IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

VALORIE JACOBS,

Plaintiff,

v. No. 2:18-cv-02591-MSN-cgc

PEABODY HOTEL GROUP, INC., and
PEABODY MANAGEMENT, INC.,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff, Valorie Jacobs, brought this action against Defendants, Peabody Hotel Group, Inc. ("PHGI") and Peabody Management, Inc. ("PMI"), alleging discrimination on the basis of race, retaliatory discharge, and hostile work environment in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2, -3. (ECF No. 22.) Before the Court is Defendants' Motion for Summary Judgment, filed on August 8, 2019. (ECF No. 40.) Plaintiff responded to Defendants' Motion on September 5, 2019. (ECF No. 43.) Defendants filed their Reply on September 19, 2019. (ECF No. 45.)

The issue before the Court is whether Plaintiff has presented sufficient evidence of race-based retaliation and hostile work environment to warrant presentation of her claims to a jury. For the reasons set forth below, Defendants' Motion for Summary Judgment is **DENIED** as to Plaintiff's retaliatory discharge claim and **GRANTED** as to Plaintiff's hostile work environment and punitive damages claims.

I. BACKGROUND

The following facts are undisputed unless noted. The Peabody Memphis Hotel is a renowned luxury hotel located in downtown Memphis, Tennessee. While Defendant PHGI owns the property upon which the Peabody Memphis Hotel sits, it does not have any employees. (ECF No. 44 at PageID 557.) Instead, Defendant PMI employs individuals working at the Peabody Memphis Hotel. (*Id.*) On October 2, 2015, PMI hired Plaintiff, who is African American, to work as a nail technician in the Feathers Spa at the Peabody Memphis Hotel. (ECF No. 44 at PageID 558.)

Doug Browne ("Mr. Browne") is the General Manager of PHGI. (*See* ECF No. 40-1 at PageID 477.) Donna Golden ("Ms. Golden") is the Director of Human Resources for the Peabody Memphis; she has been in that position since January 2015. (ECF No. 44 at PageID 558.) Karen Foley ("Ms. Foley") is the Assistant Director of Human Resources and reports to Ms. Golden. (*Id.* at PageID 558–59.) Scott Boucher ("Mr. Boucher") is the Hotel Manager at the Peabody Memphis. (ECF No. 40-1 at PageID 479.) Lisa Rafferty ("Ms. Rafferty"), a white female, was Plaintiff's direct supervisor at the Feathers Spa at all times relevant to Plaintiff's complaint and reported to Mr. Boucher. (ECF No. 44 at PageID 559; ECF No. 39-1 at PageID 143.) In March 2016, Ms. Rafferty promoted Plaintiff to the position of lead technician, with an increase in pay. (ECF No. 44 at PageID 559.) In 2017, Plaintiff received another pay raise. (*Id.*)

In her amended complaint, Plaintiff alleges she was subjected to hostile work environment and racial discrimination by Ms. Rafferty during her employment at PMI. (ECF No. 22 at PageID 71.) In particular, Plaintiff alleges Ms. Rafferty used racial epithets such as "monkey" and "pretty black girl" in reference to Plaintiff and other African American employees at work. (ECF No. 43 at PageID 550.) The affidavit of PMI's former employee, Ginger Watkins, also provides that Ms. Rafferty made several offensive comments referencing African American employees such as, "we

have too many monkeys around here," and called African American employees "bottom feeders." (ECF No. 43-1 at PageID 555.) Plaintiff also maintains Ms. Rafferty routinely gave preferential treatment to white employees over African American employees in instances "including, but not limited to, booking clients, going home early, and use of the company spa and gym." (ECF No. 22 at PageID 71.)

Plaintiff alleges she complained to Mr. Boucher about additional incidents where she was inappropriately called "bitch" and "black bitch" by other employees at work. (ECF No. 43 at PageID 546.) Plaintiff further avers in February of 2017, a white coworker yelled at her, cursed at her, and advised her he was "sick of black people." (ECF No. 22 at PageID 71.) Plaintiff purports she reported the pattern of racial hostility to Ms. Golden and Mr. Browne, but no action was taken to address the discriminatory behavior. (*Id.*)

On August 10, 2017, Plaintiff wrote an anonymous letter to Ronald Belz, the president of PHGI, complaining of Ms. Rafferty's alleged discriminatory behavior toward African American employees and unprofessional management practices. (ECF No. 40-8.) Plaintiff avers Defendants were able to identify her as the author of the letter due to her past complaints of discrimination to upper management. (ECF No. 44 at PageID 567.) Defendants, however, disagree and maintain that the managers who terminated Plaintiff had no knowledge that Plaintiff authored the anonymous letter sent to Mr. Belz. (ECF No. 40-1 at PageID 477.)

