

APPENDIX

APPENDIX A

Case No. 19-17053

UNITED STATES COURTS OF APPEALS

FOR THE NINTH CIRCUIT

Tammy H. Hepburn

Plaintiff-Appellant

v.

Teleperformance

Defendant-Appellees

On Appeal from the United States District Court

for the District of Arizona

Order Panel Rehearing denied.....	1
Order Recall Mandate.....	2
Memorandum- Affirm Summary Judgment in Favor of Teleperformance.....	3-5
Mandate.....	6

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 16 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAMMY H. HEPBURN,

Plaintiff-Appellant,

v.

TELEPERFORMANCE, Corporation,

Defendant-Appellee.

No. 19-17053

D.C. No. 4:18-cv-00151-BGM
District of Arizona, Tucson

ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Hepburn's petition for panel rehearing (Docket Entry No. 20) is denied.

The mandate will reissue forthwith.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 12 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAMMY H. HEPBURN,

Plaintiff-Appellant,

v.

TELEPERFORMANCE, Corporation,

Defendant-Appellee.

No. 19-17053

D.C. No. 4:18-cv-00151-BGM
District of Arizona,
Tucson

ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Hepburn's motions to recall the mandate (Docket Entry Nos. 17 and 18) are granted. The mandate is recalled for the limited purpose of considering a petition for rehearing. Any petition for rehearing is due on February 10, 2021.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 2 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAMMY H. HEPBURN,

No. 19-17053

Plaintiff-Appellant,

D.C. No. 4:18-cv-00151-BGM

v.

MEMORANDUM*

TELEPERFORMANCE, Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Arizona
Bruce G. Macdonald, Magistrate Judge, Presiding**

Submitted October 26, 2020***

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Tammy H. Hepburn appeals pro se from the district court's summary judgment in her Title VII employment action alleging race discrimination, hostile work environment, and retaliation claims. We have jurisdiction under 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. See 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo. *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1112 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Hepburn's disparate treatment claim because Hepburn failed to raise a genuine dispute of material fact as to whether Teleperformance's proffered non-discriminatory, legitimate reasons for any adverse employment actions, including changing Hepburn's job duties and work location, were pretextual. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658-59 (9th Cir. 2002) (discussing elements of and burden-shifting framework for a discrimination claim under Title VII; explaining that evidence of pretext must be specific and substantial); *see also Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir. 2008) ("Conclusory statements without factual support are insufficient to defeat a motion for summary judgment.").

The district court properly granted summary judgment on Hepburn's hostile work environment claim because Hepburn failed to raise a genuine dispute of material fact as to whether defendant failed to take adequate remedial and disciplinary action in response to a non-supervisory employee's use of offensive racial slurs or any other alleged conduct. *See McGinest*, 360 F.3d at 1112, 1119-20.

The district court properly granted summary judgment on Hepburn's

retaliation claim because Hepburn failed to raise a genuine dispute of material fact as to whether there was a causal relationship between any protected activity and a materially adverse employment action. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 646 (9th Cir. 2004) (setting forth elements of Title VII retaliation claim and explaining what constitutes an adverse employment action).

The district court did not abuse its discretion in denying Hepburn's motion for default judgment as a discovery sanction because defendant did not violate a court order, and the district court was within its discretion in finding that defendant's actions did not warrant the extreme sanction of entry of a default judgment. *See Pau v. Yosemite Park & Curry Co.*, 928 F.2d 880, 885 (9th Cir. 1991) (setting forth standard of review).

We reject as unsupported by the record Hepburn's arguments that the district court erred by failing to consider Hepburn's allegations of harassment, failing to acknowledge that racial slurs are offensive, and considering the affidavits of Reinartz and Bay.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAMMY H. HEPBURN,

Plaintiff - Appellant,

v.

TELEPERFORMANCE, Corporation,

Defendant - Appellee.

No. 19-17053

D.C. No. 4:18-cv-00151-BGM
U.S. District Court for Arizona,
Tucson

MANDATE

The judgment of this Court, entered November 02, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rebecca Lopez
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX B

Case No. 4:18-cv-00151-TUS-BGM

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tammy H. Hepburn

Plaintiff

v.

Teleperformance

Defendant

Order Granting Summary Judgment in Favor of Teleperformance and Denying Hepburn's

Motion For Default Judgment

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Tammy H Hepburn,

10 Plaintiff,

11 v.

12 Teleperformance,

13 Defendant.
14

NO. CV-18-00151-TUC-BGM

JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 **IT IS ORDERED AND ADJUDGED** that, pursuant to the Court's Order filed
18 September 30, 2019, which granted the Motion for Summary Judgment, judgment is
19 entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and the
20 complaint and action are dismissed with prejudice.

