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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-550

ELIZABETH SPOKOINY,
Plaintiff - Appellant,

v.

UNIVERSITY OF WASHINGTON MEDICAL CENTER,
Defendant - Appellee.

FILED
MAY 14 2025
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

D.C. No. 2:22-cv-00536-JLR

ORDER

Before: GOULD and NGUYEN, Circuit Judges, and BENNETT, District Judge.*

The panel has unanimously voted to deny Appellant's petition for panel rehearing. Judge Gould and Judge

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* The Honorable Richard D. Bennett, United States District Judge for the District of Maryland, sitting by designation.

Nguyen voted to deny the petition for rehearing *en banc*, and Judge Benett recommended denial of the petition for rehearing *en banc*. The full court has been advised of the petition for rehearing *en banc*, and no judge has requested a vote on whether to rehear the matter *en banc*. Fed. R. App. P. 40.

The petitions for panel rehearing and rehearing en banc, Dkt. No. 38, are DENIED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-550

ELIZABETH SPOKOINY,
Plaintiff - Appellant,

v.

UNIVERSITY OF WASHINGTON MEDICAL CENTER,
Defendant - Appellee.

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U.S. COURT OF APPEALS

D.C. No. 2:22-cv-00536-JLR

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

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

Argued and Submitted February 13, 2025
Seattle, Washington

Before: GOULD and NGUYEN, Circuit Judges, and BENNETT, District Judge.**

Elizabeth Spokoiny appeals the district court's order granting summary judgment for her former employer, University of Washington Medical Center ("UWMC"). "A grant of 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." *Mayes v. WinCo Holdings, Inc.*, 846 F.3d 1274, 1277 (9th Cir. 2017). A fact is "material" if it has the potential to affect the outcome of a case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Spokoiny contends that a genuine issue of material fact exists as to each of the claims for which the district court granted summary judgment. We have jurisdiction under 28 U.S.C. §1291. Having reviewed the briefs, record, and supplemental letters, we affirm. Because the parties are familiar with the facts and procedural history of the case, we recite only facts necessary to decide this appeal.

1. **Title VII sexual harassment:** To prevail on a sexual harassment claim under Title VII, a plaintiff must demonstrate that the plaintiff was subjected to a hostile work environment and that the employer was liable for the harassment. *Fried v. Wynn Las Vegas, LLC*, 18 F.4th 643, 647 (9th Cir. 2021). An employer is liable for the harassment when the harassment constitutes the employer's own acts or when the employer fails to take "immediate and corrective action" in response to known harassment. *Id.* The district court dismissed Spokoiny's

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** The Honorable Richard D. Bennett, United States District Judge for the District of Maryland, sitting by designation.

sexual harassment claim because, although Spokoiny produced evidence of sexual harassment, she did not demonstrate that UWMC knew of that harassment and failed to act. The record shows that the alleged sexual harasser resigned the day after the harassment was reported to UWMC. On appeal, Spokoiny did not identify any record evidence contrary to the district court's finding. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (2003).

2. **Disparate treatment under Title VII and the Americans with Disabilities Act (ADA):** Disparate treatment claims under Title VII and the ADA are both governed by the *McDonnell Douglas* burden-shifting framework and require the same elements for a *prima facie* case: "(1) [the plaintiff] belongs to a protected class; (2) she was qualified for her position; (3) she was subject to an adverse employment action; and (4) similarly situated individuals outside her protected class were treated more favorably." *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008). "[A]n adverse employment action is one that 'materially affects the compensation, terms, conditions, or privileges of employment.' " *Campbell v. Hawaii Dep't of Educ.*, 892 F.3d 1005, 1012 (9th Cir. 2018) (quoting *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008)). The district court granted summary judgment for UWMC on Spokoiny's disparate treatment claims because Spokoiny did not identify an adverse employment action. Although Spokoiny contends that her low performance review from January 2020 was an adverse employment action, she did not identify or explain how that review changed any aspect of her employment. A low performance review standing alone, without impact on the compensation, terms, conditions, or privileges of employment does not amount to an adverse employment action.

3. **Retaliation claims:** To establish a *prima facie* claim of retaliation, Spokoiny must demonstrate (1) that she engaged in protected conduct; (2) that she suffered an

adverse employment action; and (3) that there is a causal link between the protected expression and the adverse action. *See E.E.O.C. v. Dinuba Medical Clinic*, 222 F.3d 580, 586 (9th Cir. 2000) (applying retaliation framework in Title VII context). Under the *McDonnell Douglas* framework, the burden then shifts to the employer to proffer a legitimate, non-discriminatory reason for the adverse action. *See Villiarmo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 2002). If the employer can do so, then the plaintiff must offer evidence that the proffered reason is pretext for discrimination. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003).

Assuming that Spokoiny demonstrated a *prima facie* case of retaliation, UWMC proffered a legitimate, non-discriminatory reason for the adverse action: Spokoiny had performance problems, such as with recordkeeping and tardiness. UWMC supported that contention with record evidence. The burden shifted backto Spokoiny to demonstrate that UWMC's proffered reason was pretext. *See Vasquez*, 349 F.3d at 641. Spokoiny did not explain how or why UWMC's proffered reason was pretextual, nor did she identify any evidence so showing. *See Washington*, 350 F.3d at 929 ("Our circuit has repeatedly admonished that we cannot manufacture arguments for an appellant." (simplified)).

4. **Failure to accommodate claims under the ADA:** To prevail on a case for failure to accommodate under the ADA, a plaintiff must show that (1) she is disabled; (2) she is qualified for the relevant job and capable of performing it with reasonable accommodation; (3) the employer had notice of the plaintiff's disability; and (4) the employer failed to reasonably accommodate the plaintiff's disability. *See Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012). Although Spokoiny claimed that UWMC failed to accommodate her disability, she did not explain what accommodation was delayed or denied. The

denial of a reasonable accommodation is an essential element of her claim for failure to accommodate.

