UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY LEVY, Plaintiff, v. GOOGLE LLC, Defendant.	CASE NO. C23-1678JLR ORDER

I. INTRODUCTION

Before the court is Defendant Google LLC's ("Google") (1) motion for summary judgement and (2) motion to continue trial date. (MSJ (Dkt. # 32); Reply (Dkt. # 75); MCT (Dkt. # 83).) *Pro se* Plaintiff Gary Levy opposes the motion for summary judgment. (Resp. (Dkt. # 68).) The court has considered the parties' submissions, the

relevant portions of the record, and the applicable law. Being fully advised,[1] the court GRANTS Google's motion for summary judgment and DENIES as moot Google's motion to continue trial date.

II. BACKGROUND

This case arises from Google's termination of Mr. Levy's employment. (*See generally* Compl. (Dkt. # 1-1).) Google employed Mr. Levy as a manager in the "augmented reality and virtual reality space" from approximately December 2017 until March 31, 2023. (Fredrickson Decl. (Dkt. # 35) ¶ 2, Ex. 1 ("Levy Depo.") at 69, 71; *see also id*. ¶ 23, Ex. 22 ("Termination Notice").) Mr. Levy reported to Vikram Natarajan, Director of Partnerships. (Levy Depo. at 74.) Starting in 2020, Mr. Levy assisted with a partnership between Google and VeriSilicon, Inc. ("VSI") to co-design two silicon chips for an augmented reality headset. (*See* Jordan Decl. (Dkt # 33) ¶ 3; *see also* Levy Depo. at 81-82.)

In November 2022, Mr. Levy's team began reviewing its 2022 and 2023 budget for the partnership with VSI. (*See* Jordan Decl. ¶ 4.) In late 2022, after a Google team member noticed a discrepancy between the budget figures Mr. Levy provided and the budget figures in the budget sheets, Google convened a series of meetings. (*Id*. ¶¶ 4-6.) During the course of these meetings, Google learned that VSI had begun work on one of the chips without having any contract documents in place. (*See* Cunningham Decl. (Dkt.

[1] Google requests oral argument and Mr. Levy does not. (*See* MSJ. at 1; Resp. at 1.) The court concludes that oral argument would not aid in its disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

34) ¶ 3.) On November 29, 2022, Google asked Mr. Levy to provide information about the budget discrepancy. (*See* Frederickson Decl. ¶ 5, Ex. 4 ("Family Emergency Email") at 1 (discussing the VSI budget review).) Rather than provide the requested information, Mr. Levy shared that he had a family medical emergency and could not provide the requested information or participate in any meetings scheduled that day. (*See id*. at 2.) By December 5, 2022, Mr. Levy had returned to work. (*See* Frederickson Decl. ¶ 9, Ex. 8.) On December 9, 2022, Mr. Levy and Darren Ward, Senior Director of Global Supply and one of Mr. Levy's supervisors at Google, discussed on a call Mr. Levy's health issues and plans to take leave from work effective that day. (*See* Frederickson Decl. ¶ 14, Ex. 13 ("Ward Depo.") at 78-79; *see also id*. ¶ 15, Ex. 14 ("Ward HR Email") at 1.) Mr. Ward represents that, during their call, Mr. Levy purportedly made a threat that Mr. Ward believed was directed at Mr. Natarajan. (*See* Ward Depo. at 78-79.)