21 Brian D. Karth
22 District Court Executive/Clerk of Court

23 September 30, 2019

24 By s/ A Calderón
25 Deputy Clerk
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Tammy Hepburn,

10 Plaintiff,

11 v.

12 Teleperformance,

13 Defendant.

No. CV-18-00151-TUC-BGM

ORDER

14 Currently pending before the Court is Defendant Teleperformance's Motion for
15 Summary Judgment (Doc. 46). Defendant has also filed a Statement of Facts in Support
16 of Defendant's Motion for Summary Judgment ("SOF") (Doc. 47). Plaintiff filed her
17 Opposition to Defendant's Motion for Summary Judgment (Doc. 51). Plaintiff also filed
18 a Supplemental Brief (Doc. 53), per the Court's December 21, 2018 Order (Doc. 52).
19 Defendant replied (Doc. 54) to both of Plaintiff's responses. Also pending before the
20 Court is Plaintiff's Motion for Entry of Default Judgment (Doc. 45). Defendant has filed
21 its Response (Doc. 48) and Plaintiff replied (Doc. 50). As such, both motions are fully
22 briefed and ripe for adjudication.

23 In its discretion, the Court finds this case suitable for decision without oral
24 argument. *See* LRCiv. 7.2(f). The Parties have adequately presented the facts and legal
25 arguments in their briefs and supporting documents, and the decisional process would not
26 be significantly aided by oral argument.

27 ...

28 ...

I. FACTUAL BACKGROUND

Plaintiff brings this cause of action based on allegations of discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"). The Court views the facts, as it must, in the light most favorable to Plaintiff.

A. Plaintiff's Employment at Teleperformance—Overview

Plaintiff Tammy Hepburn began her employment with Teleperformance, formerly known as Aegis USA, Inc. on September 9, 2013. Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018 (Exh. "1") at 12:3–15. Plaintiff was hired as a Customer Service Representative and worked in this position until she applied for and was accepted to the position of HR Receptionist in May 2014. *Id.*, Exh. "1" at 11:1–10, 11:24–12:11, 20:14–19; *see also* Pl.'s First Amended Compl. (Doc. 1-3), AEGIS Welcome to Our Team (Temporary Employee) (Exh. "A"). On July 30, 2014, Teleperformance experienced a seasonal increase of temporary employee hiring in the Sierra Vista area. Def.'s SOF (Doc. 47), Teleperformance's Position Statement to the EEOC (Exh. "3-A") at Bates No. TPUSA000057. Due to the hiring increase, Plaintiff was assigned the job duties of controlling employee files, conducting backgrounds checks, assisting the recruiting team, and overseeing the reception area. *Id.*, Exh. "1" at 23:1–10, 24:3–8. To fill these duties, Plaintiff was assigned to a back office to assist Human Resources. *Id.*, Exh. "1" at 23:1–4, 25:6–26:7.

B. Alleged Work Interference

On September 10, 2014, Plaintiff sent an e-mail to Judy Morris, Senior Vice President of HR and Niti Prothi, Associate Vice President of HR. Def.'s SOF (Doc. 47), Hepburn E-mail to Morris & Prothi 9/10/2014 (Exh. "3-B") at Bates No. TPUSA000062. Plaintiff indicated that she was doing well, but attached a letter stating that someone was going into her office and "sabotaging" her work by rearranging the employee files. *Id.*, Exh. "3-B" at Bates No. TPUSA000062. Ms. Prothi investigated Plaintiff's allegations, and all of Plaintiff's colleagues denied the allegations. *Id.*, Teleperformance's Position

1 Statement to the EEOC (Exh. "3-A") at Bates Nos. TPUSA000057-TPUSA000058.
2 Because the files with which Plaintiff was working were employee files, personnel from
3 both HR, as well as the recruiting department, required access to and worked with the
4 same. *Id.*, Exh. "3-A" at Bates. Nos. TPUSA000057-TPUSA000058; *see also* Def.'s
5 SOF (Doc. 47), Hepburn Depo. 5/22/2018 (Exh. "1") at 26:19-28:6.

6 On September 17, 2014, a conference call was held with Plaintiff, Ms. Prothi, and
7 Joseph Lu, the Manager of the Legal Department. Def.'s SOF (Doc. 47), Exh. "3-A" at
8 Bates Nos. TPUSA000058-59; *see also* Def.'s SOF (Doc. 47), Exh. "1" at 46:24-49:3.
9 During that call, it was decided that Ms. Prothi would remind the HR Department of the
10 company policies on professional conduct and limiting access to confidential personnel
11 files to those who worked in HR. Def.'s SOF (Doc. 47), Exh. "3-A" at Bates Nos.
12 TPUSA000058-59; *see also* Def.'s SOF (Doc. 47), Exh. "1" at 46:24-49:3. Hepburn has
13 acknowledged that the condition of the files may have been due to excessive hiring.
14 Def.'s SOF (Doc. 47), Exh. "1" at 50:2-9.