In any event, Ms. Golden informed Ms. Rafferty that a complaint had been made about the spa and that Human Resources would be conducting an investigation. (ECF No. 39-1 at PageID 255-56.) Ms. Golden and Ms. Foley conducted an investigation into the allegations stated in the letter to Mr. Belz by interviewing all spa employees, with the exception of Ms. Rafferty, from August 17, 2017 to August 21, 2017. (*See Id.* at PageID 258.) During the investigation,

Defendants did not disclose to Ms. Rafferty, or any spa employees, the existence of the letter to Mr. Belz or the precise nature of the allegations contained therein. (*Id.* at PageID 258–59.) The results of the investigation, including questions asked to spa employees and their responses, reveal that spa employees as a whole were concerned about favoritism in booking clients, employee grooming standards, arguing in front of customers, and need for additional supplies. *See* ECF No. 46-3.

A few days later, on August 25, 2017, Ms. Rafferty reported Plaintiff to upper management for allegedly accessing prohibited areas in the Peabody's computer management system, Book4Time—Book4Time was used to order supplies and book appointments at the Feathers Spa and contained personal and financial information of other employees. (*See* ECF No. 44 at PageID 562; ECF No. 40-1 at PageID 474.) According to Ms. Rafferty, the breach occurred on August 24, 2017. (ECF No. 44 at PageID 561). On August 25, 2017, Ms. Golden and Ms. Foley met with Plaintiff to discuss whether she accessed unauthorized administrative areas of Book4Time. (*Id.* at PageID 562.) Plaintiff denied any wrongdoing and argued that Ms. Rafferty knew her login credentials. (*Id.*) At the conclusion of the meeting, Plaintiff was placed on suspension pending further investigation. (*Id.* at PageID 563.)

On the night of August 25, 2017, after Plaintiff's suspension meeting, Plaintiff sent a text message to Ms. Rafferty stating, "you nor Scott will get away with what you did to me..I will see all of you in court..Lisa Marie Fry Perkins Rafferty you are a liar and I will not sit back and take what you have done..I'll see you soon." (ECF No. 40-3 at PageID 505.) Defendants argue said text message was "threatening"; Plaintiff maintains the text was an "organic reaction to someone who was treated poorly." (ECF No. 44 at PageID 564.)

During their investigation, Ms. Golden and Ms. Foley discovered that Plaintiff's password had been used to access unauthorized areas of Book4Time on several occasions prior to the August 24, 2017 breach reported by Ms. Rafferty. (*Id.*) Ms. Golden and Ms. Foley also found that on at least one occasion, Plaintiff's login information was used to alter time records in the system to Plaintiff's advantage. (ECF No. 40-1 at PageID 480.) Ms. Golden and Ms. Foley ruled out the spa's receptionist as the perpetrator because "video surveillance . . . showed the receptionist had left the spa on errands at the time the system was being accessed with Plaintiff's credentials, and the receptionist would not have had remote access to the system." (ECF No. 44 at PageID 563–64.)

On August 30, 2017, after completing their investigation, Ms. Golden and Ms. Foley met with Plaintiff and terminated her for violating multiple company policies. (*Id.* at PageID 565.) According to Defendants, Plaintiff, prior to being fired, claimed she had information that would exonerate her from having accessed Book4Time but refused to provide such information to Ms. Golden or Ms. Foley. (ECF No. 44 at PageID 566; ECF No. 39-1 at PageID 268–69.) Plaintiff disputes this and avers that during the termination meeting, Plaintiff continued to allege Ms. Rafferty used her login information to access restricted areas of Book4Time and altered her time records. (ECF No. 44 at PageID 566.) Ms. Golden ultimately concluded that "Plaintiff was responsible for her password" and that "she was the only person in the spa at the time of the usage and, therefore, responsible for accessing the inappropriate areas of the computer." (ECF No. 39-1 at PageID 267.) Mr. Browne approved the termination decision "based on his confidence in the investigation conducted by PMI's human resources department." (*Id.*)

After her termination, Plaintiff filed a charge with the Equal Employment Opportunity Commission and subsequently obtained a notice of right to sue on August 8, 2018. (ECF No. 3.)

On August 30, 2018, Plaintiff filed a complaint against PHGI alleging retaliatory discharge and hostile work environment based on race in violation of Title VII; Plaintiff also states a claim for punitive damages under Title VII. (ECF No. 1.) Plaintiff maintains she did not alter her time records or access any unauthorized areas of Book4Time and further avers Ms. Rafferty had her login information, used it to access Book4Time, "and then reported [said] access to management in an ultimately successful effort to get [her] fired." (*Id.* at PageID 562.) Plaintiff further alleges Ms. Golden and Ms. Foley did not adequately investigate whether Ms. Rafferty was responsible for the breach or changing Plaintiff's time records. (*Id.* at PageID 565.)

On October 25, 2018, PHGI filed an answer. (ECF No. 20.) On October 25, 2018, Plaintiff amended her complaint to add PMI as a defendant. (ECF No. 22.) On August 8, 2019, Defendants filed the instant Motion for Summary Judgment. (ECF No. 40.)