On December 12, 2022, Mr. Levy's team met to discuss the best method of recording contract payments to VSI. (*See* Jordan Decl. ¶ 8.) During the meeting, Mr. Levy disagreed with other members of the team about how best to calculate payments to VSI for work performed. (*Id*.) As he left the meeting, Mr. Levy claimed "protection as a Sarbanes-Oxley whistleblower." (*Id*.) That evening, (1) Mr. Levy sent a cryptic email to Augmented Reality Senior Director Shahram Izadi entitled "HELP" that stated, "Please help. Please send mobile" and included Mr. Levy's phone number, (Frederickson Decl. ¶ 12, Ex. 11 ("Izadi Email"); (2) Mr. Ward contacted Google's human resources team to discuss Mr. Levy's behavior and report the purported threat Mr. Levy made against Mr. Natarajan during their December 9, 2022 phone call, (*see generally* Ward HR Email);

and (3) Mr. Levy filed a complaint with Google alleging financial fraud pertaining to the deal between Google and VSI, (Fredrickson Decl. ¶ 13, Ex. 12 ("Financial Fraud Ticket") at 1). On December 13, 2022, the Google Security Operations Center ("GSOC") reported to Mr. Ward and Mr. Natarajan that it had performed a well-being check on Mr. Levy and that Mr. Levy confirmed, during the check, that he was on leave until February 14, 2023. (*See* Frederickson Decl. ¶ 17, Ex. 16 ("GSOC Email") at 2.)

Between August and October 2022, Google conducted annual performance reviews of its employees during which it assigned "GRAD" ratings—a form of employee performance review. (*See* Ward Depo. at 45.) During this period, Mr. Natarajan and Mr. Ward attempted to give Mr. Levy a lower performance review rating, referred to at Google as a "Not Enough Impact" rating. (*Id*. at 154-55; *see also* Frederickson Decl. ¶¶ 18-19, Exs. 17-18 ("Not Enough Impact Emails") (describing Mr. Levy's managers' unsuccessful attempt to give him a "Not Enough Impact" rating during his 2022 performance review).) On December 27, 2022, Google denied the request because such a rating (1) first requires a support check-in[2] and (2) cannot be assigned to a Google employee currently on leave. (*See* Not Enough Impact Emails.)

Beginning in January 2023, Google conducted a company-wide reduction in force ("RIF") and terminated the employment of 12,000 employees. (*See* Frederickson Decl. ¶ 22, Ex. 21 ("RIF Criteria") (listing the employees selected for layoff and the selection

[2] The parties dispute whether Mr. Natarajan and Mr. Levy had a support check-in meeting on December 7, 2022, prior to the start of Mr. Levy's leave. (*See* Levy Depo. at 188-89; *see also* Fredrickson Decl. ¶ 4, Ex. 3 ("Support Check-In Email") at 1.)

criteria); *see also id*. ¶ 21, Ex. 20 ("Corrales Depo.") at 108-09, 114 (describing how Google determined which decisional units[3] and employees would be terminated during the layoff).) Google asserts that it selected employees for termination based on their location, historic performance, and skill set, but did not incorporate into the decision any assessment of performance as determined by the GRAD rating process. (*Id*. at 109; *id*. at 122 ("We were very specifically instructed to ignore GRAD ratings."); *see also* Ward Depo. at 143-44 (describing Mr. Ward's knowledge of the timing of and selection criteria for the January 2023 RIF).) On January 20, 2023, Google notified Mr. Levy that his position had been eliminated, effective March 31, 2023, as part of the RIF. (*See* Termination Notice.) Forty-three of 46 employees in Mr. Levy's decisional unit were selected for layoff. (*See* RIF Criteria.)

On October 3, 2023, Mr. Levy filed a complaint against Google in King County Superior Court seeking damages and bringing claims for (1) retaliation under Washington's Silenced No More Act ("SNMA"), RCW 49.44.211(3); (2) wrongful termination in violation of public policy; and (3) interference under the Washington Paid Family and Medical Leave Act ("WPFMLA"), RCW 50A.40.010. (*See* Compl. ¶¶ 4.1-4.21.) Google removed the action to this court on November 2, 2023. (*See* Not. of Removal (Dkt. # 1).) On August 29, 2025, Google filed the instant motion for summary judgment as to all of Mr. Levy's claims. (*See generally* MSJ.)

[3] "A decisional unit is a group of an organization's employees who were considered for layoff." (*See* MSJ at 9.)