15 **C. *Alleged Discriminatory Treatment***

16 **1. McClanahan Statements**

17 On September 16, 2014, Plaintiff raised an additional allegation in an e-mail to
18 Ms. Morris stating that Margaret McClanahan, a receptionist at Teleperformance had
19 referred to Plaintiff using the "N" word. PL's First Amended Compl. (Doc. 1-3), E-mail
20 from Hepburn to Morris 9/16/2014 (Exh. "C"). This additional allegation was also
21 discussed during the conference call on September 17, 2014. Def.'s SOF (Doc. 47),
22 Hepburn Depo. 5/22/2018 (Exh. "1") at 46:24-49:3. It was decided that Rhonda
23 Reinartz, HR Assistant, would investigate the allegation. Def.'s SOF (Doc. 47),
24 Teleperformance's Position Statement to the EEOC (Exh. "3-A") at Bates Nos.
25 TPUSA000059 & Reinartz Aff. (Exh. "5") at ¶ 6 & Bay Aff. (Exh. "6") at ¶ 15. Neither
26 Ms. Prothi nor Ms. Reinartz were able to corroborate Hepburn's claim. Def.'s SOF (Doc.
27 47), Exh. "3-A" at Bates No. TPUSA000059 & Exh. "5" at ¶ 10 & Exh. "6" at ¶ 18. Ms.
28 McClanahan denied ever having used such language in reference to Plaintiff. Def.'s SOF

(Doc. 47), Exh. "6" at ¶ 11.

On October 6, 2014, Plaintiff again raised her claims of file "sabotage" and Ms. McClanahan's alleged use of the "N" word to the new HR Manager, Yolanda Bay. *Id.*, Exh. "6" at ¶ 4 & Exh. "1" at 73:4-20 & Exh. "3-A" at Bates No. TPUSA000059. Ms. Bay investigated the allegation and spoke with Ms. McClanahan who again denied ever having used such language. Def.'s SOF (Doc. 47), Exh. "6" at ¶ 11 & Exh. "3-A" at Bates No. TPUSA000059. Ms. Bay also spoke with Ms. Reinartz who confirmed that Ms. McClanahan had also denied ever using such language upon questioning by Ms. Reinartz. Def.'s SOF (Doc. 47), Exh. "6" at ¶ 16 & Exh. "5" at ¶ 8 & Exh. "3-A" at Bates No. TPUSA000059. No one was able to substantiate any of Plaintiff's claims. Def.'s SOF (Doc. 47), Exh. "6" at ¶ 19 & Exh. "5" at ¶ 10 & Exh. "3-A" at Bates No. TPUSA000059. Ms. McClanahan was coached on proper workplace behavior. Def.'s SOF (Doc. 47), Exh. "6" at ¶ 23.

2. Reinartz Actions

Plaintiff alleges that Ms. Reinartz, an HR Representative, also used the "N" word in her presence, as well as showing Plaintiff an electronic photograph of a black and white herder type dog, with a bloody knife, and in quotations it read "Mary had a little lamb." Def.'s SOF (Doc. 47), Second Amended Compl. (Doc. 15) at ¶¶ 10, 12 & Reinartz Aff. (Exh. "5") at ¶ 1. Ms. Reinartz denies that she ever showed Plaintiff such a photograph. Def.'s SOF (Doc. 47), Exh. "5" at ¶¶ 11-13. After the September 17, 2014 conference call between Plaintiff, Ms. Prothi, and Mr. Lu, Plaintiff "e-mailed Joe Lu back and requested that Rhonda Reinartz be the one designated for the investigation[,] . . . stat[ing] . . . [she] wanted Rhonda Reinartz to do the investigation because Karl Kondos spends a large amount of time conversing with Margret [sic] McClanahan and I wanted to make sure this is done professionally, honestly, and fairly." Def.'s SOF (Doc. 47), Hepburn Rebuttal to Teleperformance EEOC Position Statement (Exh. "8-B") (Doc. 47-9) at 19.¹

¹ Page reference is to the CM/ECF page number for clarity.

1 **3. E-mails**

2 Plaintiff alleges that she ceased receiving company update e-mails while fulfilling
3 her new duties in the HR Department, despite having received them while working in the
4 receptionist position. Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018 (Exh. "1") at
5 59:20-60:14. Plaintiff indicated that Ms. McClanahan, the new receptionist, began
6 receiving those e-mails. *Id.*, Exh. "1" at 56:6-10. Plaintiff testified that the e-mail
7 updates came from an employee named Jim Gordon. *Id.*, Exh. "1" at 59:17-22.

