July 19, 2010), aff'd in part, 507 F. App'x 831 (11th Cir. 2013) (unpublished) (citations omitted). “[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation[s] or denials of [her] pleading, but must set forth specific facts showing that there is a genuine issue for trial.” Jackson v. B & L Disposal, Inc., 425 F. App'x 819, 820 (11th Cir. 2011) (per curiam) (unpublished) (first alteration in original) (citation and internal marks omitted); see also Shuler v. Ingram & Assocs., 441 F. App'x 712, 715 (11th Cir. 2011) (per curiam) (unpublished) (citation and internal marks omitted); Bryant v. U.S. Steel Corp., 428 F. App'x 895, 897 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). “Speculation or conjecture cannot create a genuine issue of material fact.” Shuler, 441 F. App'x at 715 (citation omitted); see also Howard v. Or. Television, Inc., 276 F. App'x 940, 941 (11th Cir. 2008) (per curiam) (unpublished) (citation omitted); Goodman v. Ga. Sw., 147 F. App'x 888, 891 (11th Cir. 2005) (per curiam) (unpublished) (citation and internal marks omitted) (“[A]ll reasonable inferences arising from the undisputed facts should be made in favor of the nonmovant, but an inference based on speculation and conjecture is not reasonable.”). “Moreover, the non-moving party cannot create a genuine issue

through evidence that is ‘merely colorable’ or ‘not significantly probative.’” Morales v. Ga. Dep’t of Human Res., 446 F. App’x 179, 181 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). And, “the nonmoving party must do more than summarily deny the allegations or show that there is some metaphysical doubt as to the material facts.” Everidge v. Wells Fargo Bank, N.A., CASE NOS.: 5:12-CV-497 (LJA), 2015 WL 5786738, at *11 (M.D. Ga. Sept. 29, 2015), aff’d, No. 15-15041, 2016 WL 2997193 (11th Cir. May 25, 2016) (per curiam) (unpublished) (citation and internal marks omitted). In addition, “[t]here is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment,” Anyanwu v. Brumos Motor Cars, Inc., 496 F. App’x 943, 945-46 (11th Cir. 2012) (per curiam) (unpublished) (citation and internal marks omitted), and “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, summary judgment for the moving party is proper,” Premier Assocs., Inc., 2010 WL 2838497, at *9 (alteration in original) (citation and internal marks omitted).

III. DISCUSSION

Gogel claims that KMMG discriminated against her because of her race, alienage, national origin, and gender in violation of § 1981 and Title VII. [Doc. 19 at 17-19 ¶¶ 53-59, 21-23 ¶¶ 65-72]. She further claims that she was retaliated against for her complaints of discrimination and her filing of an EEOC charge in violation

of § 1981 and Title VII. [Id. at 19-21 ¶¶ 60-64, 23-26 ¶¶ 73-83]. KMMG argues that it is entitled to summary judgment on all of Gogel's claims and makes several arguments in support of its motion. [Doc. 83]. First, KMMG asserts that any allegations of conduct that occurred over 180 days prior to the filing of Gogel's EEOC charge and over four years prior to the filing of her complaint in the Superior Court of Fulton County are untimely. [Doc. 83-1 at 10-11]. KMMG also argues that, to the extent her allegations are timely, Gogel's failure to promote claims fail as a matter of law, [id. at 11-13], and that Gogel cannot set forth a prima facie case of discrimination under Title VII or § 1981 with regard to certain alleged conduct, [id. at 13-17], though it does not dispute that she can establish a prima facie case of discrimination as it pertains to her termination and concedes, for the purposes of summary judgment, that she can set forth a prima facie case of retaliation, [id. at 13-17; Doc. 110 at 14 n.3; Doc. 99 at 15 n.5]. Finally, KMMG argues that it has articulated legitimate, non-discriminatory and non-retaliatory reasons for its employment actions, which she has failed to show are pretextual. [Doc. 83-1 at 23-26]. Gogel opposes KMMG's motion for summary judgment, [Doc. 101], and argues that she is entitled to partial summary judgment on the inapplicability of certain affirmative defenses asserted by KMMG and in regard to the establishment of prima facie claims of retaliation under Title VII and § 1981. [Doc. 93-1 at 11-36].

A. Timeliness

KMMG argues that many of Gogel's claims are time-barred. [Doc. 83-1 at 10-11]. In particular, KMMG asserts that any of Gogel's Title VII claims pertaining to discrete acts that occurred before May 14, 2010, are barred and that "to the extent [she] seeks to recover under [§] 1981 for any events occurring before June 19, 2010, such recovery is prohibited by [§] 1981's four-year statute of limitations."⁶⁵ [*Id.* (emphasis omitted)]. The Court will address each argument.

1. *Title VII*

A plaintiff pursuing a private action under Title VII must first timely file a charge of discrimination "within one hundred and eighty days after the alleged unlawful employment practice occurred[.]"⁶⁶ 42 U.S.C. § 2000e-5(e)(1); Nat'l R.R.

⁶⁵ These arguments were asserted by KMMG as affirmative defenses in its answer to Gogel's complaint, see [Doc. 2 at 18], and Gogel claims she is entitled to summary judgment on these affirmative defenses, see [Doc. 93-1 at 29-31]. In particular, she alleges that she "was well within the applicable statutes of limitations, and accordingly, [KMMG's] Seventh and Eighth Defenses fail as a matter of law." [*Id.* at 30]. However, as addressed in detail hereinafter, many of Gogel's allegations, see generally [Doc. 19], as argued by KMMG, see [Doc. 99 at 24-26], are clearly untimely. Accordingly, Gogel's motion for partial summary judgment, [Doc. 93-1], in this respect is without merit and due to be denied.

⁶⁶ "The clock for the 180-day filing period starts when the discrete unlawful practice takes place." Jordan v. City of Montgomery, 283 F. App'x 766, 767 (11th Cir. 2008) (per curiam) (unpublished) (citation omitted); see also Barnes v. Hillhaven Rehab. & Convalescent Ctr., 686 F. Supp. 311, 312 (N.D. Ga. 1988) (citations omitted) ("The 180 day filing period begins to run from the date the adverse employment decision is communicated to the employee.").

Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002); Gay v. AirTran Airways, Inc., 427 F. App'x 743, 745 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). “Accordingly, in general, only those claims arising within 180 days prior to the filing of the EEOC discrimination charge are actionable under Title VII.” Manley v. DeKalb Cty., 587 F. App'x 507, 511 (11th Cir. 2014) (per curiam) (unpublished) (citation omitted). “The continuing violation doctrine permits a plaintiff to sue on an otherwise time-barred claim where at least one other violation occurred within the statutory period.” Brooks v. CSX Transp., Inc., 555 F. App'x 878, 880 (11th Cir. 2014) (per curiam) (unpublished) (citing Hipp v. Liberty Nat'l Life Ins. Co., 252 F.3d 1208, 1221 (11th Cir. 2001) (per curiam)). “However, the doctrine does not apply to discrete acts of discrimination, such as a promotion denial or refusal to hire.” Id. (citing Nat'l R.R. Passenger Corp., 536 U.S. at 114).

Gogel filed her first charge of discrimination with the EEOC on November 10, 2010, [Doc. 117 at 137]; see also [id. at 38 pp. 149-51], and KMMG thus argues that “any discrete act that occurred before May 14, 2010 is barred,” [Doc. 83-1 at 10 (footnote and citation omitted)].⁶⁷ The Court agrees. “While [Gogel] alleged that

⁶⁷ KMMG specifically points to the following discrete acts claimed by Gogel as time-barred: her claim that she should have been designated HOD in March 2009, her assertions that she should have been sent to the SHRM on June 12, 2009, her claim that she was abandoned on a trip to Korea in the summer of 2009, her claim that she was told not to speak strongly after the fall of 2009, and her claim that she should have been made HOD on April 12, 2010. [Doc. 83-1 at 11].

[s]he suffered from numerous discriminatory and retaliatory acts from the day that [s]he was hired through [January 19, 2011], the date that [s]he was fired, only incidents that took place within the timely filing period are actionable.” Nat’l R.R. Passenger Corp., 536 U.S. at 114. Because Gogel first filed her EEOC charge on November 10, 2011, only those acts that occurred 180 days before this date are actionable.⁶⁸ Id. Accordingly, the Court finds that any allegations of conduct that occurred more than 180 days prior to the filing of her EEOC charge, including Gogel’s allegations that she was denied a promotion to HOD in March of 2009 and April of 2010, are time-barred. See Manley, 587 F. App’x at 511-12 (affirming the district court’s ruling that plaintiff’s claims based on alleged denial of promotions were time-barred as they occurred outside the 180-day limitations period); see also

⁶⁸ Gogel maintains that her claim that she was not designated HOD occurred within 180 days of her filing her first EEOC charge because the “last time [she] recalled asking [] Jackson about her not being promoted to HOD of Team Relations was in June or July 2010.” [Doc. 93-1 at 30 (citing [Doc. 117 at 62 p. 248])]; see also [Doc. 109 at 20]. However, “the Eleventh Circuit has held that the denial of a promotion is a one time violation, the present consequences of which only are felt at the present time, and not a continuing violation.” Johnson v. Austal, U.S.A., L.L.C., 805 F. Supp. 2d 1299, 1308 (S.D. Ala. 2011) (citations omitted). Gogel claims that she was not designated HOD in March 2009 and April 2010, see [Doc. 101 at 3; Doc. 117 at 116-22, 140], and failure to promote is a discrete act, see Price v. M & H Valve Co., 177 F. App’x 1, 7 (11th Cir. 2006) (per curiam) (unpublished) (citing Nat’l R.R. Passenger Corp., 536 U.S. at 114) (“[A]n employer’s failure to promote is a discrete act or single occurrence.”). As KMMG correctly contends, Gogel cannot “revive her untimely HOD promotion allegations by contending that she continued to complain about the ‘promotion’ within the 180-day statutory period.” [Doc. 110 at 7].

Anderson v. City of Fort Pierce, Case Number: 14-14095-CIV-MARTINEZ-LYNCH, 2015 WL 10857439, at *3 (S.D. Fla. July 29, 2015) (finding the discrete discriminatory acts alleged by plaintiff that occurred outside the timely filing period were time-barred).⁶⁹

2. Section 1981

“Congress created a catchall 4-year statute of limitations for actions arising under federal statutes enacted after December 1, 1990, that do not contain a statute of limitations provision.” Palmer v. Stewart Cty. Sch. Dist., 178 F. App’x 999, 1002-

⁶⁹ Gogel asserts that “[e]vidence of discrimination that occurred more than 180 days prior to the filing of [her] EEOC [c]harge is relevant and probative.” [Doc. 101 at 48]. She further argues that because “KMMG, for two years in a row, prevented [her] from being promoted by filling the HOD of Team Relations position with a Caucasian male,” and she, “at the same time, was witnessing other instances of discrimination against other American females,” “her claims should be considered in full in determining whether she was discriminated against and retaliated against for engaging in protected activity.” [*Id.* at 52]. Although these time-barred allegations cannot serve as the basis of her claims, they may still be relevant to timely claims as evidence which “illuminate[s] current practices which, viewed in isolation, may not indicate discriminatory [and retaliatory] motives.” Allen v. Montgomery Cty., 788 F.2d 1485, 1488 (11th Cir. 1986) (citations omitted); see also Eubanks v. Henry Cty., Civil Action File No. 1:11-CV-3969-AJB, 2014 WL 1309338, at *15 (N.D. Ga. Mar. 31, 2014), *aff’d*, 626 F. App’x 250 (11th Cir. 2015) (per curiam) (unpublished) (citation omitted) (agreeing with the plaintiff that the court could consider time-barred instances to demonstrate discrimination); E.E.O.C. v. Atlanta Gastroenterology Assocs., LLC, No. Civ.A.1:05CV2504-TWT, 2007 WL 602212, at *14 (N.D. Ga. Feb. 16, 2007), adopted at *1 (alterations in original) (quoting United Air Lines, Inc. v. Evans, 431 U.S. 553, 558 (1977)) (“As noted by the Supreme Court, a discriminatory act ‘which is not made the basis for a timely charge . . . may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue[.]’”).