III. ANALYSIS

The court first addresses the legal standard for awarding summary judgment and then considers Google's motion.

A. Legal Standard

Summary judgment is appropriate if the moving party shows that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is material if it may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1985). A genuine dispute of material fact exists if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id*.

The party moving for summary judgment bears the initial burden of informing the court of the basis for the motion and identifying portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the movant seeks summary judgment on a claim or defense on which the nonmovant bears the burden of persuasion at trial, "the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party meets its initial burden, the burden shifts to the nonmoving party to produce evidence supporting its claims or defenses. *Id*. at 1103. If the nonmoving party does not produce evidence to

show a genuine issue of material fact, the moving party is entitled to summary judgment. *Celotex Corp.*, 477 U.S. at 323.

"The court must view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in the nonmovants favor." *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (citing *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001)). However, the party opposing summary judgment must direct the court's attention to "specific, triable facts." *S. California Gas. Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003) (citation omitted). "The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to defeat a motion for summary judgment. *Anderson*, 477 U.S. at 252. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *City of Pomona*, 750 F.3d at 1049-50 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

B. Silenced No More Act

Google first moves for summary judgment on Mr. Levy's claim that Google violated the SNMA "by retaliating against him for submitting complaints of financial fraud, Sarbanes-Oxley violations, and legal non-compliance." (MSJ at 12 (citing Compl. ¶¶ 4.2-4.3).) The court concludes that Google has shown that it is entitled to summary judgment on Mr. Levy's SNMA claim.

To state a claim for a violation of the SNMA, Mr. Levy must prove that Google terminated his employment because he discussed or disclosed conduct that he

> reasonably believed to be illegal harassment, illegal discrimination, illegal retaliation, wage and hour violations, or sexual assault, that is recognized as illegal under state, federal, or common law, or that is recognized as against a clear mandate of public policy[.]

RCW 49.44.211(3). Google argues that the SNMA applies only to "illegal harassment, illegal discrimination, illegal retaliation, wage and hour violations, or sexual assault" that is *either* illegal under state, federal, and common law *or* that violates a clear mandate of public policy. (MSJ at 12.) Thus, according to Google, Mr. Levy's claim that he was terminated for reporting financial fraud is not cognizable under the SNMA. (*Id.*) In response, Mr. Levy argues that because financial fraud is illegal under state and federal law, reporting it "falls within the SNMA's protective scope as conduct[] that is against a clear mandate of public policy." (Resp. at 29.) The court agrees with Google that the SNMA applies only to the disclosure or discussion of the types of unlawful conduct expressly enumerated in the statute, and not more generally to conduct that violates public policy. Because Mr. Levy's claim relates to disclosure of financial fraud, rather than one of the subjects governed by the statute, Mr. Levy is not entitled to protection under the SNMA. Therefore, the court grants Google's motion for summary judgment on Mr. Levy's SNMA claim.

C. Wrongful Termination in Violation of Public Policy

Google also moves for summary judgment on Mr. Levy's claim that Google terminated his employment in violation of public policy because he reported "financial

fraud, illegal behavior, Sarbanes[-]Oxley violations, and legal non-compliance." (MSJ at 15 (citing Compl. ¶ 4.14).[4])

A burden-shifting framework governs claims for wrongful termination in violation of public policy. *Martin v. Gonzaga Univ.*, 425 P.3d 837, 844 (Wash. 2018). Mr. Levy must first establish a *prima facie* case that (1) his "'discharge may have been motivated by reasons that contravene a clear mandate of public policy[,]'" and (2) his "public-policy-linked conduct was a 'significant factor'" in Google's decision to terminate his employment. *Id*. (citations omitted). If he succeeds in establishing a *prima facie* case, the burden shifts to Google to produce evidence supporting "a legitimate nonpretextual nonretaliatory reason for [Mr. Levy's] discharge[.]" *Id*. Finally, if Google meets this burden, Mr. Levy bears the final burden of showing either that Google's reason is pretextual or that his public-policy-linked conduct was nevertheless a substantial factor motivating Google to terminate his employment. *Id*.