8 **4. Vinegar Incident**

9 Plaintiff alleges that someone placed a substance that looked like sperm in the
10 vinegar at her home. Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018 (Exh. "1") at
11 82:3-83:13. Plaintiff believed that if people were able to come into her office, where she
12 kept her purse, they could get access to the keys to her home. *Id.* She took the vinegar
13 sample to her neighbor, as well as Sierra Vista Hospital, who agreed that there was
14 something in the vinegar. *Id.*

15 ***D. Plaintiff's Separation from Defendant Teleperformance***

16 On December 1, 2014, Plaintiff left her position with Defendant Teleperformance.
17 Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018 at 19:16-25. Prior to separating from
18 Defendant Teleperformance, Plaintiff indicated that she would be interested in
19 transferring to an office in Virginia to be closer to family. *Id.*, Exh. "5" at ¶ 14.

20 ***E. The Current Litigation***

21 During her deposition, Plaintiff admitted that she did not "suffer any racial
22 problems, discrimination, [or] changes in [her] employment [or] [the] conditions of [her]
23 employment because of [her] race." Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018
24 (Exh. "1") at 49:23-50:1. Plaintiff further testified that none of the Teleperformance
25 supervisors treated her poorly because of her race. *Id.*, Exh. "1" at 53:7-16. Plaintiff
26 acknowledged that following the September 17, 2014 conference call with Mr. Lu and
27 Ms. Prothi, no one used racially derogatory language or engaged in any racially based
28 discrimination. *Id.*, Exh. "1" at 49:18-50:1.

II. STANDARD OF REVIEW

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986), “there is no genuine issue as to any material fact and [] the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is “material” if it “might affect the outcome of the suit under the governing law,” and a dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510. Thus, factual disputes that have no bearing on the outcome of a suit are irrelevant to the consideration of a motion for summary judgment. *Id.* In order to withstand a motion for summary judgment, the nonmoving party must show “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Moreover, a “mere scintilla of evidence” does not preclude the entry of summary judgment. *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512. The United States Supreme Court also recognized that “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007).

III. ANALYSIS

A. Motion for Default Judgment

On October 25, 2018, Plaintiff filed a Motion for Entry of Default Judgment (Doc. 45). Plaintiff claims that Defendant failed to comply with her request for production, and therefore sought default judgment as a sanction for this failure. *Id.* at 1–2. During the course of this litigation, Defendant filed a Motion for Protective Order (Doc. 41), which the Court granted. *See* Order 10/3/2018 (Doc. 43). Prior to the filing of her motion (Doc.

1 45), Plaintiff had refused to sign the Non-Disclosure Certification of the Protective Order.
2 Def.'s Response re: Mot. for Default (Doc. 48) at 1–2. As a result of Defendant's efforts
3 to meet and confer after the filing of Plaintiff's motion (Doc. 45), Plaintiff executed the
4 Non-Disclosure Certificate and returned it to Defendant on the same date its response
5 (Doc. 48) was filed. *See* Def.'s Response re: Mot. for Default (Doc. 48); Pl.'s Response
6 to Def.'s Response to Pl.'s Mot. for Entry of Default Judgment (Doc. 50). On November
7 26, 2018, the same date that Plaintiff filed her Reply (Doc. 50), Defendant served its
8 responses to her. Def.'s Not. of Service (Doc. 49).

9 As an initial matter, default judgment is only available as a sanction for violations
10 of a Court's discovery order.² *See* Fed. R. Civ. P. 37(b)(2)(A). Refusal to produce
11 documents based on the opposing party's failure to certify non-disclosure is not a such a
12 violation. Moreover, Defendant served its supplemental discovery upon receipt of
13 Plaintiff's certification. Accordingly, Plaintiff's Motion for Entry of Default Judgment
14 (Doc. 45) is DENIED.

15 **B. Evidentiary Objections**

16 Defendant asserts that Plaintiff's responsive filings do not comply with either the
17 Federal Rules of Civil Procedure or with this district's Local Rules. *See* Def.'s Reply
18 (Doc. 54) 1–3. As such, Defendant urges the Court to grant it summary judgment. *See*
19 *id.*

20 Federal Rule 56(c) mandates that “[a] party asserting that a fact . . . is genuinely
21 disputed must support the assertion by . . . citing to particular parts of materials in the
22 record, including depositions, documents, electronically stored information, affidavits or
23 declarations, stipulations (including those made for purposes of the motion only),
24

25 ² Fed. R. Civ. P. 37(b)(2)(A) provides in relevant part:

26 (A) *For Not obeying a Discovery Order.* If a party or a party's officer,
27 director, or managing agent—or a witness designated under Rule 30(b)(6)
28 or 31(a)(4)—fails to obey an order to provide or permit discovery,
including an order under Rule 26(f), 35, or 37(a), the court where the
action is pending may issue further just orders. They may include[:] . . .
rendering a default judgment against the disobedient party.