5. **Family and Medical Leave Act (FMLA) interference:** To establish a *prima facie* case of FMLA interference, a plaintiff must establish that (1) she was eligible for FMLA protections; (2) her employer was covered by FMLA; (3) she was entitled to FMLA leave; (4) she provided sufficient notice of her intent to take leave; and (5) the employer denied her FMLA benefits to which she was entitled. *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1243 (9th Cir. 2004). The district court dismissed Spokoiny's claim because "Spokoiny fail[ed] to direct the court toward any specific instances of UWMC denying a request for FMLA leave." Although Spokoiny claims that she provided "over 20" instances of FMLA leave interference, none of Spokoiny's record citations show the denial of FMLA leave. Instead, her record citations demonstrate instances in which UWMC clarified its FMLA policies. Because an employer is permitted to have policies around the implementation of FMLA leave, *see Shelton v. Boeing Co.*, 702 Fed.App'x. 567 (9th Cir. 2017) (citing *Bones v. Honeywell Int'l, Inc.*, 366 17 F.3d 869, 878 (10th Cir. 2004)); 29 C.F.R. § 825.303, UWMC's clarifications were not facial interference with FMLA leave.

6. **Unpaid wages:** Under Washington state law, an employee can seek lost wages if "the nonpayment of wages is conducted 'willfully and with intent to deprive the employee of any part of [her] wages.' " *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1050 (9th Cir. 1995) (quoting RCW 49.52.050(2)). Spokoiny contended that UMWC failed to pay her for missed meal breaks and failed to fairly compensate her for work as a preceptor. The district court dismissed her claim because she did not point to any evidence that UMWC's failure to pay was "willful." Spokoiny now contends that UMWC's actions were "willful" because she put UMWC on notice in a January 9, 2020 email about unpaid breaks and preceptor work. But

Spokoiny admitted that she regularly failed to record her missed breaks or work as a preceptor. UMWC's refusal to pay the additional wages was therefore neither "willful" nor a "result of knowing and intentional action by the employer, rather than of a bona fide dispute as to the obligation of payment." *See Brinson*, 53 F.3d at 1049–50. "Dismissal of such claims on summary judgment is permitted." *Id.*

7. **Violation of the Washington Public Record Act:** Spokoiny contends that UWMC violated the Washington Public Record Act by taking too long to produce requested records during discovery. The district court held that Spokoiny's claim fails because, in analyzing whether UMWC properly responded to a document request, the court looks at "[w]hether the agency responded with reasonable thoroughness and diligence." *Freedom Found v. Dep't of Soc. & Health Servs.*, 9 Wn. App. 2d 654 (Wash. Ct. App. 2019). Here, UMWC "timely acknowledged" Spokoiny's document requests and produced documents on a rolling basis. Although some record productions were slow, Spokoiny had made her document requests in the middle of the COVID-19 pandemic, when UWMC already had a backlog of records requests. Under the circumstances, this delay was not unreasonable. *See Conklin v. Univ. of Wash. Sch. of Med.*, 2023 Wash. App. LEXIS 7* (Wash. Ct. App. 2023).

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASE NO. C22-0536JLR

ELIZABETH SPOKOINY,
Plaintiff,

v.

UNIVERSITY OF WASHINGTON MEDICAL CENTER,
Defendant.

Filed January 5, 2024

ORDER

I. INTRODUCTION

Before the court is Defendant University of Washington Medical Center's ("UWMC") motion for summary judgment. (Mot. (Dkt. # 12); Reply (Dkt. # 25).) Plaintiff Elizabeth Spokoiny opposes the motion. (Resp. (Dkt. # 23).) The court has considered the parties' submissions, the relevant portions of the record, and the governing law. Being fully

advised,[1] the court GRANTS UWMC's motion.

II. BACKGROUND

This case arises out of Ms. Spokoiny's employment as a registered nurse at UWMC from August 2015 through December 2020. (Am. Compl. (Dkt. # 2-7) ¶ 2.) It was Ms. Spokoiny's first full-time nursing job, and she was simultaneously pursuing a doctorate of nursing practice ("DNP") degree. (*See* Freeman Decl. (Dkt. # 13) ¶ 3(C), Ex. 3 ("Spokoiny Dep.") at 37:12-24.) Ms. Spokoiny describes herself as a hard worker and proudly proclaims that she earned "distinguished performance reviews" after her first four years at UWMC. (Am. Compl. ¶ 37.) As Ms. Spokoiny was approaching the final semester of her DNP program, however, her supervisors at UWMC noticed that she had been doing schoolwork during scheduled shifts, arrived late to work several times, and was not meeting performance expectations, including by failing to stay in designated clinic areas and ensure that patients were prepared for their procedures. (Bagdasarian Decl. (Dkt. # 18) ¶ 5, Ex. 2 ("Formal Action Plan") at DEF_000410.) In early December 2019, an assistant clinic director met with a UWMC human resources consultant, Ms. Spokoiny's union representative, and Ms. Spokoiny to discuss these issues. (Bagdasarian Decl. ¶ 5.) The assistant clinic director drafted a "potential Action Plan outlining expectations for performance in [Ms. Spokoiny's] role," but ultimately "the Action Plan was never implemented" and management "never moved forward with any corrective action." (*Id. See generally* Formal Action Plan.) The following month, in January 2020, Ms. Spokoiny received her lowest performance rating at UWMC: "2 – Successful." (Bagdasarian Decl. ¶ 9, Ex. 5 ("Performance

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1 Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court concludes that oral argument would not be helpful to its disposition of UWMC's motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

Review") at DEF_001976; *see also* Resp. at 10; Am. Compl. ¶¶ 37-38.)[2] Ms. Spokoiny claims to have never received less than a "distinguished" 2.75 until then. (Resp. at 10.)

Ms. Spokoiny continued working at UWMC for almost another year. (*See* Gould Decl. (Dkt. # 15) ¶ 16.) During that time, she earned her DNP degree, sat for her board exam, and applied for positions at other clinics before ultimately resigning from UWMC without notice in December of 2020. (*See id.*; Spokoiny Dep. at 37:21-25, 38:21-39:5, 186:18-25.) Since leaving UWMC, Ms. Spokoiny has worked for several private clinics and just recently returned to the University of Washington School of Medicine as a nurse practitioner. (Spokoiny Dep. at 186:18-25.)