03 (11th Cir. 2006) (per curiam) (unpublished) (citing Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 371 (2004); 28 U.S.C. § 1658). “Section 1981 was amended by the Civil Rights Act of 1991,” but “the four year statute of limitations applies only if the cause of action was not available before the 1991 amendments to the statute.” Id. (citing Jones, 541 U.S. at 373, 383). “In 1981, the Supreme Court concluded that § 1981 cover[ed] only conduct at the initial formation of the contract and conduct which impairs the right to enforce cont[r]act obligations through legal process.” Edwards v. Nat’l Vision Inc., 568 F. App’x 854, 859 (11th Cir. 2014) (per curiam) (unpublished) (first alteration in original) (internal marks omitted) (quoting Patterson v. McLean Credit Union, 491 U.S. 164, 179 (1989), superseded by statute on other grounds, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1074). However, “[t]he 1991 Act . . . defin[ed] the key ‘make and enforce contracts’ language in § 1981 to include the ‘termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.’” Jones, 541 U.S. at 383 (quoting 42 U.S.C. § 1981(b)).

KMMG asserts that the four-year statute of limitations applies in this case and bars “any events occurring before June 19, 2010.” [Doc. 83 at 11 (citation and emphasis omitted)]. As KMMG correctly contends, [Doc. 110 at 2-3], Gogel has failed to respond to its argument regarding the timeliness of her § 1981 claims, see

[Doc. 101].⁷⁰ “When a party does not ‘respond to an argument or otherwise address a claim, the Court deems such argument or claim abandoned.’” Sherk v. Adesa Atlanta, LLC, 432 F. Supp. 2d 1358, 1374 (N.D. Ga. 2006) (quoting Hudson v. Norfolk S. Ry. Co., 209 F. Supp. 2d 1301, 1324 (N.D. Ga. 2001)) (collecting cases). Nevertheless, the Court will address KMMG’s argument.

“Because [Gogel’s] retaliation [and discrimination] claims relate to post-contract-formation conduct of a type that was not actionable before the Civil Rights act of 1991, they are governed by the four-year statute of limitations established by 28 U.S.C. § 1658(a).”⁷¹ Belton v. Russell Cty. Bd. of Educ., Civil Action No.

⁷⁰ The Court notes that Gogel has argued that her claims are timely under § 1981 in her reply in support of her motion for partial summary judgment, [Doc. 109 at 19]; however, she has not responded to KMMG’s arguments in this respect in her response in opposition to its motion for summary judgment, see [Doc. 101].

⁷¹ With respect to Gogel’s failure to promote claims, “[b]efore the 1991 Act, a failure to promote claim could be brought under § 1981 only if the promotion rose to the level of an ‘opportunity for a new and distinct relationship between the employee and the employer.’” Bryant v. Jones, 696 F. Supp. 2d 1313, 1321 (N.D. Ga. 2010) (quoting Patterson, 491 U.S. at 186-87). “The 1991 Act, which permits claims based on existing contracts, enabled a plaintiff to bring a failure to promote claim under § 1981(b) even where the promotion would not amount to a new and distinct relationship.” Id. Gogel alleges that “[a]lthough the HOD designation was a promotion, it would not have constituted a separate contract of employment, as [she] was performing the duties and held the responsibilities of a HOD, without the title or compensation associated therewith.” [Doc. 19 at 18 ¶ 57]. Thus, though Gogel has not specifically addressed KMMG’s arguments with respect to the untimeliness of her claims under § 1981 in her response to KMMG’s motion, she does agree that the four-year statute of limitations applies in this case. [Doc. 109 at 19]. The Court will therefore apply the four-year statute of limitations to Gogel’s

3:10CV814-MHT, 2012 WL 4478668, at *2 (M.D. Ala. Aug. 1, 2012), adopted by 2012 WL 4476075, at *1 (M.D. Ala. Sept. 26, 2012); see also Jones, 541 U.S. at 383; Bryant, 696 F. Supp. 2d at 1321-22. Gogel filed her complaint against KMMG on June 19, 2014, in the Superior Court of Fulton County. [Doc. 1-1]. Accordingly, any alleged conduct that occurred before June 19, 2010, including Gogel's allegations that she was denied a promotion to HOD in March of 2009 and April of 2010, is time-barred. See McCray v. Wal-Mart Stores, Inc., 377 F. App'x 921, 924 (11th Cir. 2010) (per curiam) (unpublished) (finding the factual bases for plaintiff's § 1981 claims that took place four years prior to her complaint were time-barred); Sobutay v. Internet Int'l, Inc., No. 4:06-CV-87(CDL), 2007 WL 4166168, at *2 (M.D. Ga. Nov. 20, 2007) (finding plaintiff's § 1981 failure to promote claim time-barred as the act occurred more than four years prior to his filing suit).

B. Title VII and § 1981

Title VII prohibits discrimination in employment decisions on the basis of "race, color, religion, sex or national origin." See 42 U.S.C. § 2000e-2(a)(1); Blue v. Dunn Constr. Co., 453 F. App'x 881, 883 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted); Bolton v. Potter, No. 8:03-CV-2205-T-27EAJ, 2006 WL 118286, at *5 (M.D. Fla. Jan. 13, 2006), aff'd, 198 F. App'x 914 (11th Cir. 2006) (per curiam)

failure to promote claims.

(unpublished) (citing Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977)); see also Branham v. Astrue, Civil Action No. 7:08-CV-123(HL), 2010 WL 419395, at *3 (M.D. Ga. Jan. 28, 2010) (citation omitted). Title VII also prohibits an employer from retaliating against an employee “because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a); see also Smithers v. Wynne, 319 F. App’x 755, 756 (11th Cir. 2008) (per curiam) (unpublished) (citation omitted). Section 1981 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts^[72] . . . as is enjoyed by white citizens,” 42 U.S.C. § 1981(a), and “prohibits an employer from retaliating against its employee in response to the employee’s complaint of race-based discrimination,” Braswell v. Allen, 586 F. Supp. 2d 1297, 1310 (M.D. Ala. 2008) (citation omitted).

Title VII and § 1981 use the same analysis for discrimination and retaliation claims. See Worley v. City of Lilburn, 408 F. App’x 248, 250 (11th Cir. 2011) (per curiam) (unpublished) (citations omitted) (“The elements required to establish

⁷² “Make and enforce contracts” encompasses “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b).

retaliation claims under § 1981 are the same as those required for Title VII claims.”); Bryant v. Jones, 575 F.3d 1281, 1296 n.20 (11th Cir. 2009) (noting that discrimination claims brought under § 1981 and Title VII are subject to the same standards of proof and employ the same analytical framework); Butler v. Ala. Dep’t of Transp., 536 F.3d 1209, 1215 (11th Cir. 2008) (analyzing discrimination claim under § 1981 under same framework as Title VII); Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998) (stating that Title VII and § 1981 “have the same requirements of proof and use the same analytical framework”). Therefore, the Court will address Gogel’s Title VII discrimination and retaliation claims in connection with her § 1981 claims.

Where, as here, there is no direct evidence of discrimination or retaliation, the Court evaluates Title VII claims by using the burden shifting framework articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Maddox-Jones v. Bd. of Regents of Univ. Sys. of Ga., 448 F. App’x 17, 19 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted); see also Miller-Goodwin v. City of Panama City Beach, Fla., 385 F. App’x 966, 969 (11th Cir. 2010) (per curiam) (unpublished) (citation omitted); Coar v. Pemco Aeroplex, Inc., 372 F. App’x 1, 3 (11th Cir. 2010) (per curiam) (unpublished) (citation omitted). Gogel must first establish a prima facie case. Berman v. Orkin Exterminating Co., 160 F.3d 697, 701 (11th Cir. 1998) (footnote omitted). “Demonstrating a prima facie case is not onerous; it requires

only that the plaintiff establish facts adequate to permit an inference of discrimination [or retaliation].” Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997) (per curiam) (citations omitted); see also Tex. Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-54 (1981).

If Gogel establishes a prima facie case as to each of her claims, an inference of discrimination and retaliation arises, and the burden shifts to KMMG to articulate legitimate, non-discriminatory and non-retaliatory reasons for its actions. Berman, 160 F.3d at 702 (footnote omitted); see also Jefferson v. Burger King Corp., 505 F. App’x 830, 833 (11th Cir. 2013) (per curiam) (unpublished); Entrekin v. City of Panama City Fla., 376 F. App’x 987, 997 (11th Cir. 2010) (per curiam) (unpublished) (citation omitted); Batts v. Silver Line Bldg. Prods. Corp., Civil Action File No. 1:08-CV-3355-WSD-ECS, 2010 WL 966860, at *9 (N.D. Ga. Feb. 22, 2010), adopted by 2010 WL 966861, at *2 (N.D. Ga. Mar. 12, 2010) (citation omitted). KMMG’s burden, one of production and not of persuasion, is “exceedingly light.” Smith v. Horner, 839 F.2d 1530, 1537 (11th Cir. 1988) (citations and internal marks omitted); see also Bagwell v. Peachtree Doors & Windows, Inc., Civil Action File No. 2:08-CV-191-RWS-SSC, 2011 WL 1497831, at *21 (N.D. Ga. Feb. 8, 2011) (citations omitted), adopted by 2011 WL 1497658, at *1 (N.D. Ga. Apr. 19, 2011). “It is not necessary that the court believe the evidence; the court’s analysis can involve no

credibility assessment.” Matthews v. City of Dothan, No. 1:04-CV-640-WKW, 2006 WL 3742237, at *5 (M.D. Ala. Dec. 18, 2006) (citation and internal marks omitted). “So long as the employer articulates ‘a clear and reasonably specific’ non-discriminatory [and non-retaliatory] basis for its actions, it has discharged its burden of production.” Vessels v. Atlanta Indep. Sch. Sys., 408 F.3d 763, 770 (11th Cir. 2005) (per curiam) (citation omitted).