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56, a court shall grant a party's motion for summary judgment "if the movant 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). A party asserting the presence or absence of genuine issues of material facts must support its position either by "citing to particular parts of materials in the record," including depositions, documents, affidavits or declarations, stipulations, or other materials, or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1); see *also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)); *Asbury v. Teodosio*, 412 F. App'x 786, 791 (6th Cir. 2011). Fed. R. Civ. P. 56(c)(1). When ruling on a motion for summary judgment, the Court must view the facts contained in the record and all reasonable inferences that can be drawn therefrom

in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001). The Court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of any matter in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex*, 477 U.S. at 323. The moving party may discharge this burden either by producing evidence that demonstrates the absence of a genuine issue of material fact or simply "by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id*. at 325.

When confronted with a properly supported motion for summary judgment, the nonmoving party must set forth specific facts showing that there is a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c). "A genuine dispute exists when the plaintiff presents significant probative evidence on which a reasonable jury could return a verdict for her." *EEOC v. Ford Motor Co.*, 782 F.3d 753, 760 (6th Cir. 2015) (quotation marks omitted). The nonmoving party must do more than simply "'show that there is some metaphysical doubt as to the material facts.'" *Adcor Indus., Inc. v. Bevcorp, LLC*, 252 F. App'x 55, 61 (6th Cir. 2007) (quoting *Matsushita*, 475 U.S. at 586). A party may not oppose a properly supported summary judgment motion by mere reliance on the pleadings. *See Beckett v. Ford*, 384 F. App'x 435, 443 (6th Cir. 2010) (citing *Celotex Corp.*, 477 U.S. at 324). Instead, the nonmoving party must adduce concrete evidence on which a reasonable juror could return a verdict in her favor. *Stalbosky v. Belew*, 205 F.3d 890, 895 (6th Cir. 2000); *see* Fed. R. Civ. P. 56(c)(1).

The Court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. To start, the Court does not have the duty to search the record for such evidence. *See* Fed. R. Civ. P. 56(c)(3); *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989). Additionally, the Court must "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Anderson*, 477 U.S. at 254. Thus, if the plaintiff's evidentiary standard of proof at trial is preponderance of the evidence, then on a motion for summary judgment the Court must determine whether a jury could reasonably find that the plaintiff's factual contentions are true by a preponderance of the evidence. *See id.* at 252–53.

"When the non-moving party fails to make a sufficient showing of an essential element of his case on which he bears the burden of proof, the moving parties are entitled to judgment as a matter of law and summary judgment is proper." *Chapman v. UAW Local 1005*, 670 F.3d 677, 680 (6th Cir. 2012) (en banc). Courts must analyze a motion for summary judgment with due regard not only for the rights of the party "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and defenses to demonstrate in the manner provided by [Rule 56], prior to trial, that the claims and defenses have no factual basis." *Celotex*, 477 U.S. at 327.

III. DISCUSSION

As an initial matter, both parties agree that PHGI is not a proper party to this suit because PHGI did not employ Plaintiff. (*See* ECF No. 40-1 at PageID 475; ECF No. 43 at PageID 545.) Accordingly, Defendant PHGI is hereby **DISMISSED** from this lawsuit **WITH PREJUDICE**.

Plaintiff's amended complaint advances three causes of action under Title VII: (1) retaliation, (2) hostile work environment, and (3) punitive damages. Defendants contend Plaintiff has failed to show any genuine dispute as to material fact on any of these claims, and therefore judgment as a matter of law in favor of Defendants is appropriate. The Court will first address Plaintiff's retaliation claim before moving onto her claims for hostile work environment and punitive damages.

A. Retaliation

To establish a *prima facie* case of retaliation under Title VII, a plaintiff must show by a preponderance of the evidence that (1) she engaged in an activity protected by Title VII; (2) this exercise of her protected rights was known to the defendant; (3) defendant thereafter took an employment action adverse to the plaintiff; and (4) there was a causal connection between the protected activity and the adverse employment action. *Arban v. West Pub. Corp.*, 345 F.3d 390, 404 (6th Cir. 2003). If the plaintiff establishes a *prima facie* case, then the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the plaintiff's discharge. *Morris v. Oldham County Fiscal Court*, 201 F.3d 784, 792 (6th Cir. 2000) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). The plaintiff must then demonstrate that the proffered reason was not the true reason for the adverse employment action—i.e., that the reason was a mere pretext for discrimination. *Id.* (citations omitted).

Here, Defendants concede the first and third prong of Plaintiff's *prima facie* case. However, the parties dispute whether upper management at PMI had knowledge of Plaintiff's protected activities—i.e., Plaintiff's letter to Mr. Belz and Plaintiff's previous complaints to upper management about racial harassment—and whether there was a causal connection between said protected activities and Plaintiff's termination.