To this day, however, Ms. Spokoiny maintains that her January 2020 performance review was "tainted" and that her former supervisors at UWMC gave her a low score in retaliation for a myriad of incidents that occurred in the year prior. (Resp. at 15.) Ms. Spokoiny alleges that her supervisors "manipulated" her review and that the meeting preceding it was an "arbitrary and capricious" "sham" designed to "force [her] to resign and forego her . . . employment rights." (Am. Compl. ¶¶ 34, 37.) According to Ms. Spokoiny, her review contained "zero truthful comments related to clinical competency at which [she] excels" and was "direct retaliation" for: (1) "requesting

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2 Ms. Spokoiny's "Calculated Rating" was a 1.5, indicating that she "need[ed] improvement" in certain areas, but it appears her manager gave her an overall rating of 2 out of 3. (*See* Performance Review at DEF_001976.)

disability accommodation";[3] (2) "suffering a workplace injury"; (3) "complaining about sexual harassment"; (4) "acting as a whistleblower"; (5) "demanding unpaid wages"; and (6) "exercising her *Weingarten* rights."[4] (*Id.* ¶¶ 37, 67-73.)

Ms. Spokoiny filed her initial complaint on December 29, 2021 (Compl. (Dkt. # 1-1)) and amended her complaint on March 25, 2022 (Am. Compl.). She lists ten causes of action in her amended complaint, including claims for disparate treatment under Title VII of the Civil Rights Act of 1964 ("Title VII"), Title IX of the Education Amendments of 1972 ("Title IX"), the Washington Law Against Discrimination ("WLAD"), and the Americans with Disabilities Act ("ADA"); retaliation under Title VII, Title IX, WLAD, and the ADA; failure to accommodate under WLAD and the ADA; unpaid wages; and violation of Washington's Public Records Act ("PRA"), RCW 42.56.[5]

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3 Ms. Spokoiny has a vision disability and used a sit/stand desk at UWMC for medical reasons. (Am. Compl. ¶¶ 4, 45.) She also received Family and Medical Leave Act ("FMLA") leave while working at UWMC. (*See id.* ¶¶ 55-56.)

4 *See NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 267 (1975) (holding employees have the right to union representation at investigatory interviews that may result in disciplinary action).

5 Ms. Spokoiny included her PRA claim only in her amended complaint. (*See generally* Compl. See Am. Compl. ¶¶ 74-83.) UWMC argues that Ms. Spokoiny never served her amended complaint (Mot. at 24), but Ms. Spokoiny responds that she served it nearly a month before UWMC removed the case to this court (Resp. at 2 (citing L. Spokoiny Decl. (Dkt. # 22) ¶ 2, Ex. 1 (email correspondence between Ms. Spokoiny's counsel and the Washington Attorney General's Office regarding electronic service of the amended complaint)).). UWMC does not address this argument in its reply brief. (*See generally* Reply.) Accordingly, the court will consider the merits of Ms. Spokoiny's PRA claim.

(Am. Compl. at 14 ("Causes of Action" list).) In addition, Ms. Spokoiny includes in her amended complaint sections titled "Sexual Harassment," "Worker's Compensation," "Family Medical Leave Act," and "Whistleblower Protection" (*see id.* ¶¶ 48-56, 62-66), but does not list corresponding claims among her causes of action (*see id.* at 14).

The court first sets forth the legal standard for evaluating summary judgment motions before addressing each of Ms. Spokoiny's claims.

III. LEGAL STANDARD

Summary judgment is appropriate if the evidence viewed in the light most favorable to the non-moving party shows "that 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); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is "material" if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is "'genuine' only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party." *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing Anderson, 477 U.S. at 248-49).

The moving party bears the initial burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the absence of such a dispute in two ways: (1) by producing evidence negating an essential element of the nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party meets its burden of production, the burden then shifts to the nonmoving party to identify specific facts from which a factfinder could reasonably find in the nonmoving party's favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

IV. ANALYSIS

The court considers Ms. Spokoiny's claims in the order presented in UWMC's motion.

A. Sexual Harassment

Ms. Spokoiny's amended complaint is not a model of clarity. She does not include sexual harassment in her list of causes of action (*see* Am. Compl. at 14), and the "Sexual Harassment" section of her complaint fails to identify any statutory basis for a sexual harassment claim (*see id.* ¶¶ 48-52). UWMC argues that Ms. Spokoiny appears to plead that UWMC retaliated against her for reporting sexual harassment, not that UWMC is liable for sexual harassment. (*See id.* ¶ 52; Mot. at 7.) Nevertheless, Ms. Spokoiny argues that she has presented a *prima facie* case "under state and federal law of sexual harassment" (Resp. at 1), and UWMC addresses this claim on the merits (*see* Mot. at 7-9). The court therefore construes Ms. Spokoiny's amended complaint as alleging a sexual harassment claim.

To prevail on a sexual harassment claim under Title VII, the plaintiff must show that (1) she "was subjected to a hostile work environment," and (2) her employer "was liable for the harassment that caused the hostile environment to exist." *Fried v. Wynn Las Vegas, LLC*, 18 F.4th 643, 647 (9th Cir. 2021). The first element requires the plaintiff to prove that (1) she "was subjected to verbal or physical conduct of a sexual nature," (2) "the conduct was unwelcome," and (3) "the conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." *Id.* The second element is satisfied if the employer failed "to take immediate and corrective action in response to a coworker's or third party's sexual harassment" that it "knew or should have known about." *Id.* (collecting cases). Similarly, under the WLAD, the plaintiff must show that "(1) the harassment was unwelcome; (2) the harassment was because of sex; (3) the harassment affected the terms or conditions of employment; and (4) the harassment is imputed to the employer."

Estevez v. Fac. Club of the Univ. of Wash., 120 P.3d 579, 588 (Wash. Ct. App. 2005) (internal quotation marks omitted) (quoting *Coville v. Cobarc Servs., Inc.*, 869 P.2d 1103, 1105 (Wash. Ct. App. 1994)). Harassment is "imputed to the employer" if it "authorized, knew, or should have known of the harassment and . . . failed to take reasonably prompt and adequate corrective action." *Glasgow v. Georgia-Pacific Corp.*, 693 P.2d 708, 712 (Wash. 1985).