admissions, interrogatory answers, or other materials [in the record.]” Fed. R. Civ. P. 56(c)(1). A fact that “cannot be presented in a form that would be admissible in evidence” is grounds for objection. Fed. R. Civ. P. 56(c)(2). Moreover, the Rules of Practice of the United States District Court for the District of Arizona (“Local Rules”) require that “[e]ach additional fact . . . must refer to a specific admissible portion of the record where the fact finds support.” LRCiv. 56.1(b). After Plaintiff filed her initial response, the Court notified her of the requirements of Rule 56, Federal Rules of Civil Procedure, and LRCiv. 56.1, and allowed her to supplement his response accordingly. *See* Order 12/21/2018 (Doc. 52). It is not the Court’s task “to scour the record in search of a genuine issue of triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247 251 (7th Cir. 1995)).

Here, Plaintiff’s controverting facts indicate a denial and ostensibly what she disagrees with; however, the page and lines she designates do not match Defendant’s SOF, nor does she state what her position is or otherwise cite to anything in the record that would support her version. *See* Response (Doc. 51) at 6–8. Rather, Plaintiff has outlined dates and what occurred, as well as provided documents exchanged as part of the disclosure process. *See* Pl.’s Suppl. (Doc. 53). Although the Court will not summarily grant Defendant summary judgment for these shortcomings, bare factual allegations and conclusory statements have not been given any weight. *See, e.g.*, Pl.’s Response (Doc. 51) at 15–16 (alleging without citation or support that someone from Teleperformance broke into her home and put a substance in her vinegar).

C. *Hostile Work Environment*

Title VII of the Civil Rights Act of 1964 provides that:

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for

1 employment in any way which would deprive or tend to deprive any
2 individual of employment opportunities or otherwise adversely affect his
3 status as an employee, because of such individual's race, color, religion,
sex, or national origin.

4 42 U.S.C. § 2000e-2(a). "A hostile work environment claim involves a workplace
5 atmosphere so discriminatory and abusive that it unreasonably interferes with the job
6 performance of those harassed." *Brooks v. City of San Mateo*, 229 F.3d 917, 923 (9th
7 Cir. 2000).

8 In order to prevail on a hostile work environment claim, Plaintiff must show that
9 her "workplace [was] permeated with 'discriminatory intimidation, ridicule, and insult . .
10 . that is 'sufficiently severe or pervasive to alter the conditions of the victim's
11 employment and create an abusive working environment.'" *Harris v. Forklift Systems,*
12 *Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993); *Vasquez v. County of*
13 *Los Angeles*, 349 F.3d 634, 642 (9th Cir. 2003) ("To prevail on a hostile workplace claim
14 premised on either race or sex, a plaintiff must show: (1) that he was subjected to verbal
15 or physical conduct of a racial or sexual nature; (2) that the conduct was unwelcome; and
16 (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the
17 plaintiff's employment to create an abusive work environment."). "To determine
18 whether conduct was sufficiently severe or pervasive to violate Title VII, we look at 'all
19 the circumstances, including the frequency of the discriminatory conduct; its severity;
20 whether it is physically threatening or humiliating, or a mere offensive utterance; and
21 whether it unreasonably interferes with an employee's work performance.'" *Vasquez*, 349
22 F.3d at 642. Further, the conduct must create an objectively hostile or abusive work
23 environment, and the victim must subjectively perceive the environment to be abusive in
24 order to implicate Title VII. *Harris*, 510 U.S. at 21-22, 114 S.Ct. at 370. "Objective
25 hostility is determined by examining the totality of the circumstances and whether a
26 reasonable person with the same characteristics as the victim would perceive the
27 workplace as hostile." *Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1055 (9th Cir.
28 2007) (citations omitted). Subjective hostility requires a showing that the employee

1 “perceived [his] work environment to be hostile, and that a reasonable person in [his]
2 position would perceive it to be so.” *Dominguez-Curry v. Nevada Transp. Dept.*, 424
3 F.3d 1027, 1034 (9th Cir. 2005) (citations omitted).

4 Here, Plaintiff alleges one instance in September 2014 alleging that someone was
5 going into her office and “sabotaging” her work by rearranging the employee files. Pl.’s
6 Second Amended Compl. (Doc. 33) at 3 ¶¶ 5–7. Plaintiff also alleges two (2) instances
7 in which co-workers used the “N” word in her presence. *Id.* at 4 ¶¶ 9–10. Plaintiff
8 alleged that Ms. Reinartz twice showed her a picture of a black and white dog and a
9 bloody knife, with the caption “Mary had a little lamb.” *Id.* at 4–5 ¶ 12. Finally, Plaintiff
10 alleges that she stopped receiving corporate e-mail updates from August 1, 2014 through
11 November 30, 2014. *Id.* at 5 ¶ 14.