Google argues that Mr. Levy cannot establish a *prima facie* case of wrongful termination because he fails to demonstrate that his public-policy-linked conduct was a "significant factor" in Google's decision to terminate his employment and, even if he could establish such a case, Mr. Levy cannot show that Google's explanation for the termination was pretextual. (MSJ at 18-20.) In response, Mr. Levy asserts that he satisfies the second element of the *prima facie* case and that Google's reason for his

[4] As pleaded, Mr. Levy's wrongful termination claim pertains only to his report of financial fraud and is not based on alleged violations of the WPFMLA. (*See* Compl. ¶¶ 4.9-4.15.)

termination is pretextual. (Resp. at 17.) The court concludes that Google is entitled to summary judgment on Mr. Levy's claim for wrongful termination in violation of public policy.

The court begins with the *prima facie* case. Google avers that Mr. Levy cannot establish a *prima facie* case because he lacks evidence that his "public-policy-linked conduct was a 'significant factor' in the decision" to terminate his employment.[5] (*See Martin*, 425 P.3d at 844; MSJ at 18-20.) It is undisputed, however, that Mr. Levy submitted an internal ticket with Google alleging financial violations; that Mr. Levy asserted during a meeting that he was a Sarbanes-Oxley whistleblower; and that Google terminated his employment shortly thereafter. (*See* Financial Fraud Ticket (setting forth that Mr. Levy filed an internal report at Google asserting financial violations on December 12, 2022); *see* Jordan Decl. ¶ 8 (stating that Mr. Levy claimed "protection as a Sarbanes-Oxley whistleblower" during a December 12, 2022 meeting); *see* Termination Notice (notifying Mr. Levy on January 20, 2023, of his imminent layoff)); *see Kama v. Mayorkas*, 107 F.4th 1054, 1059 (9th Cir. 2024) ("Temporal proximity can support . . . a *prima facie* case of retaliation[.]") (citation omitted). Viewing this evidence in the light most favorable to Mr. Levy, the court concludes that Mr. Levy has met his initial burden to establish a *prima facie* case that his financial fraud complaint was a significant factor in Google's decision to terminate his employment.

[5] For the purposes of its motion, Google does not argue that Mr. Levy cannot establish the first prong of the claim. (*See* MSJ at 18 n.12.)

The second step of the burden-shifting framework requires Google to provide a legitimate reason for Mr. Levy's termination and to produce evidence supporting its theory. *See Martin*, 425 P.3d at 844. Here, Google has produced evidence that it terminated Mr. Levy's employment as part of a company-wide RIF and that Mr. Levy's complaint played no role in the decision to terminate his employment. (*See, e.g.*, Corrales Depo. at 108-109, 114 (setting forth Google's timeline and approach to selecting employees for layoff); *see also* Termination Notice (setting forth the reason for Mr. Levy's termination).) Mr. Levy concedes that Google has met its burden at the second step. (*See* Resp. at 16.)

At the third step, Mr. Levy asserts that Google's reason for terminating him is pretextual because (1) Google continued its partnership with VSI; (2) Google had structural defects in its RIF process; (3) Google purportedly fabricated evidence of a December 2022 support check-in meeting; and (4) Mr. Ward was biased against him and acted to proximately cause his termination. (Resp. at 17-25). Mr. Levy fails to present "both specific and substantial" evidence supporting any of these theories of pretext. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002) (citing *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1222 (9th Cir. 1998)); *see id.* at 1061 ("[T]his court has refused to find a 'genuine issue' where the only evidence presented is 'uncorroborated and self-serving' testimony.") (citation omitted).