Although Ms. Spokoiny has produced evidence that UWMC employee Cooper Wilhelm subjected her to unwelcome conduct of a sexual nature (*see, e.g.*, 1st Spokoiny Decl. (Dkt. # 21) ¶¶ 16, 38 (describing that conduct)), she has not met her burden to show that UWMC failed to take reasonably prompt and adequate corrective action after learning about the conduct. *See Fried*, 18 F.4th at 647. To the contrary, the undisputed evidence in the record shows that Ms. Spokoiny first reported Mr. Wilhelm's unwelcome sex-based conduct to UWMC management in late August or early September 2019, when she informed her manager that Mr. Wilhelm put "his hand on [her] back and said: 'I can see through your clothes. Don't you care?'" (1st Spokoiny Decl. ¶¶ 38-39; *see also* (Petritz Decl. (Dkt. # 16) ¶ 14 (confirming that Ms. Spokoiny had not reported an earlier comment by Mr. Wilhelm). *See generally* Resp. (directing the court to no evidence that Ms. Spokoiny reported the earlier comment or any other alleged sex-based conduct by Mr. Wilhelm).) Ms. Spokoiny's manager immediately reported the comment to Mr. Wilhelm's manager, who then "immediately addressed" it with Mr. Wilhelm. (Petritz Decl. ¶ 14.) Mr. Wilhelm resigned that same day and never worked with Ms. Spokoiny again. (*See id.*; Spokoiny Dep. at 168:17-169:15; 1st Spokoiny Decl. ¶ 41.) Although Ms. Spokoiny also refers to a July 2019 "mediation meeting" that her managers allegedly "forced" her to attend with Mr. Wilhelm, she does not cite any evidence that she reported any sex-based conduct by Mr. Wilhelm (as opposed to

bullying) before that meeting, and an email she sent shortly after the meeting includes no references to sexual harassment or sexual conduct. (Resp. at 4; *see* Waldhausen Decl. (Dkt. # 20) ¶ 6, Ex. 2, at 6-7 (discussing concerns about bullying and group dynamics).) Finally, Ms. Spokoiny asserts that she "was forced" to watch Mr. Wilhelm's wrestling videos, which had "sexual overtones" (Res. at 2), but does not point the court to any evidence that UWMC was or should have been aware of this conduct (*see generally id.*).

Thus, because Ms. Spokoiny has not met her burden to present evidence that would allow a reasonable factfinder to conclude that UWMC failed to take immediate corrective action after learning of unwelcome sex-based conduct, the court grants UWMC's motion for summary judgment on Ms. Spokoiny's hostile work environment sexual harassment claims.

B. Disparate Treatment

Although her pleadings are again unclear, Ms. Spokoiny appears to allege that UWMC discriminated against her on the basis of disability[6] in violation of Title VII, Title IX, WLAD, and the ADA by giving her a low performance review in January 2020 and by denying her requests for accommodations and FMLA leave. (*See, e.g.*, Am. Compl. ¶¶ 47, 54, 56; *id.* at 14; Resp. at 6 (citing Spokoiny Dep. at 155:9-156:4).) She asserts that the court must deny

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6 Ms. Spokoiny does not respond to UWMC's argument that she has only identified disability as a basis for her disparate treatment claim. (*See* Mot. at 10 (citing Am. Compl.)); Resp. at 1 (referring only to discrimination on the basis of disability).) In addition, the complaint's sole mention of discrimination on any ground other than disability appears within its discussion of alleged sexual harassment. (*See* Am. Compl. ¶ 52 (alleging UWMC discriminated "on the basis of sex" by "allowing [Mr.] Wilhelm's harassment to continue unabated").) The court therefore concludes that Ms. Spokoiny's disparate treatment claims are based only on disability.

UWMC's motion for summary judgment on her disparate treatment claims because she has presented a *prima facie* case of disability discrimination. (Resp. at 1.) The court disagrees.

Disparate treatment claims under federal and state law are governed by the *McDonnell Douglas* burden-shifting framework. *See Curley v. City of N. Las Vegas*, 772 F.3d 629, 632 (9th Cir. 2014) (ADA); *Hines v. Todd Pac. Shipyards*, 112 P.3d 522, 529 (Wash. Ct. App. 2005) (WLAD); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).[7] The WLAD largely mirrors federal law, and courts "look to interpretations of federal anti-discrimination laws . . . when applying the WLAD." *See Grill v. Costco Wholesale Corp.*, 312 F. Supp. 2d 1349, 1354 (W.D. Wash. 2004). Under the burden-shifting framework, the plaintiff must first establish a *prima facie* case of discrimination. *Curley*, 772 F.3d at 632. The plaintiff may establish a *prima facie* case either by offering direct evidence of discrimination or by showing that (1) she is disabled; (2) she is doing satisfactory work; (3) she suffered an adverse employment action; and (4) similarly situated non-disabled individuals were treated more favorably or that other circumstances raise a reasonable inference of unlawful discrimination. *McElwain v. Boeing Co.*, 244 F. Supp. 3d 1093, 1097-98 (W.D. Wash. 2017) (citing *Callahan v. Walla Walla Hous. Auth.*, 110 P.3d 782, 786 (Wash. Ct.

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7 Claims for disability discrimination in employment are not actionable under Title VII (*see* 42 U.S.C. § 2000e-2(a)(1)) and Ms. Spokoiny refers to Title IX in her response only in the context of gender discrimination (*see* Resp. at 7). Therefore, the court grants UWMC's motion for summary judgment to the extent Ms. Spokoiny alleges disability discrimination claims under Title VII and Title IX.

App. 2005)). If the plaintiff succeeds in making out a *prima facie* case, then the burden shifts to the defendant to offer a legitimate nondiscriminatory explanation for its actions. *Curley*, 772 F.3d at 632. If the defendant does so, the burden shifts back to the plaintiff to show that the defendant's explanation is pretext for discrimination. *Id.*

Ms. Spokoiny has not identified any direct evidence of UWMC's intent to discriminate against her on the basis of disability. (*See generally* Resp.) She points to a December 15, 2019 email in which she asserts that her supervisor "admitted in writing that the main reason she gave Ms. Spokoiny a very low performance review was due to 'health issues.'" (*Id.* at 11 (citing 2nd Spokoiny Decl. (Dkt. # 24) ¶ 20, Ex. 4 ("Sarabia Email" at 1).) Ms. Spokoiny's characterization of this email, however, is untenable. Ms. Spokoiny's supervisor actually wrote that it was *Ms. Spokoiny*, rather than the supervisor, who "attribute[d] her behaviors or missteps in work performance to her stressors," which included "health issues, work related stressors, familial, school-related stressors, and personal issues." (Sarabia Email at 1.) No reasonable factfinder could conclude that this email is direct evidence of UWMC's discriminatory intent.