12 “Because only the employer can change the terms and conditions of employment,
13 an isolated incident of harassment by a co-worker will rarely (if ever) give rise to a
14 reasonable fear that [racial] harassment has become a permanent feature of the
15 employment relationship. *Brooks*, 229 F.3d at 924. Title VII is not a “general civility
16 code,” and therefore, “simple teasing, . . . offhand comments, and isolated incidents
17 (unless extremely serious) will not amount to discriminatory changes in the terms and
18 conditions of employment.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118
19 S.Ct. 2275, 2283 (1998). “When compared to other hostile work environment cases, the
20 events in this case are not severe or pervasive enough to violate Title VII.” *Vasquez*, 349
21 F.3d at 643. Based on the totality of the circumstances, Plaintiff has not met her burden
22 to establish that the workplace to be hostile. Accordingly, Defendant is entitled to
23 judgment as a matter of law.

24 ***D. Disparate Treatment***

25 **1. Legal standard**

26 “Under Title VII, an individual suffers disparate treatment ‘when he or she is
27 singled out and treated less favorably than others similarly situated on account of race.’”
28 *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1122 (9th Cir. 2004) (quoting *Jauregui*

1 v. *City of Glendale*, 852 F.2d 1128, 1134 (9th Cir. 1988)). “To establish a *prima facie*
2 case under Title VII, a plaintiff must offer proof: (1) that the plaintiff belongs to a class of
3 persons protected by Title VII; (2) that the plaintiff performed his or her job
4 satisfactorily; (3) that the plaintiff suffered an adverse employment action; and (4) that
5 the plaintiff’s employer treated the plaintiff differently than a similarly situated employee
6 who does not belong to the same protected class as the plaintiff.” *Cornwell v. Electra*
7 *Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2000) (citing *McDonnell Douglas*
8 *Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973)).

9 Once a plaintiff establishes a *prima facie* case, “[t]he burden then must shift to the
10 employer to articulate some legitimate nondiscriminatory reason for the employee’s
11 rejection.” *McDonnell Douglas*, 411 U.S. at 802, 93 S.Ct. at 1825. If the employer
12 produces evidence of a legitimate nondiscriminatory reason for the employment action,
13 the plaintiff must offer proof that the reason is actually a pretext for racial discrimination.
14 *McGinest*, 360 F.3d at 1123; *see also Cornwell*, 439 F.3d at 1028. “A plaintiff can show
15 pretext directly, by showing that discrimination more likely motivated the employer, or
16 indirectly, by showing that the employer’s explanation is unworthy of credence.”
17 *Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003).

18 2. Prima facie case

19 Defendant argues that Plaintiff cannot establish a *prima facie* case of
20 discrimination, and therefore her claims must fail. *See* Def.’s Mot. for Summ. J. (Doc.
21 46) at 7–10.

22 **a. Protected class**

23 It is undisputed that Plaintiff is African-American, and her national origin
24 represents a protected class. As such, Plaintiff establishes the first prong of his *prima*
25 *facie* case.

26 **b. Job performance**

27 It is undisputed that Plaintiff was performing satisfactorily. She was promoted
28 after her initial hire, as well as assigned additional responsibilities. Def.’s SOF (Doc.

1 47), Hepburn Depo. 5/22/2018 (Exh. "1") at 11:1-10, 11:24-12:15, 20:14-19, 23:1-10,
2 24:3-8, 25:6-26:7.

3 **c. Adverse employment action**

4 Plaintiff did not suffer any adverse employment action. To the extent that Plaintiff
5 alleges that her failure to receive corporate update e-mails was an adverse employment
6 action, she has failed to produce any evidence to support that this was a personnel action.
7 Rather, her testimony reflects that a co-worker was responsible for providing the e-mails.
8 Def.'s SOF (Doc. 47), Hepburn Depo. 5/22/2018 (Exh. "1") at 59:17-60:14. *See Strother*
9 *v. So. Cal. Permanente Med. Group*, 79 F.3d 859, 869 (9th Cir. 1996) ("mere ostracism
10 in the workplace is not enough to show an adverse employment decision").

11 **d. Treatment different from similarly situated employees**

12 Plaintiff does not make any allegation that she received treatment different from
13 similarly situated employees, nor does the evidence support such a claim.

14 **e. Conclusion**

15 Plaintiff cannot establish a *prima facie* case of disparate treatment. As such,
16 Defendant is entitled to summary judgment regarding Plaintiff's disparate treatment
17 claims.

18 **E. Retaliation**

19 Title VII makes it unlawful for employers "to discriminate against any of his
20 employees . . . because he has opposed any practice made an unlawful employment
21 practice by this subchapter, or because he has made a charge, testified, assisted, or
22 participated in any manner in an investigation, proceeding, or hearing under this
23 subchapter." 42 U.S.C. § 2000e-3(a). "To make out a *prima facie* case of retaliation, an
24 employee must show that (1) he engaged in a protected activity; (2) his employer
25 subjected him to an adverse employment action; and (3) a causal link exists between the
26 protected activity and the adverse action." *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th
27 Cir. 2000).