1. Post-Termination Work Continuation

First, Mr. Levy argues that Google's reason for terminating him is pretextual because Google held a series of meetings pertaining to the continuation of his work at

Google and to address issues that he identified regarding the VSI deal prior to his departure. (*See* Resp. at 17-18.) Purporting to quote *Diaz v. Pan American World Airways, Inc.*, 759 F.2d 464 (5th Cir. 1985), Mr. Levy asserts that (1) "the continuation of plaintiff's work post-termination is dispositive proof that the position was not eliminated[,]" and (2) "evidence that the position still existed after the plaintiff was terminated is strong evidence of pretext[.]" (Resp. at 13, 17.) Mr. Levy, however, provides an incorrect citation for *Diaz*, and the case does not include the quoted language; to the contrary, it does not address pretext at all. *See generally Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971) (discussing the bona fide occupational qualification defense to a Title VII discrimination claim).[6] Furthermore, Mr. Levy presents no evidence supporting his argument. Mr. Levy instructs the court to review "Exhibit [X]" and "Exhibit [Y]" for evidence of such meetings, but these exhibits were not included with his response and do not exist in the record.[7] (*See* Resp. at 12-13; *see generally* Dkt.)

[6] In its reply, Google notes that Mr. Levy's opposition brief cites several cases that "do not exist based on the citations provided" and includes "parentheticals and quotations to cases [that] do not exist in the cited cases themselves." (Reply at 2.) The court has also identified several such citations in Mr. Levy's brief. The court puts Mr. Levy on notice that such behavior will not be tolerated and could result in sanctions. The court is mindful of Mr. Levy's *pro se* status, but being a *pro se* litigant does not justify or excuse misconduct of this nature.

[7] After Mr. Levy submitted his response, the court ordered Mr. Levy to "file a declaration that includes the exhibits he cites in his response brief[.]" (11/18/25 Order (Dkt. # 69) at 2 (so ordering).) In response, Mr. Levy timely filed a single exhibit labled "Exhibit 63-1-'Clawback[.]'" (Dkt. # 70; *see also* 12/3/25 Order (addressing Mr. Levy's submission and rejecting any late-filed submissions in support of Mr. Levy's opposition to Google's motion).) Mr. Levy does not cite "Exhibit 63-1-Clawback" in his opposition and it is not clear to the court how this exhibit supports the arguments contained therein. Furthermore, he did not submit any of the exhibits he refers to or lists in his brief with his opposition. (*See generally* Dkt.; *see also*

Mr. Levy also asserts that the temporal proximity between his financial fraud complaint and his termination, "coupled with additional circumstantial evidence, . . . can support an inference of retaliation[.]" (Resp. at 16.) To support this position, Mr. Levy cites *Villiarimo v. Aloha Island Air, Inc.*, 113 F.3d 212, 226 (9th Cir. 1997). Again, however, Mr. Levy provides an incorrect citation and purports to quote language that does not appear in the actual opinion. *See generally Villiarimo*, 281 F.3d at 1054. In the absence of controlling authority or sufficient evidence, the court rejects Mr. Levy's contention that Google's purported continuation of its partnership with VSI is demonstrative of pretext.

2. Structural Defects in Google's RIF Process

Second, Mr. Levy asserts that purported "structural defects" in Google's process for implementing layoffs "reveal pretext[.]" (Resp. at 18.) Mr. Levy contends that the fact that there is no evidence in the record showing that Google planned a RIF before Mr. Levy filed his financial fraud complaint shows that "the RIF was created post-hoc to justify retaliation." (*Id*. at 19.) Purporting to cite *Springer v. Boeing*, 138 Wash. App. 248 (1997), Mr. Levy asserts that "[t]he absence of contemporaneous documentation of decisions is probative of pretext; such documentation is normally maintained by prudent employers." (*Id*. at 18.) The court, however, is unable to locate *Springer* in any legal database. In any event, Mr. Levy may not simply point to the absence of evidence in the

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Resp. at 30-31.) The court need not, and will not, "scour the record in search of a genuine issue of triable fact" as relates to Mr. Levy's claim for wrongful termination. *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

record to create a genuine issue of fact when he has the burden of proof. *Mackey v. Home Depot USA, Inc.*, 459 P.3d 371, 386 (Wash. Ct. App. 2020) (stating that in the final step of the burden shifting framework governing wrongful termination, the employee must "produce sufficient evidence to establish a question of fact as to pretext[.]"). Furthermore, to the extent Mr. Levy suggests that Google laid off 12,000 employees as a pretext for terminating his employment, this theory is not supported by any facts in the record. (*See generally* Dkt.)