Because Ms. Spokoiny has not identified direct evidence of discrimination on the basis of disability, the court applies the *McDonnell Douglas* framework in evaluating her claims. *See McElwain*, 244 F. Supp. 3d at 1097-98. As discussed below, the court concludes that summary judgment in UWMC's favor is warranted because, even assuming Ms. Spokoiny belongs to a protected class within the meaning of WLAD and federal law, and even assuming she was performing in accordance with UWMC's expectations, she does not raise a genuine issue as to the third and fourth elements of the *prima facie* case. Specifically, Ms. Spokoiny has failed to direct the court toward "specific facts" that would support a finding that

UWMC took an adverse employment action against her or that the circumstances surrounding that action raise a reasonable inference of unlawful discrimination. *Celotex*, 477 U.S. at 324; *see McElwain*, 244 F. Supp. 3d at 1097-98.

Regarding the third element of the *prima facie* case, the court agrees with UWMC that Ms. Spokoiny has not raised a genuine issue as to whether UWMC subjected her to a cognizable adverse employment action, defined as one that "materially affects the compensation, terms, conditions, or privileges of employment." *Campbell v. Haw. Dep't of Educ.*, 892 F.3d 1005, 1012 (9th Cir. 2018) (quoting *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008)). First, Ms. Spokoiny asserts that the January 2020 performance evaluation was an adverse employment action. (Resp. at 9.) However, "a negative performance review, without more, does not constitute an adverse employment action" in the context of a disparate treatment claim. *Bryant v. Covina-Valley Unified Sch. Dist.*, No. CV 17-1274 PSG (AJWx), 2017 WL 10543559, at *5 (C.D. Cal. Oct. 16, 2017) (collecting cases).

Second, Ms. Spokoiny asserts that she suffered an adverse action because "her FMLA was interfered with and accommodations delayed or denied." (Resp. at 9-10.) She does not, however, cite any specific examples of UWMC denying a request for FMLA or accommodation, nor does she rebut UWMC's evidence that it never denied such requests. (*See generally id. See also* Garman Decl. (Dkt. # 14) ¶ 15 ("I am not aware of any circumstances in which [Ms. Spokoiny] was denied FMLA leave or accommodation.").) To the contrary, Ms. Spokoiny acknowledges that UWMC provided several requested accommodations, including an alternative keyboard, document camera, sit-stand desk, magnifier, and intermittent leave. (Spokoiny Dep. at 82:17-20.)

Third, Ms. Spokoiny points to two purported adverse employment actions in her response brief that she did not raise in her complaint. She first argues that management

tried to "force" her to quit by encouraging her to resign to avoid being placed on an action plan. (Resp. at 11 (citing 2d Spokoiny Decl. ¶ 21, Ex. 5 ("Davey Emails") at 1).) Ms. Spokoiny relies, however, on an email thread that was initiated in response to her own query about the resignation process. (*See* Davey Emails at 3.) Ms. Spokoiny next asserts that a supervisor "attempted to reassign [her] from a nursing job to a housekeeping role." (Resp. at 11.) But nothing in the record suggests that Ms. Spokoiny was ever actually demoted or reassigned to housekeeping. (*See generally id.* (citing no evidence supporting a finding that Ms. Spokoiny was reassigned).) The court therefore concludes that Ms. Spokoiny has failed to meet her burden to establish the third element of a *prima facie* disparate treatment claim.

Ms. Spokoiny also fails to satisfy the fourth element of the *prima facie* case because she has neither provided evidence that similarly situated employees were treated more favorably than she was nor shown that other circumstances give rise to an inference of discrimination. (*See generally id.*) Ms. Spokoiny identifies no evidence that UWMC treated any non-disabled individual who had a similar job and engaged in similar conduct more favorably. *See Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003) Although she contends that "no other nurse received an annual performance review score lower than 2.25" (Resp. at 10 (citing L. Spokoiny Decl. ¶ 5, Ex. 4 ("Evaluations"))), she fails to identify any nondisabled nurses who received higher scores despite engaging in conduct similar to that which led to her lower score. *See Vasquez*, 349 F.3d at 641. Ms. Spokoiny has not identified any other evidence from which a reasonable factfinder could infer that UWMC subjected her to discrimination on the basis of her disability. (*See generally* Resp.)

In sum, Ms. Spokoiny has failed to establish a *prima facie* case of disparate treatment on the basis of disability. Ms. Spokoiny does not offer any direct evidence of UWMC's

alleged discriminatory intent, and she fails to provide evidence sufficient to meet her initial burden under the *McDonnell Douglas* framework to establish a *prima facie* case of disability discrimination. UWMC is therefore entitled to summary judgment on these claims.

C. Retaliation

Ms. Spokoiny alleges that UWMC "singled [her] out for punishment in direct retaliation" for the following: (1) "requesting disability accommodation"; (2) "suffering a workplace injury"; (3) "complaining about sexual harassment"; (4) "acting as a whistleblower"; (5) "demanding unpaid wages"; and (6) "exercising her *Weingarten* rights." (Am. Compl. ¶¶ 67-73.) In response to UWMC's motion for summary judgment on her retaliation claims, however, Ms. Spokoiny appears to identify only two actions for which UWMC allegedly retaliated against her: "filing the sexual harassment complaint against Mr. Wilhelm" and "taking advantage of FMLA to deal with her disabilities." (*See* Resp. at 6.) Ms. Spokoiny asserts that UWMC retaliated against her by (1) issuing the January 2020 performance review, (2) "orchestrating [a] secret meeting, which occurred the same day Mr. Wilhelm resigned," (3) interfering with her FMLA requests, and (4) delaying or denying her requests for accommodations. (*Id.* at 5, 10.) The court concludes that Ms. Spokoiny fails to raise a triable issue as to her retaliation claims.

Like disparate treatment claims under WLAD, "a plaintiff may defeat summary judgment in a retaliation claim with direct evidence or through the *McDonnell Douglas* burden shifting scheme." *Houserman v. Comtech Telecomms. Corp.*, No. C19-0644RAJ, 2020 WL 7773417, at *8 (W.D. Wash. Dec. 30, 2020). Under both state and federal law, a *prima facie* case of retaliation requires proof that the plaintiff (1) "engaged in a protected activity," (2) "suffered an adverse action," and (3) can establish "a causal connection between the protected activity and the adverse action." *Brzycki v. Harborview Med. Ctr.*, No. C18-

1582MJP, 2020 WL 1237154, at *7 (W.D. Wash. Mar. 13, 2020) (citing *Vasquez*, 349 F.3d at 646). In the retaliation context, an adverse action "consists of conduct which would dissuade a reasonable worker from engaging in protected activity." *Id.* (citing *BNSF Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

Again, Ms. Spokoiny has come forward with no direct evidence in support of her claims. (*See generally* Resp.) Accordingly, she must satisfy her burden under the *McDonnell Douglas* framework. The court concludes that summary judgment is appropriate because, even assuming that Ms. Spokoiny has shown a genuine issue of material fact regarding whether she engaged in protected activity and whether UWMC subjected her to an adverse employment action, she has failed to demonstrate any causal relationship between her protected activity and UWMC's actions.