1. Defendants' Knowledge

The decisionmaker's knowledge of the protected activity is an essential element of the *prima facie* case of unlawful retaliation. *See Mulhall v. Ashcroft*, 287 F.3d 543, 551 (6th Cir. 2002). Defendants contend that "the management personnel charged with the decision to terminate Plaintiff (Ms. Golden and Karen Foley, with approval from General Manager Doug Browne) had no knowledge that Plaintiff was the author of the anonymous letter sent to Mr. Belz." (ECF No. 40-1 at PageID 477.) It is undisputed that when Ms. Golden and Ms. Foley received a copy of the letter, they suspected it had been written by former employee, Ginger Watkins; however, they did not investigate the identity of the author at the time they received the letter. (ECF No. 44 at PageID 567.) Plaintiff did not inform Ms. Rafferty or anyone in human resources that she was the author of the letter prior to filing the instant lawsuit. (*Id.* at PageID 566.)

Nonetheless, Plaintiff argues that a logical explanation for her termination is that Defendants made the adverse decision based upon her letter to Mr. Belz. This, according to Plaintiff, is one way to reconcile Defendants' abrupt decision to terminate her. However, Plaintiff has failed to produce any evidence, direct or circumstantial, to support her contention that Ms. Golden, Ms. Foley, or Mr. Browne, were aware Plaintiff authored the August 10, 2017 letter to Mr. Belz. To survive a summary judgment motion, a plaintiff must put forward more than speculations or intuitions. *Mulhall*, 287 F.3d at 552 (holding that the plaintiff failed to establish knowledge on the part of the decisionmaker where plaintiff did not adduce any evidence, direct or circumstantial, to rebut evidence that decisionmaker had no knowledge and plaintiff offered "only conspiratorial theories, not the specific facts required under the Federal Rule of Civil Procedure 56.") (citing *Visser v. Packer Eng'g Assocs., Inc.*, 924 F.2d 655, 659 (7th Cir. 1991) (en banc) (holding that summary judgment was appropriate where the inferences plaintiff sought to draw

from evidence were akin to "flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from [personal] experience" rather than opinions grounded in fact, direct observation, or other first-hand personal experience). Accordingly, Plaintiff has failed to establish the "knowledge prong" of the *prima facie* case with respect to her August 10, 2017 letter to Mr. Belz.

Next, the Court must analyze whether Defendants had knowledge of Plaintiff's other protected activities—i.e., various reports of racial discrimination to upper management preceding her letter to Mr. Belz. According to the record, a meeting took place between Plaintiff and Ms. Golden sometime in 2016 or 2017, though the parties dispute the purpose of the meeting and the topics that were discussed. (ECF No. 44 at PageID 559–60.) Plaintiff avers she met with Ms. Golden to "complain of racial discrimination" by Ms. Rafferty and other PMI employees. Defendants on the other hand aver said meeting was held to discuss issues regarding scheduling appointments in the spa. (ECF No. 44 at PageID 559–60.) Notwithstanding, both parties agree that after said meeting, Ms. Rafferty did not make any additional derogatory comments toward Plaintiff. (*Id.* at PageID 560.) Considering this outcome, and all reasonable inferences therefrom in the light most favorable to Plaintiff, the Court finds there is a genuine issue of material fact as to whether Defendants had knowledge of at least one instance of Plaintiff reporting workplace discrimination and harassment to upper management.

Plaintiff also avers that in February 2017 she complained to Mr. Boucher about an instance where a coworker, Tony Schubert, called her a "black bitch." (*Id.*); (ECF No. 44-1 at PageID 623.) Defendants aver that human resources "was not aware of that allegation until after Plaintiff filed her lawsuit" and that "Plaintiff brought the matter to the attention of [Ms.] Rafferty, and [Ms.] Rafferty addressed it." (ECF No. 44 at PageID 559–60.) Notably, neither Defendants nor Plaintiff

submit direct proof supporting their views as to who knew what and when. The parties' conflicting deposition testimony and lack of record evidence as to this claim leaves the Court in the position of weighing the credibility of Defendants' testimony and Plaintiff's testimony, which it cannot do at the summary judgment stage. Therefore, construing the facts in the light most favorable to Plaintiff, the Court finds there is a genuine issue of material fact as to whether Defendants, via Mr. Boucher, knew about Plaintiff's complaint about Tony Schubert.

2. Causal Connection

"The text, structure, and history of Title VII demonstrate that a plaintiff making a retaliation claim under [42 U.S.C.] § 2000e-3(a) must establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." *Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 362 (2013). To establish the requisite causal connection, a plaintiff must "'proffer evidence sufficient to raise the inference that [his or] her protected activity was the likely reason for the adverse action.'" *EEOC v. Avery Dennison Corp.*, 104 F.3d 858, 861 (6th Cir. 1997) (quoting *Zanders v. National R.R. Passenger Corp.*, 898 F.2d 1127, 1135 (6th Cir. 1990) (internal quotations and citations omitted). The burden of proof at the *prima facie* stage is minimal; all the plaintiff must do is put forth some credible evidence that enables the court to deduce that there is a causal connection between the retaliatory action and the protected activity. *Avery*, 104 F.3d at 861. Stated differently, the plaintiff must put forth credible evidence demonstrating that "the desire to retaliate was the but-for cause of the challenged adverse employment action." *Nassar*, 570 U.S. at 352 (citing *Gross v. FBL Fin. Servs.*, 557 U.S. 167, 176 (2009)).