If KMMG meets its burden of production with respect to each claim, the inference of discrimination and retaliation is erased, and the burden shifts back to Gogel to show that KMMG’s articulated reason is merely a pretext for discrimination and retaliation. Entrekin, 376 F. App’x at 997 (citation omitted); Berman, 160 F.3d at 702 (footnote omitted); see also Wigfall v. St. Leo Univ., Inc., No. 12-11316, 2013 WL 1798341, at *1 (11th Cir. Apr. 29, 2013) (per curiam) (unpublished) (footnote omitted); Saunders v. Emory Healthcare, Inc., 360 F. App’x 110, 113, 115 (11th Cir. 2010) (per curiam) (unpublished). That is, “[o]nce [KMMG] proffers a legitimate, non-discriminatory [and non-retaliatory] reason, in order to survive summary judgment, [Gogel] must proffer sufficient evidence to create a genuine issue of material fact regarding whether each of [KMMG’s] . . . articulated reasons [are] pretextual.” Dockery v. Nicholson, 170 F. App’x 63, 65-66 (11th Cir. 2006) (per curiam) (unpublished) (last alteration in original) (citation and internal

marks omitted); Bagwell, 2011 WL 1497831, at *25 (citation omitted). Despite this burden-shifting framework, the “ultimate burden of persuading the trier of fact that [KMMG] intentionally [discriminated or retaliated] against [Gogel] remains at all times with [Gogel].” See Burdine, 450 U.S. at 253 (citations omitted); see also Walker v. St. Joseph’s/Candler Health Sys., Inc., 506 F. App’x 886, 886 (11th Cir. 2013) (per curiam) (unpublished) (citation omitted).⁷³

⁷³ Even if Gogel’s failure to promote allegations were not time-barred, these claims would still fail because she cannot establish a *prima facie* claim with respect to the April 2010 claim, and KMMG has articulated legitimate, non-discriminatory and non-retaliatory reasons with respect to the March 2009 claim, which Gogel has not shown are pretext for discrimination. Gogel claims that she was not designated HOD of Team Relations when Tyler was designated as HOD of both Human Resources and Team Relations in March of 2009. See [Doc. 19 at 7 ¶ 21; Doc. 93-2 at 7 ¶ 28, 8 ¶ 32; Doc. 101 at 33]. Even if she could establish a *prima facie* case as to this allegation, KMMG has articulated a legitimate, non-discriminatory and non-retaliatory reason for not selecting Gogel for HOD of Team Relations as Jackson chose to designate one HOD over both personnel departments in order to reduce his direct reports, and he chose Tyler for this role based on his greater experience and longer tenure at KMMG. [Doc. 85 at 2-3 ¶¶ 6-8]. Gogel has failed to show that Jackson’s reasons were pretextual, and thus KMMG’s summary judgment motion with respect to this claim is due to be granted on this alternative basis as well. See Price, 177 F. App’x at 9 (footnote omitted) (“[E]ven if [plaintiff’s] claim of failure to promote . . . was not time-barred, and even assuming [plaintiff] established a *prima facie* case, he failed to show that genuine issues of material fact existed as to whether [defendant’s] non-discriminatory reasons for not promoting him were pretextual and that summary judgment was not warranted.”); Brooks v. Cty. Comm’n of Jefferson Cty., 446 F.3d 1160, 1163 (11th Cir. 2006) (citation and internal marks omitted) (finding defendant’s reason of superior qualifications and experience were legitimate, non-discriminatory reasons and plaintiff failed to prove pretext as she did not show that “the disparities between the successful applicant’s and her own qualifications were of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the

1. *Retaliation Claims*

Gogel claims that she was terminated in retaliation for her internal complaints of discrimination and for filing an EEOC charge.⁷⁴ To establish a prima facie case of

plaintiff”); Denney v. City of Albany, 247 F.3d 1172, 1184-90 (11th Cir. 2001) (finding plaintiffs’ evidence insufficient to show defendant’s reasons for not promoting plaintiffs were pretext for intentional discrimination). Gogel also claims that she was denied a promotion to HOD of Team Relations in April 2010. [Doc. 93-2 at 13 ¶ 55; Doc. 101 at 33]. However, as KMMG asserts, “there was no opening to promote [her] into at that time because [] Tyler was HOD for both Team Relations and Human Resources.” [Doc. 83-1 at 11 n.3 (citing [Doc. 120 at 47 p. 184])]; see also [Doc. 99 at 25; Doc. 119 at 50 p. 196]. Thus, she has failed to establish a prima facie case pertaining to her 2010 failure to promote claim, and KMMG’s motion for summary judgment is due to be granted on this alternative basis. Lane v. Ogden Entm’t, Inc., 13 F. Supp. 2d 1261, 1267 (M.D. Ala. 1998) (granting summary judgment on plaintiff’s failure to promote claim where there was no opening as the prima facie case assumes that there is actually an opening to be filled); see also Adesalu v. Copps, 606 F. Supp. 2d 97, 104 (D.D.C. 2009) (citation and internal marks omitted) (“Lacking evidence of an available position, plaintiff cannot establish a prima facie case of employment discrimination based on non-promotion.”).

⁷⁴ Gogel also claims that KMMG retaliated against her by excluding her from management meetings, labeling her as uncooperative, taking away her resources, and prohibiting her from advising employees of their right to file a charge with the EEOC. See [Doc. 19 at 19-20 ¶ 60, 23-24 ¶ 74, 25 ¶ 80]. However, these actions do not constitute materially adverse actions. See Wells v. General Dynamic Info. Tech. Inc., 571 F. App’x 732, 736-37 (11th Cir. 2014) (per curiam) (unpublished) (emphasis omitted) (finding plaintiff’s allegations that she was cut off from resources that she needed to perform her duties and that she was excluded from meetings “do not rise to the level of a materially adverse action required for a retaliation claim under Title VII or § 1981”); Edwards, 568 F. App’x at 862 (holding that telling other employees not to talk to plaintiff, among other actions, was not materially adverse); Moat v. Aaron's Inc., No. 4:13-CV-181-VEH, 2014 WL 5860574, at *9 (N.D. Ala. Nov. 12, 2014) (citations omitted) (holding that hostility and avoidance of communication have “consistently been held not to qualify as materially adverse” actions under Burlington); Ewald v. Royal Norwegian Embassy, 2 F. Supp. 3d 1101, 1121 (D. Minn.

retaliation, Gogel must show that (1) she engaged in statutorily protected activity⁷⁵; (2) she suffered a materially adverse employment action; and (3) the adverse employment action was caused by her engaging in protected activity. Bailey v. City of Huntsville, 517 F. App'x 857, 861 (11th Cir. 2013) (per curiam) (unpublished) (citation omitted); see also Hawk v. Atlanta Peach Movers, 469 F. App'x 783, 785 (11th Cir. 2012) (per curiam) (unpublished) (citation omitted); Hawthorne v. Baptist Hosp. Inc., 448 F. App'x 965, 968 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted); Cleveland v. Sec'y of the Treasury, 407 F. App'x 386, 387-88 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). KMMG concedes that Gogel can satisfy the elements of a prima facie case of retaliation for her termination, [Doc. 110 at 15 n.3; Doc. 99 at 15 n.5],⁷⁶ but maintains that her claim still fails because she

2014) (holding that exclusion from work-related events and communications not sufficient to support retaliation claim).

⁷⁵ Under Title VII, "[s]tatutorily protected expression includes internal complaints of discrimination to superiors, as well as complaints lodged with the EEOC and discrimination-based lawsuits." Gerard v. Bd. of Regents State of Ga., 324 F. App'x 818, 825 (11th Cir. 2009) (per curiam) (unpublished) (citing Pipkins v. City of Temple Terrace, 267 F.3d 1197, 1201 (11th Cir. 2001)). Likewise, "[i]n the § 1981 context, '[s]tatutorily protected expression includes complaining to superiors about harassment in the work place, lodging complaints with the EEOC and participating in discrimination-based lawsuits.'" Page v. Winn-Dixie Montgomery, Inc., 702 F. Supp. 2d 1334, 1354 (S.D. Ala. 2010) (second alteration in original) (citation omitted).

⁷⁶ Although KMMG argues in its motion for summary judgment, [Doc. 83-1 at 17-22], and in its response in opposition to Gogel's motion for partial summary

has not shown that its proffered legitimate, non-retaliatory reason for her termination is a pretext for retaliation, [Doc. 83-1 at 23-26; Doc. 99 at 19-23; Doc. 110 at 9-21].

KMMG asserts that Gogel was terminated on January 19, 2011, because it lost confidence in her abilities to perform her job duties after an investigation showed that she had solicited Ledbetter to file a charge against KMMG, which was in violation of the agreement she signed on December 6, 2010. [Doc. 83-1 at 23; Doc. 99 at 16-18; Doc. 110 at 17-19]. Because this reason constitutes a “clear and reasonably specific” non-retaliatory explanation for KMMG’s decision to terminate Gogel, KMMG has discharged its burden of production, see Vessels, 408 F.3d at 770 (citation omitted); see also Wilson v. Bellsouth Telecomms. Inc., 386 F. App’x 971, 972 (11th Cir. 2010) (per curiam) (unpublished); Jones v. Flagship Int’l, 793 F.2d 714, 728 (5th Cir. 1986), and the burden shifts back to Gogel to prove by a preponderance of the evidence that the reason provided by KMMG is pretext for a prohibited, retaliatory motive, see Edmond v. Univ. of Miami, 441 F. App’x 721, 724 (11th Cir.

judgment, [Doc. 99 at 8-14], that Gogel cannot establish a *prima facie* case of retaliation, in its reply in support of its motion for summary judgment, KMMG states that it “does not contest that [Gogel’s] filing of her EEOC Charge on November 3, 2010, was protected activity and assumes (for summary judgment purposes) that [she] has made out the minimal requirements for a *prima facie* retaliation claim.” [Doc. 110 at 14 n.3]; see also [Doc. 99 at 15 n.5].

2011) (per curiam) (unpublished); Tiggs-Vaughn v. Tuscaloosa Hous. Auth., 385 F. App'x 919, 923 (11th Cir. 2010) (per curiam) (unpublished).

To demonstrate pretext, Gogel's evidence must reveal "'such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in [KMMG's] proffered legitimate reason[] for its actions that a reasonable factfinder could find them unworthy of credence.'" Maples v. UHS of Ga., Inc., 716 F. Supp. 2d 1266, 1274 (N.D. Ga. 2010) (quoting Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997)). Gogel may prove pretext by "either proving that intentional [retaliation] motivated the employer or producing sufficient evidence to allow a rational trier of fact to disbelieve the legitimate reason proffered by the employer, which permits, but does not compel, the trier of fact to find illegal [retaliation]." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1088 (11th Cir. 2004). Gogel may thus create an issue of fact at the pretext stage by (1) presenting evidence that KMMG's proffered reason is not worthy of belief, or (2) presenting evidence that retaliation was, in fact, KMMG's real reason. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146-47 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511 (1993).

"Pretext means more than a mistake on the part of the employer; pretext means a lie, specifically a phony reason for some action." Tolley v. United Parcel Serv., No. Civ.A.1:05CV606TWT, 2006 WL 486523, at *5 (N.D. Ga. Feb. 27, 2006)

(citation and internal marks omitted). “Thus, the inquiry is limited to whether the employer offered an honest, [non-retaliatory] explanation for [the materially adverse action], regardless of whether the decision might have been mistaken.” Id. (citations omitted). “Ultimately, an employee must meet the employer’s stated reason ‘head on and rebut it, and [she] cannot succeed by simply quarreling with the wisdom of that reason.’” Young, 432 F. App’x at 917 (citation omitted). Gogel “cannot establish pretext by simply demonstrating facts that suggest [retaliatory] animus, but must specifically respond to . . . [KMMG’s] explanation[] and rebut [it].” Burgos-Stefanelli v. Sec’y, U.S. Dep’t of Homeland Sec., 410 F. App’x 243, 247 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). “If [Gogel] fails to demonstrate that there is a genuine issue of material fact concerning whether [KMMG’s] articulated reason[] for the [materially] adverse [] action [is] pretextual, then [KMMG] is entitled to summary judgment on the retaliation claim.” Johnson v. Advertiser Co., 778 F. Supp. 2d 1270, 1277 (M.D. Ala. 2011) (citing Combs, 106 F.3d at 1528). Finally, despite this burden-shifting framework, the “ultimate burden of persuading the trier of fact that [KMMG] intentionally [retaliated] against [Gogel] remains at all times with [Gogel].” Burdine, 450 U.S. at 253 (citations omitted).