The court assumes, without deciding, that Ms. Spokoiny's complaint about Mr. Wilhelm's alleged sexual harassment and requests for FMLA to accommodate her disability constituted protected activity. (*See generally* Resp.; Reply. *See* 1st Spokoiny Decl. ¶ 41.) The court also assumes, without deciding, that the January 2020 performance review was an adverse employment action.[8] *See Hooks v. Works*, 14 F. App'x 769, 772 (9th Cir. 2001) ("A negative performance evaluation may constitute an adverse employment action." (citing *Kortan v. Cal. Youth. Auth.*, 217 F.3d 1104, 1112 (9th Cir. 2000)).

Ms. Spokoiny falls short, however, of satisfying the causation element of her *prima facie* case. Indeed, she does not address causation in her brief. (*See generally* Resp. (no

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8 Ms. Spokoiny fails to explain how or why the "secret meeting" was an adverse employment action (*see generally* Resp.), and, as discussed above, Ms. Spokoiny does not cite any specific examples of UWMC denying a request for FMLA or accommodation and fails to rebut UWMC's evidence that it did not, *see supra* § IV(B).

discussion of causal connection).) In any event, the causation element requires Ms. Spokoiny to present "evidence sufficient to raise the inference that protected activity was the likely reason" for the adverse actions. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1984 (9th Cir. 2008). This she has failed to do. Simply put, Ms. Spokoiny has directed the court to no evidence from which a reasonable juror could find a causal connection between her protected activities and her performance review. (*See generally* Resp.) *See, e.g., Martinez-Patterson v. AT&T Servs. Inc.*, No. C18-1180RSM, 2021 WL 3617179, at *10 (W.D. Wash. Aug. 16, 2021) ("Plaintiff's mere belief that her ratings . . . were motivated by retaliatory animus do not establish a causal connection between the protected activities and her ratings . . . ."). Because Ms. Spokoiny has not met her burden to demonstrate a causal connection between the protected activities she undertook and the adverse employment action she allegedly suffered, the court need not consider the remaining steps of the *McDonnell Douglas* framework. UWMC is entitled to summary judgment on Ms. Spokoiny's retaliation claims.

D. Whistleblowing

In the "Whistleblower Protection" section of her amended complaint, Ms. Spokoiny alleges that UWMC retaliated against her after she reported a coworker for a possible ethics violation in accepting "approximately 20 lbs of deer and elk meat" from a Montana patient. (Am. Compl. ¶ 63.) UWMC argues this claim should be dismissed because the undisputed facts show that Ms. Spokoiny did not report the alleged violation until a year after it occurred and months after UWMC issued the January 2020 performance evaluation. (Mot. at 18-19.) Ms. Spokoiny neither responds to this argument nor directs the court toward any evidence or legal authority supporting a claim for whistleblower protection. (*See generally* Resp.) UWMC is therefore entitled to summary judgment on this claim.

E. Failure to Accommodate.

Ms. Spokoiny alleges that UWMC violated the WLAD and ADA by delaying or denying her requests for accommodations. (Am. Compl. ¶¶ 45-47; *see id.* at 14.)

The "basic requirements" of a failure to accommodate claim under WLAD and the ADA "are essentially the same." *McElwain*, 244 F. Supp. 3d at 1098 (quoting *McDaniels v. Grp. Health Co-op*, 57 F. Supp. 3d 1300, 1314 (W.D. Wash. 2014)). Both statutes require the plaintiff to show that (1) she is disabled, (2) she is qualified for the job in question and capable of performing it with reasonable accommodation; (3) the employer had notice of her disability; and (4) the employer failed to reasonably accommodate the disability. *Id.* at 1098-99. "Reasonable accommodation . . . envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the employee's capabilities and available positions." *Goodman v. Boeing Co.*, 899 P.2d 1265, 1269-70 (Wash. 1995). But "[t]he employee, of course, retains a duty to cooperate with the employer's efforts by explaining her disability and qualifications." *Id.* at 1269.

Ms. Spokoiny alleges that although she was "entitled to a special [sit/stand] desk," "her managers routinely forced her to work in an area without providing such accommodations." (Am. Compl. ¶ 45.) She further asserts that she "was informed an update to her accommodations would be made" but "the meeting was cancelled and she was denied the opportunity to update her current needs." (*Id.* ¶ 46.)

UWMC does not dispute Ms. Spokoiny's disability status or qualifications but argues that it provided her with the accommodations she requested. (*See* Mot. at 20 (describing a "desk, document camera/magnifier, keyboard, s[]it/stand desk, medical device for migraines, [and] intermittent leave" (citing Spokoiny Dep. at 82:14-20)).) Ms. Spokoiny does not respond to the substance of UWMC's argument.

(*See generally* Resp.) Although she contends, in the first sentence of her opposition brief, that she presents a *prima facie* case for "failure to accommodate under ADA" (*id.* at 1), she never expressly addresses her failure to accommodate claim (*see generally id.*). Ms. Spokoiny makes conclusory statements, in the context of her discussion of her discrimination and retaliation claims, that her accommodations were "delayed or denied" and quotes notes from her own interview in support of that contention. (*See id.* at 10.) Ms. Spokoiny does not, however, point the court toward evidence from which a reasonable factfinder could conclude that she ever made a request for accommodations that UWMC denied. (*See generally id. See* Garman Decl. ¶ 15 ("I am not aware of any circumstances in which [Ms. Spokoiny] was denied . . . accommodation.")); *see also Wells v. Mut. of Enumclaw*, 244 F. App'x 790, 792 (9th Cir. 2007) (affirming grant of summary judgment after the plaintiff failed to "request[] an accommodation"). Because Ms. Spokoiny has failed to provide evidence that UWMC failed to reasonably accommodate her disability, UWMC is entitled to summary judgment on these claims.