28 A retaliation claim requires that Plaintiff complain about an unlawful employment

1 practice. "Title VII defines the term 'unlawful employment practice' as discrimination
2 on the basis of any of seven prohibited criteria: race, color, religion, sex, national origin,
3 opposition to employment discrimination, and submitting or supporting a complaint
4 about employment discrimination." *University of Texas Southwestern Medical Ctr. v.*
5 *Nassar*, 133 S.Ct. 2517, 2532, 186 L.Ed.2d 503 (2013).


6 Here, Plaintiff engaged in a protected activity—alerting HR to racially derogatory
7 language; however, she has not alleged sufficient facts to support that she suffered an
8 adverse employment action. As such, she cannot meet her burden to establish a
9 retaliation claim, and Defendant is entitled to summary judgment.

10
11 **IV. CONCLUSION**

12 Based upon the foregoing, the Court finds that Plaintiff has failed to meet her
13 burden in opposing Defendant's motion for summary judgment. Accordingly, IT IS
14 HEREBY ORDERED that:

- 15 (1) Plaintiff's Motion for Entry of Default Judgment (Doc. 45) is DENIED;
16 (2) Defendant's Motion for Summary Judgment (Doc. 46) is GRANTED; and
17 (3) This matter is DISMISSED WITH PREJUDICE. The Clerk of the Court
18 shall enter judgment and close the case.

19
20 Dated this 30th day of September, 2019.

21 
22 Honorable Bruce G. Macdonald
23 United States Magistrate Judge
24
25
26
27
28

APPENDIX C

Case No. 2017700625

SUPERIOR COURT OF ARIZONA

IN CHOCHISE COUNTY

Tammy H. Hepburn

Plaintiff

v.

Teleperformance

Defendant

Case File

Person Filing: Tommy Hepburn
Address (if not protected by attorney-client privilege): 1121 E. Cotton Blvd, Suite 2110
City, State, Zip Code: San Diego, CA 92108
Telephone: (619) 441-6315
Email Address: tommy.hepburn@suprb.com
Lawyer's Bar Number: _____

FILED

2017 NOV -9 AM 8:52

MARY ELLEN GUNLAP
CLERK OF SUPERIOR COURT

BY JS
SV

Representing ☒ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

**SUPERIOR COURT OF ARIZONA
IN COCHISE COUNTY**

Tommy Hepburn
Name of Plaintiff

Case Number: CV201700625

Title: CIVIL COMPLAINT

Teleperformance
Name of Defendant

DIV. 1

Plaintiff hereby submits this complaint against Defendant(s) and alleges the following:

JURISDICTION and VENUE

1. Cochise County Superior Court has the legal authority to hear and decide this case because: (Check all boxes that are true.)

- ☒ The value of this case exceeds \$10,000 dollars.
- ☐ Replevin or other nonmonetary remedy will take place in Cochise County.
- ☐ The Plaintiff resides in Cochise County.
- ☐ The Defendant resides in Cochise County.
- ☒ The Defendant does business in Cochise County.
- ☒ The events, actions, or debts subject of this Complaint occurred in Cochise County.
- ☐ Other reason: _____

PARTIES

2. The Plaintiff in this case is Tommy Hepburn

3. The Defendant in this case is Teleperformance

STATEMENT OF FACTS AND BREACH

1. Margaret McLanahan - "Refer to as the 'lagger uplant'"
Rhonda Pimentel "Refer and use the nigger word pre-kning"
to the man that sexually molested her son.

6. Rhonda Pimentel - showed me a picture (see) of a man with
advice with a knife beside it with words in quote "nigger"
and "lagger uplant"

7. Not being included in company updates and changes
variability of pay period

8. _____

9. _____

(If you need more space, add an attachment labeled "Statement of Facts and Breach," and continue consecutive numbering.)

APPLICABLE LAW SUPPORTING CLAIMS

- (1. Discrimination Civil Right Act 1964 Title VII
- Title II of the Genetic Information non-discrimination Act of
- (1. Harassment - Title VII Civil Right Act 1964 2008

- () _____

() _____

() _____

() _____

(If you need more space, add an attachment labeled "Applicable Laws Supporting Claims," and continue consecutive numbering.)

INJURIES

- () 1. Mental stress

() 1. Depression

() 1. Loss of income

() 1. Discriminatory, belittling, degrading
Force to relocate, fear of life
() 1. Hostile work environment
for

(If you need more space, add an attachment labeled "Injuries," and continue consecutive numbering.)