Gogel first argues that KMMG’s proffered reason for her termination is pretextual because she did not, in fact, encourage, solicit, or coerce Ledbetter to file

an EEOC charge or to sue KMMG. [Doc. 101 at 28 (citation omitted)]. Gogel points to Ledbetter's testimony that she "decided for [her]self . . . to file a Charge with the EEOC," that Gogel "did not encourage [Ledbetter] nor solicit [her] to get an attorney and sue [KMMG] or file an EEOC Charge," that Ledbetter "never told [] Williams that [Gogel] was the 'leader' of [her] and [Tyler] in filing a Charge with the EEOC" or that "all three of [them] were going to sue [KMMG] and had the same attorney," and that there was no collusion. [Doc. 101-2 at 3-4 ¶¶ 7-11]. Despite Gogel's focus on whether she actually solicited Ledbetter and thus violated the December 2010 agreement, the Court need not address these arguments any further since the issue is not whether she actually solicited Ledbetter to file a charge or a lawsuit or whether KMMG was wrong in believing that she did, but whether KMMG, at the time it terminated her, honestly believed that she had solicited Ledbetter to pursue legal action against KMMG. See Clark v. S. Broward Hosp. Dist., 601 F. App'x 886, 896 (11th Cir. 2015) (unpublished) (citations omitted) ("[S]ignificantly, the question is not whether Plaintiff actually engaged in the alleged misconduct. Rather, it is whether the [defendant] in good faith believed the reports of misconduct."); Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991) (citation omitted) ("That the employee did not in fact engage in misconduct reported to the employer is irrelevant to the question whether the employer believed the employee had done

wrong.”); Berstein v. Ga. Dep’t of Educ., 970 F. Supp. 2d 1340, 1360-61 (N.D. Ga. 2013), adopted at 1347 (citing Holifield, 115 F.3d at 1565); Butts v. Ameripath, Inc., 794 F. Supp. 2d 1277, 1298 (S.D. Fla. 2011), adopted at 1279 (citation omitted) (“With respect to . . . proving pretext, ‘the ultimate issue is whether the decision-maker believed that the employee violated the rule, not whether the employee actually violated the rule.’”).

Indeed, the “inquiry is not whether [Gogel] was guilty of misconduct but whether [KMMG] in good faith believed [Gogel] had done wrong and whether this belief was the reason for [her] termination.” Butts, 794 F. Supp. at 1299 (citing Entrekin, 376 F. App’x at 997); see also Hankins v. AirTran Airways, Inc., 237 F. App’x 513, 522 (11th Cir. 2007) (per curiam) (unpublished) (alterations in original) (citation omitted) (“‘The relevant issue here is not whether [the employee] actually falsified the entry, but rather whether [the employer] honestly *believed* [the employee] falsified the entry.’”); Grey v. City of Oak Grove, 396 F.3d 1031, 1035 (8th Cir. 2005) (citation omitted) (“The question is whether [the employer’s] articulated reasons for discharge were a pretext for retaliation, not whether [the employee] actually did what he was accused of doing or whether discharge was warranted.”). That is, “[a] plaintiff employee may not establish that an employer’s proffered reason is pretextual merely by questioning the wisdom of the employer’s reason, as

long as the reason is one that might motivate a reasonable employer.” Philson v. Hosp. Auth. of Houston Cty., Civil Action No. 5:08-CV-155 (HL), 2009 WL 2477255, at *14 (M.D. Ga. Aug. 10, 2009) (citation and internal marks omitted). In fact, “[a]n employer may fire an employee for [a] good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory [or retaliatory] reason.” Brown v. Mobile Cty. Comm’rs, 79 F. Supp. 3d 1259, 1276 (S.D. Ala. 2015) (internal marks omitted) (quoting Nix v. WLCY Radio/Rahall Commc’ns, 738 F.2d 1181, 1186 (11th Cir. 1984)).

Here, as KMMG correctly contends, [Doc. 110 at 9-10], the undisputed evidence shows that KMMG received Ledbetter’s EEOC charge in a fax from Gogel’s lawyer on December 23, 2010, [Doc. 120 at 59-60 pp. 232-33, 62 pp. 241-42, 134-36]; see also [Doc. 83-2 at 6-7 ¶ 23; Doc. 102 at 21 ¶ 23]; that Williams, of his own accord, approached Jackson on January 4, 2011, to inform him of plans by Gogel, Tyler, and Ledbetter to sue KMMG, [Doc. 85 at 6 ¶ 20; Doc. 120 at 63-65 pp. 248-53, 72 p. 283, 137; Doc. 123 at 50 pp. 193-94]; see also [Doc. 83-2 at 31 ¶ 158; Doc. 102 at 101 ¶ 158]; that Gogel was interviewed regarding the allegations on January 7, 2011, and thereafter placed on paid administrative leave pending further investigation, [Doc. 85 at 6-7 ¶¶ 22-23; Doc. 115 at 39 p. 151; Doc. 117 at 66 pp. 261, 263-64; Doc. 118 at 26; Doc. 120 at 69 p. 270, 142]; see also [Doc. 83-2 at 8 ¶¶ 30-31, 31 ¶ 159; Doc. 102 at

26-28 ¶¶ 30-31, 102 ¶ 159]; that on January 11, 2011, both Williams and Grimes signed written statements summarizing their allegations against Gogel that were expressed during individual meetings with Jackson and Webb on January 5, 2011, [Doc. 119 at 59 pp. 229-30, 98-110; Doc. 123 at 79 pp. 311-12, 153-54]; see also [Doc. Doc. 83-2 at 8 ¶¶ 28-29, 32 ¶ 160; Doc. 102 at 25 ¶¶ 28-29, 104 ¶ 160]; and that on January 19, 2011, Jackson terminated Gogel because “[b]ased on [KMMG’s] investigation, one could conclude that [she] encouraged or even solicited the filing of [Ledbetter’s] charge” and “[a]t the very least, there [was] a conflict of interest sufficient to cause [KMMG] to lose confidence in the loyalty and trust that is required by [her] position,” [Doc. 115 at 95-96]; see also [*id.* at 41 p. 159; Doc. 117 at 54 pp. 214-15; Doc. 118 at 26-27]; see also [Doc. 83-2 at 9 ¶ 34, 32-33 ¶¶ 161, 164; Doc. 102 at 30-31 ¶ 34, 105 ¶ 161, 108 ¶ 164]. In fact, Jackson testified that based on the information he had before him, he was “totally convinced” that she had solicited Ledbetter to file a lawsuit against KMMG, which caused him to lose confidence and trust in her ability to perform her job duties. [Doc. 120 at 69-70 pp. 272-73]. Gogel’s own testimony supplies some validation of Jackson’s concerns as Gogel testified that she told Ledbetter that she was going to seek outside assistance and provided Ledbetter the name of the attorney that she was going to meet. [Doc. 117 at 52-53 pp. 208-09].

Gogel has failed to present any evidence showing that Jackson did not honestly believe that she had solicited Ledbetter in violation of the agreement she signed on December 6, 2010. See DeLong v. Best Buy Co. Inc., 211 F. App'x 856, 859 (11th Cir. 2006) (per curiam) (unpublished) (citations omitted) (“[Plaintiff] has not shown that [the employer] did not honestly believe, following an investigation into the allegations against her, that she had on two separate occasions engaged in activities that violated the [employer’s] policies. Accordingly, she has not created a genuine issue of fact on the question whether [the employer’s] proffered reason was a pretext for retaliation.”); see also Jones v. Fulton Cty., 446 F. App'x 187, 191 (11th Cir. 2011) (per curiam) (unpublished) (finding plaintiff had not presented sufficient evidence to show the employer’s reasons were pretext for discrimination or retaliation as she did not show that the employer “did not honestly believe that she had attempted to fix equipment with which she was unfamiliar or that she had failed to follow proper procedures by notifying the help desk”); Jones, 793 F.2d at 729 (finding the employer “had reasonable grounds, or in good faith though[t] it did, for its suspension and termination of [plaintiff’s] employment” for engaging in solicitation); Flowers v. Troup Cty., Ga., Sch. Dist., 1 F. Supp. 3d 1363, 1377 (N.D. Ga. 2014), aff’d, 803 F.3d 1327 (11th Cir. 2015) (“[Plaintiff] has presented no evidence that calls into question the sincerity of [the decisionmaker’s] belief that [plaintiff] had

committed a recruiting violation Thus, [plaintiff] has failed to present any evidence from which a reasonable jury could conclude that the proffered reason was pretext for race discrimination.”).⁷⁷

Next, Gogel points to “me too” evidence to show that KMMG retaliated against other employees who had lodged internal complaints and filed EEOC charges. [Doc. 101 at 29-30]. In particular, she argues that “Tyler was terminated after lodging discrimination complaints and filing an EEOC [c]harge shortly before [she] was terminated” and that after she and Tyler were terminated, “KMMG bullied Ledbetter to drop her EEOC [c]harge[.]” [Id. at 29-31]. In support of her argument, Gogel cites Goldsmith v. Bagby Elevator Co., 513 F.3d 1261 (11th Cir. 2008). See [Doc. 101 at 29]. “In *Goldsmith*, the Eleventh Circuit found no abuse of discretion in the admission of evidence of discrimination and retaliation against the plaintiff’s coworkers, where that evidence was offered to support a pattern and practice claim and to rebut certain defenses.” Lane v. Terry, Civil Action File No.

⁷⁷ Gogel challenges KMMG’s investigation into her alleged solicitation. In particular, she claims that the investigation “only included gathering self-serving information from [her] subordinates, [] Grimes and [] Williams.” [Doc. 102 at 28-29 ¶ 32]; see also [Doc. 109 at 17]. However, Gogel’s argument is misplaced, as she has still not shown that Jackson did not honestly believe that she had solicited Ledbetter. See DeLong, 211 F. App’x at 859; see also Jernigan v. Dollar General Corp., Civil Action No, 2:11-CV-01448-WMA, 2013 WL 452820, at * 6 (N.D. Ala. Jan. 31, 2013) (Plaintiff “must show that, following the investigation, [defendant] did not arrive at a good faith belief that she had violated company policy, wise or unwise.”). Thus, Gogel’s argument is without merit.

1:08-CV-3781-TWT-WEJ, 2010 WL 2721896, at *17 (N.D. Ga. June 4, 2010), adopted by 2010 WL 2721536, at *1 (N.D. Ga. Jul. 7, 2010) (citing Goldsmith, 513 F.3d at 1285). “However, unlike *Goldsmith*, this action does not include a pattern or practice claim. Rather, the only relevant evidence is that pertaining to the actions taken against [Gogel].” *Id.*; see also Brown v. Berg Spiral Pipe Corp., Civil Action No. 10-237-CG-B, 2011 WL 3610646, at *14 (S.D. Ala. Aug. 17, 2011) (citation omitted) (finding because plaintiff’s complaint did not include a pattern and practice claim, “me too” evidence was not relevant). Moreover, even if the evidence Gogel offers was relevant, “when offered to show pretext . . . , me too evidence is suspect,” and “generally, courts are reluctant to consider prior bad acts in this [employment discrimination] context where those acts do not relate directly to the plaintiff[.]” Hamilton v. Coffee Health Grp., 949 F. Supp. 2d 1119, 1158 (N.D. Ala. 2013) (citations and internal marks omitted). Here, none of the “me too” evidence rebuts KMMG’s non-retaliatory reason for terminating Gogel. See Jackson, 593 F. App’x at 877; Lane, 2010 WL 2721896, at *17. Thus, Gogel’s “me too” evidence is insufficient to establish pretext.