F. Workers' Compensation Retaliation and Discrimination

Ms. Spokoiny asserts that UWMC retaliated and discriminated against her for having a workers' compensation claim related to an on-the-job injury "by routinely and systematically denying her requests for time off despite [her FMLA] certification." (Am. Compl. ¶¶ 53-54.) UWMC argues that that Ms. Spokoiny "should not be permitted to proceed on a worker's compensation retaliation/discrimination claim" because "[n]o evidence suggests any animus toward [Ms.] Spokoiny for filing a workers' compensation claim with the State." (Mot. at 21-22 (capitalization altered).) Ms. Spokoiny does not respond to this argument and fails to direct the court toward any evidence in support of any claim concerning workers' compensation. (*See generally* Resp. (no mention of workers'

compensation).) UWMC is therefore entitled to summary judgment on these claims.

G. FMLA Interference

Ms. Spokoiny alleges that "UWMC . . . interfered with her FMLA claim by routinely and systematically denying her requests for time off." (Am. Compl. ¶¶ 55-56.) Like her hostile work environment sexual harassment claims, Ms. Spokoiny does not include claims for FMLA interference in her causes of action. (*See id.* at 14.) Again, however, UWMC argues these claims on the merits (*see* Mot. at 22-23), and Ms. Spokoiny asserts that she has presented a *prima facie* case of "FMLA interference" (Resp. at 1). The court therefore construes Ms. Spokoiny's amended complaint as alleging a claim for FMLA interference.[9]

"The FMLA grants employees twelve weeks of unpaid leave for certain medical reasons and requires employers to reinstate employees to the same or similar positions after they return from 'such leave.'" *Fiatoa v. Keala*, 191 F. App'x 551, 553 (9th Cir. 2006) (quoting 29 U.S.C. §§ 2612(a)(1), 2614(a)(1)). Section 2615 of the FMLA makes it "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise" these rights. 29 U.S.C. § 2615(a)(1).

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9 UWMC argues that it is entitled to summary judgment on any claims brought under Washington's Paid Family Leave Act ("PFMLA") (Mot. at 22-23 (citing RCW 50A.40.010)), but Ms. Spokoiny did not assert a claim for PFMLA interference (*see* Am. Compl. at 14), nor did she even mention the PMFLA in her complaint or opposition brief (*see generally* Am. Compl.; Resp.). Although the PFMLA "mirrors its federal counterpart," *Mooney v. Roller Bearing Co. of Am., Inc.*, No. C20-1030LK, 2022 WL 1014904, at *21 (W.D. Wash. Apr. 5, 2022) (quoting *Crawford v. JP Morgan Chase NA*, 983 F. Supp. 2d 1264, 1269 (W.D. Wash. 2013)), the court only addresses whether UWMC is entitled to summary judgment on Ms. Spokoiny's federal FMLA claims.

To establish a prima facie case of FMLA interference, the plaintiff must establish that (1) she "was eligible for the FMLA's protections," (2) her "employer was covered by the FMLA," (3) she "was entitled to leave under the FMLA," (4) she "provided sufficient notice of [her] intent to take leave," and (5) the "employer denied [her] FMLA benefits to which [s]he was entitled." *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1243 (9th Cir. 2004) (quoting *Sanders v. City of Newport*, 657 F.3d 772, 778 (9th Cir. 2011)).

As discussed above, Ms. Spokoiny fails to direct the court toward any specific instances of UWMC denying a request for FMLA leave. *Supra* § IV(B). (*See generally* Resp.) Ms. Spokoiny also fails to rebut UWMC's evidence that it never denied requests for FMLA leave. (*See generally* Resp. *See* Garman Decl. ¶ 15.) Accordingly, even assuming Ms. Spokoiny has established the first four elements of her *prima facie* case for FMLA interference, she does not raise a genuine issue as to the fifth element because she has failed to direct the court toward "specific facts" that would support a finding that UWMC denied her any benefits to which she was entitled under the FMLA. *Celotex*, 477 U.S. at 324; *see McElwain*, 244 F. Supp. 3d at 1097-98. UWMC is therefore entitled to summary judgment on these claims.

H. Unpaid Wages

Ms. Spokoiny alleges that UWMC violated RCW 49.52.050 and 49.52.070 by failing to compensate her for missed meal breaks and unpaid preceptor pay. (Am. Compl. ¶¶ 57-61; *id.* at 14.) She asserts that she was entitled to this pay pursuant to the Washington State Nurses Association ("WSNA") union contract. (*Id.* ¶¶ 58-59.)

"By their own terms, sections 49.52.050(2) and 49.52.070 . . . apply only where the nonpayment of wages is conducted 'willfully and with intent to deprive the employee of any part of [her] wages.'" *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1050 (9th Cir. 1995) (quoting RCW 49.52.050(2)). "[T]he nonpayment must be the result of

knowing and intentional action by the employer, rather than of a bona fide dispute as to the obligation of payment." *Edman v. Kindred Nursing Ctrs. W., LLC*, No. C14-1280BJR, 2016 WL 6836884, at *11 (W.D. Wash. Nov. 21, 2016) (citing *Schilling v. Radio Holdings, Inc.*, 961 P.2d 371, 375 (Wash. 1998)). "Dismissal of such claims on summary judgment is permitted when there is no evidence that the employer acted willfully." (*Id.*)

Ms. Spokoiny has not sustained her burden on summary judgment because she has failed to present evidence suggesting that UWMC willfully withheld payment of her wages. Although UWMC policy required Ms. Spokoiny to document missed breaks and lunches in UWMC's software program, and although Ms. Spokoiny's supervisor "encouraged her to use the [program]" and gave her a toolkit with "guidelines for recording missed lunches and breaks," Ms. Spokoiny did not enter any missed breaks or lunches. (Petritz Decl. ¶ 14; Spokoiny Dep. at 198:17-199:9 (acknowledging that she did not document her breaks and lunches).) Similarly, Ms. Spokoiny acknowledges that she never recorded the time she worked as a preceptor and that she was never "officially assigned to a preceptor role." (*See* Spokoiny Dep. Ex. 30 at DEF_001995; *see* Spokoiny Dep. at 336:14-2; *see also* Petritz Decl. ¶ 14 (stating that the clinic where Ms. Spokoiny worked "was not using 'preceptors,' specifically defined by the WSNA Agreement")). Ms. Spokoiny may have trained new employees (*see* 1st Spokoiny Decl. ¶ 46), but there is no evidence she was "assigned in writing . . . as a Preceptor," a prerequisite to be eligible for preceptor pay under the WSNA contract (Spokoiny Dep. Ex. 30 at DEF_001994).