Plaintiff argues that the temporal proximity between her termination and her complaints of race discrimination and hostile work environment, taken together, support an inference that her

termination would not have occurred had Plaintiff not spoken out. In the Sixth Circuit, "[p]roof of temporal proximity between the protected activity and the adverse employment action, 'coupled with other indicia of retaliatory conduct,' may give rise to a finding of a causal connection." *Dixon v. Gonzales*, 481 F.3d 324, 333 (6th Cir. 2007) (quoting *Randolph v. Ohio Dep't of Youth Servs.*, 453 F.3d 724, 737 (6th Cir. 2006)). However, the more time that elapses between the protected activity and the adverse employment action, the more the plaintiff must supplement her claim with "other evidence of retaliatory conduct to establish causality." *See Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 524–25 (6th Cir. 2008).

In the instant case, the temporal proximity between the date of Plaintiff's letter to Mr. Belz (August 10, 2017) and Ms. Rafferty's reporting Plaintiff to human resources management for accessing unauthorized areas of Book4Time (August 25, 2017) forms the foundation of Plaintiff's retaliatory discharge claim. However, because Ms. Golden, Ms. Foley, and Mr. Browne (the ultimate decision makers) were unaware of the fact that Plaintiff authored the letter to Mr. Belz prior to Plaintiff's suspension, the Court need not consider whether the letter itself was the but-for cause of Plaintiff's termination.

The Court must instead consider whether Plaintiff's in-person complaints of racial discrimination and hostile work environment, coupled with other indicia, support the causation element of her retaliation claim. Viewing the facts in the light most favorable to Plaintiff, it appears that Defendants learned of a protected activity as late as February 2017—i.e., Plaintiff's complaint to Mr. Boucher about Tony Schubert, calling Plaintiff a "black bitch" and complaining he was "sick of black people." (*See* ECF No. 22 at PageID 71; ECF No. 44-1 at PageID 623.) And while the passage of time between Plaintiff's in-person complaint and her suspension—

roughly six months—is not short enough in itself to establish *prima facie* causal connection,[1] Plaintiff has submitted sufficient proof to create a genuine issue of fact that Ms. Rafferty harbored animosity toward Plaintiff and reported her to upper management in retaliation for Plaintiff's complaints about the spa.

The fact that Ms. Rafferty reported the Book4Time breach shortly after Ms. Golden and Ms. Foley's investigation of what Ms. Rafferty knew as an anonymous employee "complaint" about the spa (i.e., the letter sent to Mr. Belz), coupled with Plaintiff's past complaints about Ms. Rafferty, could lead a reasonable jury to conclude that Ms. Rafferty somehow deduced or found out that Plaintiff was the source of the complaint, thus giving Ms. Rafferty motive to retaliate against Plaintiff. In addition to motive, Plaintiff also provides sufficient evidence of Ms. Rafferty's knowledge of Plaintiff's Book4Time login information through text messages between her and Ms. Rafferty, (ECF No. 44-1 at PageID 772–76), and the affidavit of Ginger Watkins (ECF No. 43-1). Ginger Watkins's affidavit provides that Ms. Rafferty "gave out her Book4Time login passwords to employees all the time" and "had other employee's Book4Time login passwords." (ECF No. 43-1 at PageID 556.) Text messages between Plaintiff and Ms. Rafferty also reveal at least one occasion where Ms. Rafferty knew of Plaintiff's login information: Plaintiff texted Ms. Rafferty, "my password is not working, please fix it..its JacobsV-Motherof1," to which Ms. Rafferty responded, "ok I'll fix your login and password." (ECF No. 44-1 at PageID 776.) This evidence of Ms. Rafferty's ability to carry out the alleged retaliatory act, coupled with the proximity of Plaintiff's termination to her complaints of race discrimination and hostile work

[1] *See Lewis-Smith v. W. Ky. Univ.*, 85 F. Supp. 3d 885, 911 (W.D. Ky. Jan. 8, 2015) (citing *Cooper v. City of N. Olmsted*, 795 F.2d 1265, 1272 (6th Cir. 1986)) (holding that a four-month window between the adverse employment action and the plaintiff's termination is insufficient to establish causation.)

environment to Ms. Raftery and upper management, plausibly supports the inference of the causal connection element of Plaintiff's *prima facie* case at the summary judgment stage.