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendant(s), and each of them (if applicable) for the following dollars, interest, costs and expenses incurred herein, or non-monetary remedy, including reasonable attorneys' fees, and for such other and further relief as the Court may deem just and proper.

Revised 08/14/2017

Page 3 of 4

11/3/2017

SER000458

- (1) Lost wages from Dec 1, 2014 to present totaling \$1,180.00
- (2) Job discrimination and pay for position held
- (3) 5 year AS pay base in organization determination of position held within Human Resources of 178,300.00
- (4) All employees be trained on EEOC and documented
- (5) All employees be trained on Discrimination and documented
- (6) All employees be trained on Harassment and documented
- (7) Mental damages of depression

(If you need more space, add an attachment labeled "Demand for Relief," and continue consecutive numbering.)

DEMAND FOR JURY TRIAL (Optional)

☐ I request a jury trial, and wrote this in the "Title" below the words "Civil Complaint."

Dated this 11/8/2017
(Date of signature)

(Signature of Plaintiff or Plaintiff's Attorney)
(Signature of Plaintiff or Plaintiff's Attorney)

FILED

2017 NOV -9 AM 8:52

MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT

FOR CLERK USE ONLY
SV

Person Filing: Tammy Hepburn
Address (if not protected): 2132 Fernon Drive, #206
City, State, Zip Code: San Diego, CA 92108
Telephone: (619) 941-5570
Email Address: Tammy.Hepburn@jpschd.ca.gov
Lawyer's Bar Number: 211A

Representing ☒ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

SUPERIOR COURT OF ARIZONA
IN COCHISE COUNTY

Tammy Hepburn

PLAINTIFF,

VS.

Teleperformance

DEFENDANT.

Case Number CV201700625

CERTIFICATE OF COMPULSORY
ARBITRATION

The undersigned certifies that the largest award sought by the complainant, including punitive damages, but excluding interest, attorneys' fees, and costs does / does not exceed limits set by Local Rule for compulsory arbitration. This case is / is not subject to compulsory arbitration as provided in Rules 72 through 77 of the Rules of Civil Procedure.

SUBMITTED this 8 day of November, 20 17.

BY Tammy Hepburn

APPENDIX D

Case No. 2017700625

SUPERIOR COURT OF ARIZONA

IN CHOCHISE COUNTY

Tammy H. Hepburn

Plaintiff

v.

Teleperformance


Defendant

APPLICATION FOR ENTRY OF DEFAULT

Tammy Hepburn
2182 Fenton Pkwy
200
San Diego, CA 92108
Plaintiff(s) Name/Address/Phone

v.
Teleperformance
9999 Technology Blvd West
Dallas, TX 75220

Defendant(s) Name/Address/Phone


CASE NUMBER CV 201700625
APPLICATION FOR ENTRY OF DEFAULT/
AFFIDAVIT FOR JUDGMENT BY DEFAULT
SMALL CLAIMS

APPLICATION FOR ENTRY OF DEFAULT

NOTICE IS GIVEN TO:

Defendant(s): Teleperformance

At the last known address indicated herein.

If you do not answer or file a responsive pleading with this court within ten (10) working days of the filing of this application, default will be effective and a default judgment will be entered against you.

1. The above named defendant(s) has failed to plead or otherwise defend in this action within the time allowed by law.
2. The status of the Defendant(s) military status is set forth in the affidavit for judgment by default.
3. This application is made for the purpose of entering default against the defendant(s).

Date: 01/09/2018

Tammy H. Hepburn
Plaintiff

AFFIDAVIT FOR JUDGMENT BY DEFAULT

Plaintiff moves for judgment against the defendant(s) named below, because the named defendant(s) has failed to plead or otherwise defend in this action within the time allowed by law: Job performance.
Defendant(s)

I incorporate the application for entry of default made herein and submit this affidavit.

1. I am the plaintiff in this action.

2. ☐ Defendant(s) named herein is engaged in active military service.

Supporting facts are: By

☒ Defendant(s) named herein is not in the armed forces of the United States

Supporting facts are: Private Sector

☐ I am unable to determine whether the defendant(s) is in the military.

3. The following amount is due and owing on plaintiff's claim as of this date.

Amount \$ 799,790.00

Costs \$ 354.85

Total \$ 799,094.85

4. ☒ The claim is for a sum certain (an amount that can be shown by clear computation).

5. ☒ I am attaching documents showing that the defendant owes what is claimed.

6. ☐ There are no exhibits.

I state under penalty of perjury that the foregoing is true and correct.

Date: 01/09/2018

Tammy Hepburn
Plaintiff

CERTIFICATE OF MAILING

I certify that I will mail a copy of the Application for Entry of Default/Affidavit for Judgment by Default to the opposing party(ies) at the address(es) listed.

Date: 01/09/2018

Tammy Hepburn
Plaintiff