Accordingly, UWMC is entitled to summary judgment on Ms. Spokoiny's claims under RCW 49.52.050 and 49.52.070 because she has presented no evidence from which a reasonable factfinder could conclude that UWMC willfully withheld wages owed to her.

I. Public Records Act

Finally, Ms. Spokoiny asserts that UWMC has violated the PRA, RCW 42.56. (Am. Compl. ¶¶ 74-83.) Ms. Spokoiny filed public records requests related to her time at UWMC on June 17, 2020, and April 1, 2021. (Am. Compl. ¶¶ 74, 78.) Ms. Spokoiny believes that UWMC "intentionally delayed" responding to her requests, arguing the "[e]vidence . . . shows that while documents responsive to" her requests "were fully available by October 30, 2020 and . . . April 7, 2021, neither set of documents were provided to [her] until August 2023 (i.e. more than 2 years later)." (Resp. at 13.) The court concludes that the evidence falls short of raising a triable issue with respect to Ms. Spokoiny's PRA claims.

Upon receiving a request for public records under the PRA, "the agency may respond in one of three ways: produce the records, ask for more time or clarification, or deny the request along with a proper claim of exemption." *Belenski v. Jefferson Cnty.*, 378 P.3d 176, 179 (Wash. 2016). RCW 42.56.550 provides a cause of action for citizens to challenge violations of the PRA. When considering alleged violations of the PRA, the proper inquiry is "[w]hether the agency responded with reasonable thoroughness and diligence." *Freedom Found. v. Dep't of Soc. & Health Servs.*, 445 P.3d 971, 981 (Wash. Ct. App. 2019), *rev. denied*, 1 Wash. 3d 1011 (2023). An agency is not bound to its original estimate of the time it will take to respond to the request, and reasonableness "must be based on a forward-looking evaluation at the time of the estimate, not on a backward-looking evaluation after the fact." *Conklin v. Univ. of Wash. Sch. of Med.*, 25 Wash. App. 2d 1010, No. 83200-0-I, 2023 WL 21565, at *9, (2023) (unpublished[10]) (first citing *Hikel v. City of Lynnwood*, 389 P.3d 677, 681 (Wash. Ct. App. 2016), and then quoting *Freedom Found.*, 445 P.3d at 978).

Here, UWMC timely acknowledged Ms. Spokoiny's public records requests and produced documents on a

rolling basis. (Saunders Decl. (Dkt. # 19) ¶ 14, 18 (stating that documents were produced in batches starting March 5, 2021, through August 17, 2023); *see also id.* ¶ 16, Ex. 4 ("First Response") at 1 (acknowledging Ms. Spokoiny's first request one week after it was submitted); *id.* ¶ 18, Ex. 8 ("Second Response").) (acknowledging Ms. Spokoiny's second request one week after it was submitted).) Ms. Spokoiny submitted her requests during the height of the COVID-19 pandemic, and the University of Washington's Public Records Office ("PRO") informed her that there were over 300 other open requests and over 1.5 million pages of records that needed review at the time. (Second Response at 3.) Ms. Spokoiny responded to the PRO in part as follows: "Surely you can simply ask . . . for the documents and receive within days. . . . I will save you 12 months and copy [a document custodian] on this response." (*Id.* at 4.)

Ms. Spokoiny emphasizes the PRO's delay in producing documents but does not provide any evidence suggesting that UWMC's delay was unreasonable. (*See generally* Resp.) As UWMC argues, and as Ms. Spokoiny's email to the PRO suggests, Ms. Spokoiny erroneously equates "available records" with those "ready for production" and ignores the global circumstances in which she made her requests, the backlog of other requests ahead of hers, and the 1.5 million pages of records requiring review. (Reply at 11; *see also* Second Response at 4.) Ms. Spokoiny also ignores UWMC's discussion of Conklin, a case in which the Washington Court of Appeals determined that similar

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10 Although unpublished opinions of the Washington Court of Appeals "have no precedential value and are not binding upon any court," they "may be accorded such persuasive value as the court deems appropriate." Wash. Gen. Rule GR 14.1; *see also Emps. Ins. of Wausau v. Granite State Ins. Co.*, 330 F.3d 1214, 1220 n.8 (9th Cir. 2003) ("[W]e may consider unpublished state decisions, even though such opinions have no precedential value.").

delays under similar circumstances were reasonable and did not violate the PRA. (*See* Mot. at 25); *See generally* Resp.) *See Conklin*, 2023 WL 21565, at *6, *9-11 (holding that the University of Washington's 307-day delay was not unreasonable where "the COVID-19 pandemic impacted the records response" and the evidence demonstrated that UW acted diligently). Ms. Spokoiny cites just one case in support of her argument, but as *Conklin* explains, the school district in that case was not "diligently working on any requests"— unlike UWMC in this case. (*See* Resp. at 14 (citing *Cantu v. Yakima Sch. Dist. No. 7*, 514 P.3d 661 (2022))); *see also Conklin*, 2023 WL 21565, at *11 (distinguishing *Cantu*).

Ms. Spokoiny provides no evidence to refute UWMC's evidence that the PRO's delay was reasonable. Ms. Spokoiny speculates that the PRO's production "was intentionally delayed" because "the average time for production of any one request should be around 4 months." (Resp. at 13-14 (arguing that because the 321 requests in the PRO's backlog in August 2023 represented "roughly 1/3 of the total annual requests," the production time should have been only 1/3 of the year).) But the number of "total annual requests" does not reveal the number of requests actually pending, nor does it have any bearing on the average timeframe for responding to a given PRA request. Ms. Spokoiny's deduction also ignores the context of each request and other factors that may contribute to delay, such as staff resources. The question is whether UWMC acted reasonably with respect to Ms. Spokoiny's particular requests, and Ms. Spokoiny has directed the court to no evidence from which a reasonable factfinder could conclude that it did not. UWMC is therefore entitled to summary judgment on this claim.

V. CONCLUSION

For the foregoing reasons, the court GRANTS UWMC's motion for summary judgment (Dkt. # 12) and DISMISSES

this matter with prejudice. UWMC's motion to reset the trial date (Dkt. # 29) is DENIED as moot.

Dated this 4th day of January, 2024.
s/ JAMES L. ROBART
United States District Judge