In sum, there are several genuine issues of material fact in dispute which preclude the Court from finding that Plaintiff cannot prove causation. Accordingly, the Court finds Plaintiff has made the initial *prima facie* case for retaliation under Title VII.

3. Employer's Non-discriminatory Rationale and Pretext

Because Plaintiff has established a *prima facie* case for retaliation, the burden now shifts to Defendants to produce evidence of a legitimate, non-discriminatory reason for firing Plaintiff. *See Barrow v. City of Cleveland*, 773 Fed. Appx. 254, 261 (6th Cir. 2019). In the instant case, Defendants assert Plaintiff was fired for violating multiple company policies including "accessing of forbidden administrative files, altering her time card, . . . being untruthful during the course of an investigation, [and] swearing at management during the termination meeting." (ECF No. 40-1 at PageID 481.) Defendants also contend "Plaintiff's inconsistent and untruthful statements given during the Company's investigation, compounded with . . . her aggressive and unprofessional conduct, were additional factors leading to the decision to terminate her." (*Id.* at PageID 482.)

As evidence, Defendants point to an excerpt of the Book4Time log showing that Plaintiff's login was used to access multiple areas of the system containing information about other employee's earnings, performance history, employee ID, and other private employer-employee data. (ECF No. 46-2); (*See* ECF No. 39-1 at PageID 149–68 (explaining the nature of the employee information contained in each unauthorized area)). In addition, Defendants contend surveillance footage from the spa revealed that Plaintiff was the only person in the spa at the time of improper usage. (ECF No. 39-1 at PageID 267.) Plaintiff also texted Ms. Rafferty after her suspension

meeting making inflammatory comments such as "I'll see you in court" and calling Ms. Rafferty a "liar." (ECF No. 40-3 at PageID 505.)

Plaintiff responds that Defendants' grounds are merely pretext for her termination. Plaintiff retains the ultimate burden of producing sufficient evidence from which a reasonable jury could reject Defendants' proffered reasons for terminating Plaintiff and infer that Defendants intentionally discriminated against her because of her race or protected activity. A Title VII plaintiff can demonstrate pretext by showing "(1) the employer's stated reason for terminating the employee has no basis in fact, (2) the reason offered for terminating the employee was not the actual reason for the termination, or (3) the reason offered was insufficient to explain the employer's action." *Imwalle v. Reliance Med. Prods.*, 515 F.3d 531, 544 (6th Cir. 2008) (citing *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994)). Here, the gravamen of Plaintiff's pretext argument is that Defendants' proffered reasons for terminating her were not the actual reasons. Specifically, Plaintiff contends Defendants' reasons for terminating her are pretextual because Defendants decided to enforce ambiguous rules about Book4Time fifteen days after she sent her letter to Mr. Belz. However, Plaintiff does not rebut Defendants' argument that, though there were no written rules regarding lead spa employees'[2] usage of Book4Time, Plaintiff was nevertheless aware of the areas which she was not allowed to access. Plaintiff also argues that Ms. Rafferty's knowledge of Plaintiff's login credentials and ability to log into Book4Time remotely shows pretext. Finally, Plaintiff argues that because Ms. Golden and Ms. Foley knew Ms. Rafferty was the subject of the anonymous letter sent to Mr. Belz, Ms.

[2] Plaintiff held the title of Lead Nail Technician and was considered a "spa lead" at the time of her termination. (ECF No. 44 at PageID 559.)

Golden and Ms. Foley should not have given credit to Ms. Rafferty's report of Plaintiff's unauthorized access to Book4Time.

To survive summary judgment, "a plaintiff must show substantial evidence from which a jury could reasonably doubt the employer's explanation." *Montell v. Diversified Clinical Servs.*, 757 F.3d 497, 508 (6th Cir. 2014). Here, the Court finds Plaintiff has shown sufficient evidence of potential animus by Ms. Rafferty that—along with evidence of Ms. Rafferty's knowledge of employees' login information and the disputed basis for the termination—raises a genuine issue as to whether Defendants' proffered reasons actually motivated Plaintiff's termination. The period of time between Ms. Rafferty and Ms. Foley's investigation of the letter to Mr. Belz and Ms. Rafferty's report of the Book4Time incident was short—4 days. Despite the close timing, it is undisputed that during their investigation of the Book4Time incident, Ms. Golden and Ms. Foley did not pause to substantially question Ms. Rafferty's ability to alter Book4Time records covertly or her motivations for reporting Plaintiff. This raises at least a genuine issue of material fact as to whether Defendants' proffered reasons for terminating Plaintiff were pretextual.

Though Defendants' reasons for terminating Plaintiff may appear justified at first glance, after careful review of the record, the Court finds there is sufficient evidence from which a jury could reasonably reject Defendants' explanation. *See generally Singfield v. Akron Metro. Hous. Auth.*, 389 F.3d 555, 564 (6th Cir. 2004) (opining courts should be cautious about granting summary judgment in Title VII retaliation cases once plaintiff has established a prima facie case because "the employer's true motivations are particularly difficult to ascertain" and are "elusive").