Finally, Gogel argues that she has shown pretext based on the close temporal proximity between the protected acts and her termination. [Doc. 101 at 31-32]. She claims that “KMMG placed [her] on administrative leave thirty-four [] days after

filing her EEOC [c]harge and terminated [her] employment eight [] days later.” [Id.]. However, Gogel’s time line of events is erroneous. In fact, Gogel filed her EEOC charge on November 10, 2010, [Doc. 117 at 137], and KMMG received her charge on November 22, 2010, [Doc. 120 at 127]. She was placed on paid administrative leave on January 7, 2011, [Doc. 85 at 6 ¶ 22; Doc. 115 at 39 p. 151; Doc. 117 at 66 pp. 263-64; Doc. 120 at 69 p. 270, 142], and she was terminated on January 19, 2011, [Doc. 115 at 41 p. 159, 95-96; Doc. 117 at 54 pp. 214-15; Doc. 118 at 26-27]. Thus, it was approximately two months between the time KMMG received Gogel’s EEOC charge and the time at which she was terminated. “Although temporal proximity can sometimes be sufficient to establish a causal link, temporal proximity alone is insufficient evidence of pretext to survive summary judgment.” Archard v. Potter, Civil Action No. 08-0746-CG-N, 2010 WL 1926747, at *10 (S.D. Ala. May 12, 2010) (citations omitted); see also Matias v. Sears Home Improvement Prods., Inc., 391 F. App’x 782, 787 (11th Cir. 2010) (per curiam) (unpublished) (citation omitted) (citing Hurlbert v. St. Mary’s Health Care Sys., Inc., 439 F.3d 1286, 1289 (11th Cir. 2006)); Swanson v. Gen. Servs. Admin., 110 F.3d 1180, 1188 (5th Cir. 1997) (footnote and internal citation omitted) (“Close timing between an employee’s protected activity and an adverse action against him may provide the ‘causal connection’ required to make out a *prima facie* case of retaliation. However, once the

employer offers a legitimate, nondiscriminatory reason that explains both the adverse action and the timing, the plaintiff must offer some evidence from which the jury may infer that retaliation was the real motive.”); Coleman v. Ala. State Univ., 904 F. Supp. 2d 1245, 1256 (M.D. Ala. 2012) (“The court is unaware of any authority establishing, however, that where the *prima facie* case has been successfully rebutted, the temporal closeness between the protected activity and the adverse action is sufficient on its own to sustain a pretext finding.”). Thus, “[s]ummary judgment is proper when the defendant offers legitimate reasons and the employee only offers temporal proximity.” Archard, 2010 WL 1926747, at *10 (citing Wascura v. City of S. Miami, 257 F.3d 1238, 1247 (11th Cir. 2001)).

While the Court recognizes the close timing of the filing of Gogel’s EEOC charge, her suspension, and her termination, see Padron v. BellSouth Telecomms., Inc., 196 F. Supp. 2d 1250, 1256-57 (S.D. Fla. 2002), aff’d, 62 F. App’x 317 (11th Cir. 2003) (unpublished), “this fact is not dispositive of pretext” and “does not undercut [KMMG’s] stated reason[] for the termination,” Corning v. LodgeNet Interactive Corp., 896 F. Supp. 2d 1138, 1154 (M.D. Fla. 2012) (citation omitted); see also Barnes v. Crowne Invs., Inc., 391 F. Supp. 2d 1108, 1117-18 (S.D. Ala. 2005) (finding temporal proximity insufficient to show pretext where defendant offered legitimate reasons for suspending and terminating plaintiffs, i.e., reports of misconduct at

work, despite plaintiff's contentions that the reports were false); Padron, 196 F. Supp. 2d at 1257 (citations omitted) ("Standing alone against Defendant's strongly supported legitimate reason for terminating [plaintiff], temporal proximity does not amount to more than a scintilla of evidence of retaliation. This is insufficient."). Thus, Gogel's arguments regarding pretext fail to demonstrate "'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reason[] for its action that a reasonable fact finder could find [that reason] unworthy of credence.'" Standard, 161 F.3d at 1333 (quoting Combs, 106 F.3d at 1538). Simply put, Gogel has produced insufficient evidence to create a genuine issue of material fact that KMMG's reason for terminating her was pretext for retaliation. See Barnes, 391 F. Supp. 2d at 1118. Because Gogel has failed to show that KMMG's proffered reason is so inconsistent, implausible, incoherent, or contradictory that it is unworthy of belief, she has failed to create any genuine issue with regard to pretext, and it is **RECOMMENDED** that KMMG's motion for summary judgment, [Doc. 83], be **GRANTED** on Gogel's Title VII and § 1981 retaliation claims and that Gogel's motion for partial summary judgment, [Doc. 93], be **DENIED**.⁷⁸

⁷⁸ Gogel has not argued that there is a "convincing mosaic of circumstantial evidence that would allow a jury to infer [] [retaliation] by the decisionmaker." Smith v. Lockheed-Martin Corp., 644 F.3d 1321, 1328 (11th Cir. 2011) (footnote, citations, and internal marks omitted). However, she has made this argument with

2. *Discrimination Claims*

Gogel claims that KMMG discriminated against her because of her race, alienage, national origin, and gender by terminating her employment.⁷⁹ See generally [Doc. 19]. Gogel “may establish a prima facie case of discrimination through circumstantial evidence by proving that (1) she belongs to a protected class; (2) she was subjected to an adverse employment action; (3) her employer treated similarly situated employees outside of her classification more favorably; and (4) she was qualified to do the job.”⁸⁰ Wilson, 376 F.3d at 1091 (citations omitted) (citing

respect to her discrimination claims, which the Court will address hereinafter.

⁷⁹ Gogel also claims KMMG discriminated against her by excluding her from management meetings, asking her not to speak in meetings, maintaining a general dismissive attitude toward women, singling out American employees, questioning employees’ loyalty, and ignoring American workplace laws. See [Doc. 19 at 18 ¶ 57, 21 ¶ 66, 22-23 ¶ 70]. Putting aside that Gogel’s claim that she was asked not to speak too strongly in the fall of 2009 is untimely, none of these acts constitute adverse employment actions, as “[t]here was no serious and material change in the terms of [Gogel’s] employment as a result of this conduct.” McQueen v. Wells Fargo Home Mortg., 955 F. Supp. 2d 1256, 1273-74 (N.D. Ala. 2013), aff’d, 573 F. App’x 836 (11th Cir. 2014) (per curiam) (unpublished) (fifth alteration in original) (finding plaintiff’s claims that her supervisor “always made [her] mistakes seem like they were worse than other employees; loudly announced every time [she] made a mistake . . .; spoke to [her] in a condescending manner; acted like [she] was retarded . . .; [and] ignored [her]” were not adverse actions).

⁸⁰ Rather than show that other similarly situated employees outside her protected class were treated more favorably, Gogel may instead demonstrate that she was replaced by someone outside of her protected class. Hudson v. Middle Flint Behavioral Healthcare, 522 F. App’x 594, 596 (11th Cir. 2013) (per curiam) (unpublished) (citation omitted).

Holifield, 115 F.3d at 1562); see also Ivey v. Paulson, 222 F. App'x 815, 817 (11th Cir. 2007) (per curiam) (unpublished) (citation omitted). KMMG does not contest that Gogel can establish a prima facie case of discrimination regarding her termination.⁸¹ See [Docs. 83-1 & 110]. Rather, KMMG asserts that it is entitled to summary judgment on Gogel's discriminatory termination claims because she has not shown that its proffered legitimate, non-discriminatory reason for her termination is pretext for discrimination. [Doc. 83-1 at 23-26; Doc. 110 at 9-21].

As previously discussed in detail, KMMG asserts that it terminated Gogel's employment after an investigation showed that she had solicited another employee to file a charge against KMMG, violating the December 2010 agreement and causing Jackson to lose confidence in her ability to be Manager of Team Relations. [Doc. 83-1 at 23; Doc. 99 at 16-18; Doc. 110 at 17-19]. Because this reason constitutes a legitimate, non-discriminatory reason for Gogel's termination, which satisfies KMMG's "exceedingly light" burden, the onus is on Gogel to prove by a preponderance of the evidence that KMMG's reason is pretext for prohibited, discriminatory conduct. See Vessels, 408 F.3d at 770 (citation omitted); Gray, 492 F.

⁸¹ KMMG does assert that Gogel has failed to establish a prima facie case with respect to her 2009 Korea trip and the photograph from the management workshop in addition to other actions previously addressed, [Doc. 83-1 at 13-17]; however, the 2009 Korea trip is untimely and is also not included as an allegation in Gogel's complaint, see [Doc. 19], and being asked to stand in a photograph is not, as KMMG correctly contends, an adverse action, see McQueen, 955 F. Supp. 2d at 1273-74.

App'x at 5. To establish pretext, Gogel "must present concrete evidence in the form of specific facts which show [KMMG's] proffered reason is mere pretext." Smith v. Harvey, 421 F. Supp. 2d 1370, 1378 (S.D. Ala. 2006) (citation and internal marks omitted). Again, Gogel must meet KMMG's reason "head on and rebut it." Chapman v. Al Transport, 229 F.3d 1012, 1030 (11th Cir. 2000) (citation omitted).

Gogel attempts to show pretext with respect to her discrimination claims in the same ways she attempted to show pretext on her retaliation claims, [Doc. 101 at 25-33, 48], and thus, "[f]or the same reasons that this Court rejected her attempts to establish pretext for those claims, the Court finds that she has failed to introduce any evidence from which a jury could infer pretext for her [discrimination] claim[s]," Philson, 2009 WL 2477255, at *15; see also Anderson v. Dunbar Armored, Inc., 678 F. Supp. 2d 1280, 1315-1316 (N.D. Ga. 2009), adopted at 1290. "Since [KMMG has] proffered evidence supporting a legitimate, nondiscriminatory reason for [Gogel's] . . . termination, and [she] has not come forward with [sufficient] evidence to show that this reason is pretextual, summary judgment is warranted." Holifield, 115 F.3d at 1565-66 (citations omitted); see also Boone v. City of McDonough, No. 1:12-cv-1036-WSD, 2013 WL 4670480, at *25 (N.D. Ga. Aug. 29, 2013), adopted at *5, aff'd, 571 F. App'x 746 (11th Cir. 2014) (per curiam) (unpublished) (alteration in original) (citation omitted) ("If the plaintiff fails to demonstrate that there is a genuine issue

of material fact concerning whether the employer's articulated reasons for the adverse employment action are pretextual, then the employer is entitled to summary judgment on the [discrimination and] retaliation claim.'").

Gogel contends that she has demonstrated a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination. [Doc. 101 at 45]. "Although [Gogel] has failed to show that [KMMG's] proffered reason is unworthy of credence . . ., [she] can still survive summary judgment by establishing 'a convincing mosaic of circumstantial evidence' that would allow a reasonable jury to infer that [s]he was the victim of [] discrimination." Flowers, 1 F. Supp. 3d at 1381 (quoting Smith, 644 F.3d at 1328). Gogel asserts that a "convincing mosaic" exists because she "was openly critical of how Korean Management was treating her and their apparent unwillingness to learn and comply with American workplace laws," "Kevin Kim would not allow [Team Relations] and [Human Resources] to do additional intercultural training with Korean expatriates who came to work at KMMG to help them understand American laws," "Kevin Kim became angry if [she] ever tried to educate him on American culture and laws," and Justin Yoo would ask her why she was giving him this when she tried to share American laws. [Doc. 101 at 45 (citations omitted)]. In addition, she points to Grimes and Williams' testimony that the Koreans did not respect her and that they felt bad for

her, Ledbetter's belief that it was because Gogel was not a stereotypical female, and Tyler's complaints to Jackson that Kevin Kim and K.S. Kim did not listen to her. [*Id.* at 46 (citations omitted)]. Lastly, she points to Jackson's instructions not to speak strongly in meetings and an email she sent to Jackson expressing her concerns with Korean management. [*Id.* (citations omitted)]. Gogel submits that the proffered evidence shows that "Korean Management not only resented [her] as a Caucasian American woman who was in a position of authority, but did not want to work with her, and that Jackson, who knew this, believed [she] should be terminated from KMMG because the Koreans did not want to work with her." [*Id.* (citation omitted)].