Mr. Levy also argues that the lack of "written criteria, rubric, or methodology . . . to explain how skill set ratings were determined" is evidence of pretext. (Resp. at 19.) Again, however, Mr. Levy cites no authority or evidence to support his position. To the contrary, Google produced the criteria it used to select employees for its RIF, namely location, historic performance, and skill set, and explained through testimony that Google prioritized retaining employees with a skill set that was in "high demand" or "difficult to replace[.]" (*See* Corrales Depo. at 114; *see also* RIF Criteria.) Mr. Levy identifies no facts in the record that suggest he had a skill set that was sufficiently in high demand or difficult to replace to justify his retention. (*See generally* Resp.) Thus, in the absence of controlling authority or sufficient evidence, the court rejects Mr. Levy's contention that any alleged structural defects in the RIF process are demonstrative of pretext.

3. December 7, 2022 Check-In

Mr. Levy next asserts that Google's evidence of a December 7, 2022 support check-in meeting was fabricated and, as a result, the court should draw the inference that "Google's entire defense is pretextual." (Resp. at 21 (citing *Reeves v. Sanderson*

Plumbing Prods., Inc., 530 U.S. 133, 145 (2000).) Although the parties dispute whether Mr. Natarajan indeed met with Mr. Levy on December 7, 2022, this dispute is not sufficient to establish a genuine issue of material fact because whether the check-in occurred is not material to the outcome of the case. *See Anderson*, 477 U.S. at 248 (limiting the designation of a fact as "material" only to those facts that may affect the outcome of the case). In any event, Mr. Levy has not provided any evidence showing that any communication with Mr. Natarajan played a role in his termination, and the court finds that it is manifestly unreasonable to draw the inference that Google's "entire defense is pretextual" from a dispute about whether the December 7 meeting took place.

4. Subordinate Animus

Finally, Mr. Levy contends, under a "cat's paw" theory of liability, that Mr. Ward was biased against him and influenced his supervisor, Chief Operating Officer Ana Corrales, to select Mr. Levy for termination. (*See* Resp. at 23 (citing *Staub v. Proctor Hosp.*, 562 U.S. 411, 412 (2011)).) Under this theory, "a biased subordinate, who lacks decision making power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *City of Vancouver v. State Pub. Emp. Rels. Comm'n*, 325 P.3d 213, 222 (Wash. 2014) (cleaned up).[8]

[8] Mr. Levy relies on *Bahrampour v. Lampert*, 356 F.3d 969, 983 (9th Cir. 2004), for the proposition that an "employer cannot isolate knowledge of wrongdoing from the decision-maker." (Resp. at 25.) *Bahrampour*, however, is not an employment case, and the language Mr. Levy purports to quote appears nowhere in that decision. *See generally Bahrampour*, 356 F.3d 969 (reviewing a grant of summary judgment in a prisoner civil rights case under 42 U.S.C. § 1983).

Although the record supports Mr. Levy's contention that Mr. Ward was his supervisor at Google and attempted to give him a "Not Enough Impact" rating in late 2022, he provides no competent evidence that Mr. Ward was biased against him or that Mr. Ward's attempt to rate him as such resulted in his termination. (*See generally* Dkt.; *see* Resp. at 23 (alleging that Mr. Ward "[p]articipated in the RIF evaluation, knowing his rating would determine [Mr. Levy's] fate"); *see also* Not Enough Impact Emails.) To the contrary, Google produced evidence that Mr. Ward's rating played no role in Mr. Levy's termination. (*See* Ward Depo. at 144-46; *see also* Corrales Depo. at 122.) Consequently, the court rejects Mr. Levy's subordinate animus theory of liability.