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Anderson,* 477 U.S. at 255 (1986); *Garza v. Lansing Sch. District*, No. 19-1645, at 20–21 (6th Cir. Aug. 28, 2020). The Court

must consider the evidence presented in the light most favorable to Plaintiff and draws all justifiable inferences in her favor. Accordingly, Defendants' Motion for Summary Judgment as to Plaintiff's retaliation claim is **DENIED.**

B. Hostile Work Environment

In order to establish a *prima facie* case of hostile work environment based on race under Title VII, a plaintiff must show that: (1) she is a member of a protected class; (2) she was subject to unwelcome harassment; (3) the harassment was based on race; (4) the harassment affected a term, condition, or privilege of employment; and (5) the defendant knew or should have known about the harassment and failed to take action. *Moore v. KUKA Welding Systems & Robot Corp.*, 171 F.3d 1073, 1078–79 (6th Cir. 1999). The Supreme Court applies a totality of the circumstances approach to determine whether a hostile work environment claim is actionable considering: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Faragher v. City of Boca Raton*, 524 U.S. 775, 787–88 (1998) (quoting *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993)) (internal quotations omitted). The "conduct must be extreme to amount to a change in the terms and conditions of employment." *Id.* at 788. In other words, the harassment must have "adversely affected the employee's ability to do his or her job." *Moore*, 171 F.3d at 1079. "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Faragher*, 524 U.S. at 787–88 (internal quotations and citations omitted).

Again, the parties do not dispute that Plaintiff is African American and, therefore, a member of a protected class. However, Defendants contend that Plaintiff cannot establish the remaining elements of the *prima facie* case.

Plaintiff points to four instances during her employment at PMI to support her hostile work environment claim. First, Plaintiff alleges Ms. Rafferty used racial epithets such as "monkey" and "pretty black girl" in reference to Plaintiff and other African American employees in the Feathers Spa. (ECF No. 43 at PageID 550); (ECF No. 44-1 at PageID 773) (showing a text message from Ms. Rafferty to Plaintiff stating, "come to my office pretty black girl I have Peabody Bucks for you."). Second, Plaintiff avers that in February of 2017, a white coworker yelled at her, cursed at her, and advised her he was "sick of black people." (ECF No. 22 at PageID 71.) Third, Plaintiff avers that in 2017 a co-worker, Tony Schubert, called her a "black bitch." (ECF No. 44 at PageID 560.) Fourth, Plaintiff argues white spa employees routinely received preferential treatment to African American employees in instances including, but not limited to, booking clients, going home early, taking longer lunch breaks, and use of the company spa and gym. (ECF No. 43 at PageID 549–50.) Plaintiff further alleges that preferential treatment in the booking of clients had consequences for the salaries of African American employees because part of their compensation was based on tips. (*Id.*)

Even viewing the evidence in the light most favorable to Plaintiff, the Court finds that these events, when considered as a whole, do not rise to the level of an actionable hostile work environment claim under Sixth Circuit precedent To start, the alleged racial comments, though offensive and condemnable, were not ongoing, commonplace, and continuous enough to alter the terms and conditions of Plaintiff's employment. In fact, it is undisputed that after Plaintiff and Ms. Rafferty had a meeting in 2016, "Ms. Rafferty did not make any derogatory comments toward

Plaintiff." (*See* ECF No. 44 at PageID 560.) Likewise, Plaintiff fails to show how Ms. Rafferty's alleged preferential treatment of white employees or harassing comments unreasonably interfered with her ability to do her job. There is no evidence suggesting that Plaintiff was not performing her job duties, performing them in substandard fashion, or prevented from doing her job, as a result of the alleged comments and slurs she encountered at work. To the contrary, Plaintiff appears to have been successful at work. In November 2015, Plaintiff received a "Front of the House Award." (ECF No. 22 at PageID 559.) In March 2016, Ms. Rafferty promoted Plaintiff to the position of lead technician with an increase in pay; and in 2017, Plaintiff received another pay raise. (*Id.*)

Though Plaintiff may have encountered deplorable racial epithets at work, under Sixth Circuit precedent, she fails to sufficiently set forth enough events which, considered as a whole, would permit a reasonable jury to properly conclude that Defendants created a hostile work environment based on race.[3] "(W)e continue to apply 'standards for judging hostility [that] are sufficiently demanding to ensure that Title VII does not become a general civility code.'" *Phillips v. UAW Int'l,* 854 F.3d 323, 329 n.4 (6th Cir. 2017), *cert. denied*, 138 S. Ct. 980 (2018) (citing *Faragher*, 524 U.S. at 788 (1998)) (internal quotation marks removed). Accordingly, Defendant's Motion for Summary Judgment as to Plaintiff's hostile work environment claim is **GRANTED**.