However, this circumstantial evidence cited by Gogel does not support an inference of intentional discrimination on the part of KMMG, much less establish a "convincing mosaic" sufficient to withstand KMMG's motion for summary judgment. *See Williams v. Cleaver-Brooks, Inc.*, Civil Action No. 7:11-CV-144 (HL), 2012 WL 6151141, at *8 (M.D. Ga. Dec. 11, 2012), *aff'd*, 529 F. App'x 979 (11th Cir. 2013) (per curiam) (unpublished). There is no evidence linking any of these statements to Gogel's termination, and more importantly, almost all of these statements are made by non-decision makers. *See Tate v. Ancell*, 551 F. App'x 877, 887-88 (7th Cir. 2014) (unpublished) (finding no mosaic of circumstantial evidence

where statements did not relate to alleged adverse action and statements were made by non-decision makers); Gustin v. Schneider Corp., No. 1:09-cv-1452-TWP-TAB, 2011 WL 1486007, at *7 (S.D. Ind, Apr. 19, 2011) (citations omitted). Gogel's own conclusory say-so that Jackson terminated her "because the Koreans did not want to work with her" is insufficient to support an inference of discrimination. Flowers, 803 F.3d at 1337-38; see also Turner v. Fla. Prepaid Coll. Bd., 522 F. App'x 829, 833 (11th Cir. 2013) (per curiam) (unpublished) (citation omitted) (noting the Eleventh Circuit has "never suggested that a plaintiff's generalized averment that her employer treated her differently than employees of a different race[, national origin, or gender] can, alone, create a 'convincing mosaic of circumstantial evidence' from which a jury could find intentional discrimination"). Thus, Gogel has failed to create a genuine issue of material fact as to whether KMMG terminated her because of her race, alienage, national origin, or gender. See Smith, 644 F.3d at 1328 (footnote and citations omitted) ("A triable issue of fact exists if the record, viewed in the light most favorable to the plaintiff, presents a 'convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.'"). Accordingly, it is **RECOMMENDED** that KMMG's motion for

summary judgment, [Doc. 83], be **GRANTED** as to Gogel's Title VII and § 1981 discrimination claims.⁸²

IV. CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that KMMG's motion for summary judgment, [Doc. 83], be **GRANTED** and that Gogel's motion for partial summary judgment, [Doc. 93], be **DENIED**.

The Clerk is **DIRECTED** to terminate this reference.

IT IS SO RECOMMENDED, this 5th day of August, 2016.



RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

⁸² Gogel argues that the "ultimate issue of causation, as it relates to pretext, is before the Court on [KMMG's] motion for summary judgment, and . . . that it is not proper for judgment without a trial." [Doc. 109 at 2]. However, KMMG "is entitled to summary judgment in its favor [as] [Gogel does not proffer sufficient evidence of pretext[.]]" Chapman, 229 F.3d at 1025 & n.11. Thus, Gogel's argument is without merit. Gogel has also moved for partial summary judgment on several other defenses KMMG articulated in its answer, see [Doc. 93-1 at 31-36]; see also [Doc. 2], and although KMMG has not responded with respect to these defenses, see [Doc. 99], Gogel's motion is nevertheless due to be denied since it is recommended that KMMG's summary judgment motion be granted in its entirety, and thus, the Court need not reach the issue of whether KMMG is entitled to assert these defenses. Accordingly, it is **RECOMMENDED** that Gogel's motion for partial summary judgment, [Doc. 93], be **DENIED**.

Tab 130

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ANDREA GOGEL,

Plaintiff,

v.

KIA MOTORS
MANUFACTURING GEORGIA,
INC.,

Defendant.

CIVIL ACTION FILE

NUMBER 3:14-cv-00153-TCB

ORDER

This case comes before the Court on the objections of Plaintiff Andrea Gogel [127] to the final report and recommendation (“R&R”) [125] issued by Magistrate Judge Russell G. Vineyard. Gogel filed this action against Defendant Kia Motors Manufacturing Georgia, Inc., alleging discrimination and retaliation in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”), and 42 U.S.C. § 1981 (“§ 1981”) [19]. Kia filed a motion for summary judgment [83], which Gogel opposed [101]. Similarly, Gogel filed a motion for partial

summary judgment on the prima facie component of her retaliation claims Under Title VII and § 1981 and certain defenses raised by Kia [93], which Kia opposed [99]. In the R&R, Judge Vineyard recommends that Kia's motion for summary judgment be granted and that Gogel's motion for partial summary judgment be denied.

I. Standard of Review

A. Review of an R&R

A district judge has a duty to conduct a “careful and complete” review of a magistrate judge's R&R. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. Unit B 1982)).¹ This review may take different forms, however, depending on whether there are objections to the R&R. The district judge must “make a de novo determination of those portions of the [R&R] to which objection is made.” 28 U.S.C. § 636(b)(1)(C). In contrast, those portions of the R&R to which no objection is made need

¹ The Eleventh Circuit has adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981, as well as all decisions issued after that date by the Unit B panel of the former Fifth Circuit. *Stein v. Reynolds Sec., Inc.*, 667 F.2d 33, 34 (11th Cir. 1982); see also *United States v. Schultz*, 565 F.3d 1353, 1361 n.4 (11th Cir. 2009) (discussing the continuing validity of *Nettles*).

only be reviewed for clear error. *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).²

“Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court.” *Nettles*, 677 F.2d at 410 n.8. “This rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the purposes of the Magistrates Act.” *Id.* at 410.

The district judge also has discretion to decline to consider arguments that were not raised before the magistrate judge. *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009). Indeed, a contrary rule “would effectively nullify the magistrate judge’s consideration of the

² *Macort* dealt only with the standard of review to be applied to a magistrate’s factual findings, but the Supreme Court has held that there is no reason for the district court to apply a different standard to a magistrate’s legal conclusions. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Thus, district courts in this circuit have routinely applied a clear-error standard to both. *See Tauber v. Barnhart*, 438 F. Supp. 2d 1366, 1373-74 (N.D. Ga. 2006) (collecting cases). This is to be contrasted with the standard of review on appeal, which distinguishes between the two. *See Monroe v. Thigpen*, 932 F.2d 1437, 1440 (11th Cir. 1991) (when a magistrate’s findings of fact are adopted by the district court without objection, they are reviewed on appeal under a plain-error standard, but questions of law remain subject to de novo review).

matter and would not help to relieve the workload of the district court.”

Id. (quoting *United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000)).

After conducting a complete and careful review of the R&R, the district judge may accept, reject or modify the magistrate judge’s findings and recommendations. 28 U.S.C. § 636(b)(1)(C); *Williams*, 681 F.2d at 732. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. 28 U.S.C. § 636(b)(1)(C).

In this case, the Court has conducted a careful, de novo review of the R&R and Gogel’s objections thereto. Having done so, the Court finds that Judge Vineyard’s conclusions were correct and Gogel’s objections lack merit.

II. Discussion

A. Standard for Summary Judgment

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). There is a “genuine” dispute as to a material fact if “the evidence is such that a reasonable jury could

return a verdict for the nonmoving party.” *FindWhat Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). In making this determination, “a court may not weigh conflicting evidence or make credibility determinations of its own.” *Id.* Instead, the court must “view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” *Id.*

The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party would have the burden of proof at trial, there are two ways for the moving party to satisfy this initial burden. *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437-38 (11th Cir. 1991). The first is to produce “affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial.” *Id.* at 1438 (citing *Celotex*, 477 U.S. at 324). The second is to show that “there is an absence of evidence to support the nonmoving party’s case.” *Id.* (quoting *Celotex*, 477 U.S. at 323).

If the moving party satisfies its burden by either method, the burden shifts to the nonmoving party to show that a genuine issue remains for trial. *Id.* At this point, the nonmoving party must “go beyond the pleadings,’ and by its own affidavits, or by ‘depositions, answers to interrogatories, and admissions on file,’ designate specific facts showing that there is a genuine issue for trial.” *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593-94 (11th Cir. 1995) (quoting *Celotex*, 477 U.S. at 324).

B. Objections to the R&R

In the R&R, Judge Vineyard made many findings in regards to the parties’ motions for summary judgment. In addition to determining that many of Gogel’s claims are time-barred, he found no direct evidence of discrimination or retaliation.³ Therefore, Gogel’s retaliation and discrimination claims could only be based upon circumstantial evidence. The R&R, however, determined that she failed to demonstrate that

³ Gogel does not contest the R&R’s findings that her claims of discriminatory failures to promote are time-barred. [127] at 47.

Kia's legitimate, non-discriminatory reason for termination was pretextual.

Gogel makes various objections to the R&R. First, she argues that Kia's reason for terminating her is direct evidence of retaliation. Furthermore, she alleges that the R&R failed to take into account additional retaliatory conduct that should be analyzed under the circumstantial-evidence paradigm. Gogel also argues that Kia failed to show a legitimate non-discriminatory reason for her termination, and even if it did, she demonstrated that this reason was pretextual. Finally, Gogel objects to the R&R on the grounds that she proved sufficient facts to show a convincing mosaic of Kia's discriminatory and retaliatory intent.

Title VII prohibits discrimination in employment decisions on the basis of "race, color, religion, sex or national origin." *See* 42 U.S.C. § 2000e-2(a)(1); *see also Blue v. Dunn Constr. Co.*, 453 F. App'x 881, 883 (11th Cir. 2011). Title VII also prohibits an employer from retaliating against an employee "because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has

made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a); *see also Smithers v. Wynne*, 319 F. App’x 755, 756 (11th Cir. 2008) (per curiam) (citation omitted).

Title VII and § 1981 use the same analysis for discrimination and retaliation claims. *See Worley v. City of Lilburn*, 408 F. App’x 248, 250 (11th Cir. 2011) (per curiam) (“The elements required to establish retaliation claims under § 1981 are the same as those required for Title VII claims.”). Therefore, the Court will address Gogel’s Title VII discrimination and retaliation claims with her § 1981 claims.

1. Gogel’s Termination Is Not Direct Evidence of Retaliation⁴

Gogel may establish a claim of discrimination or retaliation through either direct or circumstantial evidence. *See Van Voorhis v. Hillsborough Cty. Bd. of Cty. Comm’rs*, 512 F.3d 1296, 1300 (11th Cir. 2008) (“A plaintiff may establish a claim of illegal age discrimination through either direct evidence or circumstantial evidence.”). Direct

⁴ Gogel did not allege “direct evidence” before filing her objections to the R&R. However, the Court will still address the arguments.

evidence is evidence that, “if believed, proves [the] existence of [a] fact in issue without inference or presumption.” *Burrell v. Bd. of Trs. of Ga. Military Coll.*, 125 F.3d 1390, 1393 (11th Cir. 1997). According to the Eleventh Circuit, “only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of some impermissible factor constitute direct evidence of discrimination.”

Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1086 (11th Cir. 2004). Specifically, Gogel contends that Kia’s non-discriminatory reason for her suspension and termination is itself direct evidence of retaliation because assisting or supporting a co-worker in asserting her rights would have constituted protected activity. *See Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990) (noting that opposition clause activity can include supporting a co-worker who files a charge of discrimination).

Gogel’s new argument is unavailing. The R&R states that the non-discriminatory and non-retaliatory reason for Gogel’s termination was “because [Kia] lost confidence in her abilities to perform her job duties after an investigation showed that she had solicited Ledbetter to file a

charge against Kia, which was in violation of the agreement she signed on December 6, 2010.” [125] at 62. This agreement provided that she would “not use [her] position to solicit or influence Team Members to make claims against [Kia].” [125] at 29.

The R&R and Kia cite to *Jones v. Flagship Int’l*, 793 F.2d 714, 728 (5th Cir. 1986), to demonstrate that terminating Gogel for soliciting her co-worker to file an EEOC charge does not constitute protected activity.⁵ In determining whether the employee was lawfully terminated for engaging in a protected activity, the *Jones* court adopted a balancing test between the “employer’s right to run his business . . . against the rights of the employee to express his grievances and promote his own welfare.” *Id.* at 728. Ultimately the court determined that soliciting others to sue the company “not only rendered Jones ineffective in the position for which she was employed, but critically harmed Flagship’s posture in the defense of discrimination suits brought against the company.” *Id.*

⁵ The Eleventh Circuit adopted the Fifth Circuit’s position in *Rollins v. Fla. Dep’t of Law Enforcement*, 868 F.2d 397, 401 (11th Cir. 1989).

Similar to the plaintiff in *Jones*, Gogel was responsible for investigations into discrimination and harassment; her department “worked directly with legal on EEO matters”; and “the investigation into EEO matter would be conducted by [her department] under the direction of legal.” [93-2] at 3–5. Kia maintained a good-faith belief that Gogel’s solicitation of Ledbetter critically “harm[ed] [Kia’s] posture in the defense of discrimination suits brought against the company.”

Jones, 793 F.2d at 728. Because Kia did not terminate Gogel for engaging in protected activity, there is no direct evidence of discrimination or retaliation.⁶

⁶ Gogel also alleges that Kia forcing her to sign the December 6 agreement and suspending her for not signing it constitutes direct and circumstantial evidence of retaliation. As already mentioned, the agreement simply prevented Gogel from taking advantage of her position with Kia in pursuing her own retaliation claims. By forcing her to sign it, Kia was balancing its interest in “employer’s right to run [its] business . . . against the rights of the employee to express [her] grievances and promote [her] own welfare.” *Jones*, 793 F.2d at 728. In addition, Gogel’s argument that suspending her for refusing to sign the agreement constitutes direct evidence of retaliation fails. If requiring Gogel to sign the agreement did not demonstrate direct evidence of retaliation, it logically follows that suspending her for refusing to sign the agreement also cannot be considered direct evidence. Because Kia was not inhibiting any protected activity by Gogel, requiring her to sign the agreement and suspending her when she failed to do so does not demonstrate retaliatory intent without an inference or presumption. Furthermore, the suspensions and agreement cannot be considered circumstantial evidence because Gogel failed to establish a prima facie case of retaliation. *Bailey v. City of Huntsville*, 517 F. App’x 857, 861 (11th Cir. 2013) (describing what evidence is required to prove a prima facie case of

Gogel also objects to the R&R's finding that her termination was the result of Kia's good-faith belief that she solicited Ledbetter to pursue legal action against the company. Instead, Gogel argues that she can maintain a retaliation claim based on Kia's "mistaken" belief that Gogel actually solicited Ledbetter to file a charge or a lawsuit.

The Court agrees with Judge Vineyard that the question is not whether Kia was wrong in believing that Gogel solicited Ledbetter, but whether Kia, at the time it terminated her, honestly believed that Gogel had solicited Ledbetter to pursue legal action against Kia. *See Clark v. S. Broward Hosp. Dist.*, 601 F. App'x 886, 896 (11th Cir. 2015) ("[S]ignificantly, the question is not whether Plaintiff actually engaged in the alleged misconduct. Rather, it is whether the [defendant] in good faith believed the reports of misconduct.").

The cases cited by Gogel in her objections to the R&R [127] fail to persuade the Court. In those cases, the employer terminated the

retaliation). Gogel cannot show that she was prevented from "engag[ing] in statutorily protected expression" because the agreement and suspensions only hindered her from certain conduct that would cause Kia to lose trust in her ability to carry out her job, which is not "protected expression." *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277 (11th Cir. 2008).

employee on the mistaken belief that the employee engaged in protected activity. Here, Kia believed it was terminating Gogel for an activity that was not considered protected (conduct conflicting with her job duties).

In the R&R, Judge Vineyard correctly laid out undisputed evidence showing that one could conclude that Kia honestly believed that Gogel acted in a manner sufficient to cause the company to lose confidence in the loyalty and trust of someone in her position. [125] at 68-69. Furthermore, Gogel failed to present any evidence demonstrating that Kia did not honestly believe she violated the December 6 agreement by soliciting Ledbetter. *See DeLong v. Best Buy Co.*, 211 F. App'x 856, 859 (11th Cir. 2006) (“[Plaintiff] has not shown that [the employer] did not honestly believe, following an investigation into the allegations against her, that she had on two separate occasions engaged in activities that violated the [employer’s] policies. Accordingly, she has not created a genuine issue of fact on the question whether [the employer’s] proffered reason was a pretext for retaliation.”).

2. Kia Has Not Failed to Articulate a Legitimate, Non-Discriminatory, and Non-Retaliatory Reason for Gogel's Termination

Where there is no direct evidence of discrimination or retaliation, the court evaluates Title VII and § 1981 claims by using the burden shifting framework used in *McDonnell Douglas Corp. v. Green*, 411 U.S. 192 (1973). Once Gogel establishes a prime facie case as to each claim, the burden shifts to Kia to articulate legitimate, non-discriminatory, and non-retaliatory reasons for its actions. *Berman v. Orkin Exterminating Co.*, 160 F.3d 697, 702 (11th Cir. 2010).⁷ KIA's burden is one of production and is "exceedingly light." *Smith v. Horner*, 839 F.2d 1530, 1537 (11th Cir. 1998).

Gogel alleges that Kia failed to discharge its burden because its reason for terminating her was direct evidence of retaliation. As the R&R mentions, Kia's reason for terminating Gogel was "because it lost confidence in her abilities to perform her job duties after an investigation showed that she had solicited Ledbetter to file a charge

⁷ Kia concedes that Gogel established a prima facie case for her retaliation and discrimination claims relating to her termination. [125] at 61 & 76.

against Kia, which was in violation of the agreement she signed on December 6, 2010.” [125] at 62. The Court agrees with the R&R that Kia articulated a non-discriminatory and non-retaliatory reason for Gogel’s termination based upon the facts known to Kia when making the decision. [125] at 65-67. As previously mentioned, the activity Gogel took part in was not protected activity. Therefore, Kia’s decision to terminate Gogel for this activity was legitimate, not retaliatory.

3. Kia's Reason for Termination Is Not Pretext for Retaliation and Discrimination⁸

Because the Court agrees with Judge Vineyard that Kia met its burden of production by showing a legitimate, non-discriminatory, and non-retaliatory reason for Gogel's termination, the burden shifts back to Gogel to show that Kia's articulated reason is merely a pretext for discrimination or retaliation. *See Entrekin v. City of Panama City*, 376

⁸ Gogel also argues that because Jackson, Williams, and Grimes are not "disinterested witnesses" and a jury is not required to believe their testimony, the statements must be disregarded. [127] at 37. Gogel reads too much into *Reeves v. Sanderson Plumbing Prods., Inc.*, for the proposition that summary judgment should be precluded where the employer relies on uncontradicted sworn statements of its decision-maker employees. 530 U.S. 133, 151 (2000); *see also Woods v. Delta Air Lines Inc.*, 595 F. App'x 874, 879 (11th Cir. 2014) ("[U]nder Rule 56, a party may support a motion for summary judgment with, among other things, affidavits or declarations, and there is no requirement that these sworn statements be from disinterested witnesses. Once the moving party does so, the non-moving party bears the burden to produce evidence to dispute the facts averred in the sworn statement."). Status as an "interested witness" is therefore not sufficient to prove pretext. *Id.*

Gogel also contends that the facts surrounding the investigation into her make the investigation a "sham," and therefore, a jury could find pretext by inferring retaliatory or discriminatory intent for her termination. [127] at 39-41. The facts do not warrant such a determination. The Court is only to make "all reasonable inferences" in the favor of the non-moving party. *Gray v. City of Jacksonville*, 492 F. App'x 1, 4 (11th Cir. 2012) (emphasis added). None of the facts proffered by Gogel does more than speculate about what happened with the investigation. *See Shuler v. Ingram & Assocs.*, 441 F. App'x 712, 715 (11th Cir. 2011) ("Speculation or conjecture cannot create a genuine issue of material fact.").

F. App'x 987, 997 (11th Cir. 2010) (discussing the burden-shifting paradigm). “[Gogel] must proffer sufficient evidence to create a genuine issue of material fact regarding whether . . . [Kia’s] . . . articulated reason[] [is] pretextual.” *Dockery v. Nicholson*, 170 F. App'x 63, 65–66 (11th Cir. 2006). Consequently, the “ultimate burden of persuading the trier of fact that [Kia] intentionally [discriminated or retaliated] against [Gogel] remains at all times with [Gogel].” *See Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1982).

Gogel can meet this burden by “either proving that intentional [retaliation or discrimination] motivated [Kia] or producing sufficient evidence to allow a rational trier of fact to disbelieve the legitimate reason proffered by [Kia], which permits, but does not compel, the trier of fact to find illegal [retaliation or discrimination].” *Wilson*, 376 F.3d at 1088. Gogel “cannot establish pretext by simply demonstrating facts that suggest [retaliatory or discriminatory] animus, but must specifically respond to . . . [Kia’s] explanation [] and rebut [it].” *Burgos-Stefanelli v. Sec’y, U.S. Dep’t of Homeland Sec.*, 410 F. App'x 243, 247 (11th Cir. 2011).

Gogel makes several arguments in support of her contention that Kia's reason for terminating her was pretextual. As mentioned previously, Kia terminated Gogel "because it lost confidence in her abilities to perform her job duties after an investigation showed that she had solicited Ledbetter to file a charge against Kia, which was in violation of the agreement she signed on December 6, 2010." [125] at 62. For the following reasons, the Court agrees with the R&R that Gogel failed to produce sufficient evidence to show either that Kia was motivated by retaliatory or discriminatory animus or that a trier of fact would not believe Kia's proffered reason.

Gogel argues that she can demonstrate that Kia's reason for termination is pretextual by submitting evidence that she did not engage in the solicitation of Ledbetter. Gogel points to evidence that she never encouraged, solicited, or coerced Ledbetter to file an EEOC charge or to sue Kia [101] at 28. However, as discussed previously, "the question is not whether Plaintiff actually engaged in the alleged misconduct. Rather, it is whether [Kia], in good faith, believed the reports of misconduct." *Clark v. S. Broward Hosp. Dist.*, 601 F. App'x

886, 896 (11th Cir. 2015); *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991) (“That the employee did not in fact engage in misconduct reported to the employer is irrelevant to the question whether the employer believed the employee had done wrong.”).