Ultimately, Mr. Levy does not point to competent evidence of the circumstances that he asserts give rise to an inference of retaliation. (*See* Resp. at 16, 25 (asserting that work continuation, structural defects in the RIF process, fabricated documentation, and subordinate animus, along with temporal proximity, give rise to an inference of retaliation).) Because he fails to provide any evidence that his termination was pretextual, the court concludes that Google has shown that it is entitled to summary judgment on Mr. Levy's claim for wrongful termination.

D. Interference with Paid Family Medical Leave

Finally, Google moves for summary judgment on Mr. Levy's claim that Google's conduct interfered with his ability to exercise his WPFMLA rights. (*See* MSJ at 20 (citing Compl. ¶¶ 4.18, 4.19).) Google contends that Mr. Levy's claim fails as a matter of law because he cannot show that "Google used [his] leave as a negative factor in any adverse employment decision, including [Mr. Levy's] termination." (*Id.*) In response,

Mr. Levy argues that the fact that Google notified him of his termination while he was on approved WPFMLA leave constitutes "per se interference[.]" (Resp. at 27.) The court concludes that Google has shown that it is entitled to summary judgment on Mr. Levy's claim for interference with his paid family medical leave.

Under the WPFMLA, it is unlawful for an employer to: "(a) [i]nterfere with, restrain, or deny the exercise of, or the attempt to exercise, any valid right provided under [the WPFMLA]; or (b) [d]ischarge or in any other manner discriminate against any employee for opposing any practice made unlawful by [the WPFMLA]." RCW 50A.40.010. Because the WPFMLA "mirrors its federal counterpart," courts "construe its provisions in a manner consistent with similar provisions of the [Family and Medical Leave Act of 1993 ("FMLA").]" *Mooney v. Roller Bearing Co. of Am., Inc.*, No. C20-1030LK, 2022 WL 1014904, at *21 (W.D. Wash. Apr. 5, 2022), *amended on reconsideration on other grounds*, No. C20-01030LK, 2022 WL 1289600 (W.D. Wash. Apr. 29, 2022) (quoting *Crawford v. JP Morgan Chase NA,* 983 F. Supp. 2d 1264, 1269 (W.D. Wash. 2013) (internal quotation marks omitted). The FMLA, and thus the WPFMLA, provides for two theories of recovery: (1) the interference theory, and (2) the retaliation or discrimination theory. *Sanders v. City of Newport*, 657 F.3d 772, 777 (9th Cir. 2011). Mr. Levy raises claims for both interference and retaliation under the WPFMLA. (*See* Compl. ¶ 4.19.)

1. Interference

The elements of an interference claim under the FMLA, and thus the WPFMLA, are (1) an entitlement to FMLA leave; (2) an adverse action by the plaintiff's employer,

which interfered with the plaintiff's right to take leave; and (3) a showing that the employer's adverse action was related to the exercise, or attempt to exercise, FMLA rights. *Wilmuth v. Amazon.com Inc.*, No. C23-1774JNW, 2024 WL 5088337, at *8 (W.D. Wash. Dec. 12, 2024) (citing *Martinez Patterson v. AT&T Servs. Inc.*, No. C18-1180RSM, 2021 WL 3617179, at *11 (W.D. Wash. Aug. 16, 2021)); *see* RCW 50A.40.010(1)(a). The term "interference" includes "not only denial of FMLA rights, but also instances where an employer discouraged an employee from using FMLA leave, retaliated against an employee for exercising or attempting to exercise FMLA rights, or 'otherwise caused the employee to suffer an adverse employment action as a consequence of taking FMLA leave.'" *Id.* (quoting *Martinez Patterson*, 2021 WL 3617179, at *11). If Mr. Levy establishes a *prima facie* interference claim, Google may avoid liability if it had a legitimate reason to terminate Mr. Levy's employment. *See* WAC 192-700-010(b) (providing that an employee is not entitled to WPFMLA rights if "[t]he employer is able to show that [the] employee would not otherwise have been employed at the time the employee would return to work after the employee's family or medical leave under [the WPFMLA] ends.").