While Gogel contends, based on her own testimony, that she did not perform the alleged acts, this is irrelevant when determining pretext. *See Butts v. Ameripath, Inc.*, 794 F. Supp. 2d 1277, 1298 (S.D. Fla. 2011), adopted at 1279 (“With respect to . . . proving pretext, ‘the ultimate issue is whether the decision-maker believed that the employee violated the rule, not whether the employee actually violated the rule.’”). Again, the Court agrees with the R&R’s finding that the undisputed evidence shows Kia had a good-faith, reasonable belief that Gogel solicited Ledbetter. [125] 67-69. Furthermore, Gogel failed to provide any evidence disputing this finding.⁹

⁹ Gogel points to evidence in her objections to argue that there was sufficient evidence to show pretext. [127] at 37–38. However, Gogel argues that the evidence Kia based its “reasonable belief” on were statements from interested parties acquired in a sham investigation. However, as discussed earlier, this evidence is not to be disregarded based on this reasoning. Furthermore, she alleges that the R&R should not have regarded some of Gogel’s testimony as validation of Jackson’s concerns about Gogel. According to Gogel, her testimony that she told Ledbetter she was going to hire an attorney was not known to “Jackson at the time he fired her

Gogel also objects to the R&R's finding that she failed to support her pretext argument on the basis that Judge Vineyard failed to look at the totality of her evidence in combination with the suspect timing of her termination. She cites to *Reeves v. Sanderson Plumbing Prods., Inc.*, for the proposition that the Court should consider evidence in addition to the suspect timing of her termination, including that used to establish her prima facie case. 530 U.S. 133, 143 (2000). Not only does Gogel fail to identify that additional evidence in her objections to the report, but the Court fails to find any additional evidence from which the “jury may infer that retaliation [or discrimination] was the real

and could not have served as a basis for the same.” [127] at 38. Gogel does not cite anywhere in the depositions, pleadings, motions, etc. to support this. [137] at 38. Similarly, the Court is not able to corroborate this statement with the evidence before it. Even if it is true, this not does demonstrate beyond an inference that Kia was motivated by retaliation in terminating Gogel. There is still evidence, such as Kia knowing that Gogel and Ledbetter were using the same attorney, knowing that a co-worker approached Jackson about Gogel, and knowing of Tyler and Ledbetter's plans of suing Kia, to show a reasonable belief on the part of Kia. [125] at. 67–68.

Gogel also points to Kia's and Jackson's testimony to support her argument that a jury could find that Kia terminated Gogel because of her filing the EEOC claim. However, the passages included in Gogel's objections to the R&R are taken out of context from the rest of the deposition and do not contradict Kia's reason for termination. [127] at 39. Instead, the statements show that Kia and Jackson harbored a reasonable belief that Gogel was soliciting others to sue the company, which was “in direct contradiction to what [Gogel] was hired for” [115] at 46.

motive.” *Swanson v. Gen. Servs. Admin.*, 110 F.3d 1180, 1188 (5th Cir. 1997) (footnote and internal citation omitted).¹⁰

The Court recognizes that Gogel’s termination and her filing of the EEOC charge are close in proximity, but “[t]he court is unaware of any authority establishing, however, that where the *prima facie* case has been successfully rebutted, the temporal closeness between the protected activity and the adverse action is sufficient on its own to sustain a pretext finding.” *Coleman v. Ala. State Univ.*, 904 F. Supp. 2d 1245, 1256 (M.D. Ala. 2012). Without something more than the closeness of the protected act and termination, there is not any evidence

¹⁰ It is difficult to discern from Gogel’s objections what evidence she believes furthers certain arguments. The “me too” evidence referred to includes (a) the termination of Bob Tyler after he filed an EEOC charge; (b) Kia “bullying” Ledbetter into dropping her EEOC charge and trying to get her to accuse Gogel and Tyler of encouraging her to file. [125] at 70. Gogel asserts that she relies on “me too” evidence that Judge Vineyard dispensed with this argument on the grounds that her actions do not include a pattern or practice claim and “the only relevant evidence is that pertaining to the actions taken against [Gogel].” *Lane v. Terry*, Civil Action File No. 1:08-cv-3781-TWT-WEJ, 2010 WL 2721896, at *17 (N.D. Ga. June 4, 2010). Not only is there no pattern or practice claim, but Judge Vineyard determined that even if the evidence was relevant, “when offered to show pretext . . . , me too evidence is suspect,” and “generally, courts are reluctant to consider prior bad acts in this [employment discrimination] context where those acts do not relate directly to the plaintiff” *Hamilton v. Coffee Health Grp.*, 949 F. Supp. 2d 1119, 1158 (N.D. Ala. 2013). This “me too” evidence does not relate to Kia’s intent for terminating Gogel. Because the evidence relates to the other co-workers as to their own termination, it cannot be used to argue Kia’s reason for termination was pretextual.

that could allow a reasonable juror to find that the reason for termination was discriminatorily or racially motivated or was not believable. To show pretext, Gogel “must specifically respond to . . . [Kia’s] explanation [] and rebut [it]”; however, she only points to one fact, the proximity between the termination and the protected act. Accordingly, she fails to directly rebut the believability of Kia’s reason for termination. *Burgos-Stefanelli v. Sec’y, U.S. Dep’t of Homeland Sec.*, 410 F. App’x 243, 247 (11th Cir. 2011).

4. Gogel Has Not Shown a Convincing Mosaic of Retaliatory and Discriminatory Intent

Despite failing to demonstrate that Kia’s reason for termination was pretextual, Gogel can still survive Kia’s motion for summary judgment “by establishing ‘a convincing mosaic of circumstantial evidence’ that would allow a reasonable jury to infer that [s]he was the victim of [] discrimination.” *Flowers v. Troup Cty.*, 1 F. Supp. 3d 1363, 1381 (N.D. Ga. 2014) (quoting *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011)). Gogel claims that Kia’s motion for summary judgment should be denied because she established a

convincing mosaic of circumstantial evidence to allow a jury to infer retaliatory and discriminatory intent.¹¹

Gogel argues that there is a genuine issue of material fact as to whether Kia terminated her because of her race, alienage, national origin, or gender. Specifically, the circumstantial evidence upon which Gogel relies includes denial of promotions to senior manager/head of department of team relations in favor of Caucasian males. In addition, the evidence includes various instances of a culture of discrimination showing that “Korean Management not only resented [her] as a Caucasian American woman who was in a position of authority, but did not want to work with her” [101] at 47. Furthermore Gogel relies on her own conclusory statement, “that Jackson . . . believed [Gogel]

¹¹ Gogel made the “convincing mosaic” argument with respect to showing discriminatory intent but failed to do so with her retaliation claim [125 fn.78]. Because she did not include the argument in her complaint, motion for summary judgment, or opposition to Kia’s motion for summary judgment, the Court does not address whether there was enough circumstantial evidence of retaliation to allow a reasonable juror to infer such an intent. It is within the discretion of the Court to determine whether it will entertain new arguments not raised before the magistrate judge. *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009). Because Gogel had sufficient opportunity to allege there was a convincing mosaic of retaliation and raised the same argument as to her discrimination claim, the Court will not consider the retaliation claim.

should be terminated from [Kia] because the Koreans did not want to work with her.” Id.

The Court finds Judge Vineyard’s R&R persuasive and rejects Gogel’s contention that the circumstantial evidence establishes a “convincing mosaic.” Gogel fails to provide any evidence that the statements cited are in any way linked to the adverse action taken against her (i.e., termination). *See Tate v. Ancell*, 551 F. App’x 877, 887–88 (7th Cir. 2014) (rejecting the convincing-mosaic argument because the statements cited did not relate to alleged adverse action and statements were made by non-decision makers).¹² Even though Gogel does allege that the statements demonstrate that Jackson terminated her “because the Koreans did not want to work with her[,]” this averment is only conclusory, and “a plaintiff’s generalized averment that her employer treated her differently than employees of a different race[, national origin, or gender cannot], alone, create a ‘convincing mosaic of circumstantial evidence’ from which a jury could

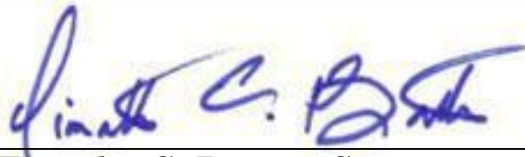
¹² The statements Gogel references also do not show they were made by a decision-maker. Her objections to the R&R fail to dispute this fact. [127] at 48–50.

find intentional discrimination.” *Turner v. Fla. Prepaid Coll. Bd.*, 522 F. App’x 829, 833 (11th Cir. 2013). Gogel’s evidence fails to establish a convincing mosaic within the office to justify a finding that she was terminated based on her race, alienage, national origin, or gender.

III. Conclusion

For the foregoing reasons, the Court adopts as its order the R&R [125]. Kia’s motion for summary judgment is GRANTED, and Gogel’s motion for partial summary judgment is DENIED. The Clerk is directed to close this case.

IT IS SO ORDERED this 27th day of September, 2016.

A handwritten signature in blue ink, appearing to read "Timothy C. Batten, Sr.", is written over a horizontal line.

Timothy C. Batten, Sr.
United States District Judge

Tab 131

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ANDREA GOGEL,

Plaintiff,

vs.

KIA MOTORS MANUFACTURING OF
GEORGIA, INC.,

Defendant.

CIVIL ACTION FILE

NO. 3:14-cv-153-TCB

J U D G M E N T

This action having come before the court, Honorable Timothy C. Batten, Sr., United States District Judge, for consideration of defendant's Motion for Summary Judgment, and the court having GRANTED said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Newnan, Georgia, this 27th day of September, 2016.

JAMES N. HATTEN
CLERK OF COURT

/s/ Janice Micallef
By: _____
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
September 27, 2016
James N. Hatten
Clerk of Court

/s/ Janice Micallef
By: _____
Deputy Clerk

Tab 134

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	3:14-cv-00153-TCB
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
GEORGIA, INC.,)	
)	
Defendant.)	

NOTICE OF APPEAL

Notice is hereby given that Andrea Gogel, Plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Order adopting the Magistrate’s Final Report and Recommendation granting summary judgment [Doc. 130], a copy of which is attached as Exhibit “A”, and the final Judgment [Doc. 131], a copy of which is attached as Exhibit “B”, both entered in this action on the 27th day of September 2016. In addition, a copy of the Magistrate’s Final Report and Recommendation [Doc. 125], is attached as Exhibit “C”, entered in this action on August 5, 2016.

Respectfully submitted, this 27th day of October, 2016.

/s/ Meredith J. Carter
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Georgia Bar No. 325422

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

ANDREA GOGEL,)	
)	
Plaintiff,	)	CIVIL ACTION NO.:
)	
vs.	)	3:14-cv-00153-TCB
)	
KIA MOTORS MANUFACTURING	)	JURY TRIAL DEMANDED
GEORGIA, INC.,)	
)	
Defendant.)	

CERTIFICATE OF FONT COMPLIANCE
REQUIRED BY LOCAL RULE 7.1D AND SERVICE

In accordance with Local Rule 7.1D, I hereby certify that the foregoing was prepared with one of the font and point selections approved by the Court in Local Rule 5.1B. Specifically, it was prepared with Times New Roman, 14 point.

I further certify that I electronically filed the foregoing NOTICE OF APPEAL with the Clerk of Court using the CM/ECF system which will automatically send email or other notification of such filing to the following attorneys of record:

W. Jonathan Martin II
William M. Clifton III
Joseph M. Murray, Jr.
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This 27th day of October, 2016.

/s/ Meredith J. Carter
Meredith J. Carter
Georgia Bar No. 325422

Respectfully submitted,

/s/ Lisa C. Lambert

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via CM/ECF and U.S. Mail to the attorneys identified below this 3rd day of March, 2017:

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