The parties do not dispute that (1) Mr. Levy was entitled to take WPFMLA leave and did take such leave from on or about December 13, 2022, until February 14, 2023, (s*ee, e.g.*, GSOC Email), and (2) that Mr. Levy suffered an adverse employment action, (*see* Termination Notice). Mr. Levy, however, fails to put forward evidence "showing that [Google's termination of his employment] was related to the exercise, or attempt to exercise, [his] FMLA rights[.]" (*See generally* Dkt; *see also Wilmuth*, 2024 WL

5088337, at *8.) In response, Mr. Levy purportedly cites *Kelley v. Conan*, 555 F.3d 630, 634 (8th Cir. 2009) (per se violation when employer explicitly considers protected leave in adverse action) and argues that the fact that he was "terminated while still on [WPFMLA] leave" is "per se interference[.]" (Resp. at 26-27.) The court, however, is unable to locate this case in any legal database. Mr. Levy does not offer any competent evidence for his claim and thus fails to show a genuine dispute as to any material fact. (*See* Resp. at 28 (restating his argument that the RIF was a pretextual justification for terminating his employment)); *see also Celotex Corp.*, 477 U.S. at 323. Therefore, given the lack of sufficient evidence or controlling law, the court grants Google's motion for summary judgment on Mr. Levy's claim for interference under the WPFMLA.

2. Retaliation

Under the retaliation theory, the FMLA, and thus the WFMLA, prohibits employers from discharging any individual "for opposing any practice made unlawful by [the FMLA]" or otherwise participating in any proceedings governed by the FMLA. 29 C.F.R. § 2615(a)(2), (b); *see* RCW 50A.40.010(1)(b). If Mr. Levy establishes a *prima facie* retaliation claim, and Google subsequently provides a legitimate, nondiscriminatory reason for the adverse employment action, Mr. Levy bears the ultimate of showing that Google's stated reason is pretextual, either by showing that the court should reject Google's stated explanation because it is internally inconsistent or otherwise not believable, or by showing that Google's decision to terminate him was more likely motivated by unlawful discrimination. *Crawford*, 983 F. Supp.2d at 1269-70.

Here, Mr. Levy's claim fails because he has not put forth facts showing he was terminated "for opposing any practice made unlawful" by the WPFMLA or otherwise participated in proceedings governed by the statute. (*See generally* Resp); *see also* 29 C.F.R. § 2615(a)(2), (b). Even if he had provided such facts and made a *prima facie* showing of his claim, Mr. Levy has not put forward facts showing Google's stated reason for his termination is pretextual. (*Id.*) Thus, with respect to his retaliation and discrimination claim under the WPFMLA, Mr. Levy fails to show a genuine dispute as to any material fact. *See Celotex Corp.*, 477 U.S. at 323. Consequently, the court concludes that Google has shown that it is entitled to summary judgment on Mr. Levy's claim for interference under the WPFMLA.

Because the court grants Google's motion for summary judgment as to all of Mr. Levy's claims, the court denies as moot Google's motion to continue trial date.

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IV. CONCLUSION

Therefore, for reason of the foregoing, the court GRANTS Google's motion for summary judgment (Dkt. # 32). Mr. Levy's claim under the Silenced No More Act, RCW 49.44.211(3); claim for wrongful termination in violation of public policy; and claims for interference and retaliation under the Washington Paid Family Medical Leave Act, RCW 50A.15.20 are DISMISSED with prejudice. The court DENIES as moot Google's motion to continue trial date (Dkt. # 83).

Dated this 22nd day of December, 2025.

JAMES L. ROBART
United States District Judge