C. <u>Punitive Damages</u>

3. This Court's ruling is in line with Sixth Circuit precedent on race-based hostile work environment claims. *See Watkins v. Wilkie*, No. 19-4045, 2020 U.S. App. LEXIS 24768, at *2 (6th Cir. Aug. 4, 2020) (holding that two separate instances of racist remarks—first "monkey," and then the "n-word"—over the period of one year did not give rise to a hostile work environment claim); *Phillips v. UAW Int'l,* 854 F.3d 323, 328 (6th Cir. 2017), *cert. denied,* 138 S. Ct. 980 (2018) (holding that plaintiff's identification of seven racial comments over a period of two years "were isolated and not pervasive or severe enough to alter the terms and conditions of [plaintiff's] employment."); *Reed v. Procter & Gamble Mfg. Co.*, 556 F. App'x 421, 432 (6th Cir. 2014) (no hostile work environment where plaintiff was subjected to race-based comments and his supervisor stood behind him and made a noose out of a telephone cord); *Williams v. CSX Transp. Co.*, 643 F.3d 502, 513 (6th Cir. 2011) (finding no hostile work environment where defendant "call[ed] Jesse Jackson and Al Sharpton 'monkeys' and [said] that black people should 'go back to where [they] came from'" among other racist comments).

Under Title VII, punitive damages are limited "to cases in which the employer has engaged in intentional discrimination and has done so 'with malice or with reckless indifference to the federally protected rights of an aggrieved individual.'" *Kolstad v. Amer. Dental Ass'n*, 527 U.S. 526, 529–30 (1999). To establish the *prima facie* case for punitive damages under Title VII, a plaintiff must prove two things. First, a plaintiff must "demonstrate that the individuals perpetrating the discrimination acted with malice or reckless disregard toward the plaintiff's federally protected rights." *E.E.O.C. v. New Breed Logistics*, 783 F.3d 1057, 1072 (6th Cir. 2015). "A plaintiff satisfies this prong by demonstrating that the individual in question acted 'in the face of a perceived risk that its actions will violate federal law.'" *Id.* (quoting *Kolstad*, 527 U.S. at 539–41). Second, a plaintiff must "show the employer is liable by establishing that the discriminatory actor worked in a managerial capacity and acted within the scope of his or her employment." *Id.* However, a defendant may avoid punitive damage liability by showing that it engaged in good faith efforts to comply with Title VII. *Id.*

Here, it is undisputed that the alleged discriminatory actors (i.e., Ms. Rafferty, Ms. Golden, Mr. Boucher, and Ms. Foley) worked in a managerial capacity at PMI and acted within the scope of his or her employment. However, the parties dispute whether Defendants acted with malice or reckless disregard in the face of Plaintiff's Title VII rights and whether Defendants engaged in good faith efforts to comply with Title VII.

As previously addressed, there is a genuine issue of material fact as to whether Defendants terminated Plaintiff in retaliation for Plaintiff's complaints of racial discrimination and hostile work environment to Ms. Rafferty and other hotel management. Defendants argue that Ms. Golden and Ms. Foley "conducted a reasonable investigation into the events giving rise to Plaintiff's termination and made good faith efforts to comply with Title VII and protect Plaintiff's rights."

(ECF No. 40-1 PageID 488.) Plaintiff, on the other hand, avers that Ms. Golden testified to not investigating Ms. Rafferty during Plaintiff's suspension "despite Plaintiff's repeated pleads that Rafferty has all employees [sic] log-in information, and may be liable for the [Book4Time] violation." (ECF No. 43 PageID 553.)

Even viewing the evidence in the light most favorable to Plaintiff, the Court finds that a reasonable jury could not infer that Defendants acted with "malice or with reckless indifference" to Plaintiff's rights under Title VII. Contrary to Plaintiff's assertion, Ms. Foley and Ms. Golden's failure to investigate Ms. Rafferty's ability to access Book4Time remotely and knowledge of Plaintiff's login information, even if true, does not support an inference of malice or reckless indifference to Plaintiff's complaints of discrimination. *See Kolstad*, 527 U.S. at 539 (citing 42 U.S.C. § 1981a(b)(1)), ("pointing to evidence of an employer's egregious behavior [provides] one means of satisfying the plaintiff's burden to 'demonstrate' that the employer acted with the requisite 'malice or . . . reckless indifference.'").

Here, the behavior of Defendants is far from "egregious" and tends to show Defendants engaged in a good-faith effort to comply with Title VII. To start, Ms. Golden and Ms. Foley conducted an independent investigation into the allegations found in the letter to Mr. Belz. Ms. Golden and Ms. Foley also made a concerted effort to investigate the Book4Time breach by reviewing Book4Time login records and surveillance footage of the spa. During her suspension meeting, Plaintiff submitted no proof of Ms. Rafferty's ability to access Book4Time remotely and use her login information, (*see* ECF No. 39-1 at PageID 268–69), and Defendants otherwise had no knowledge that remote access was possible. Given these circumstances, no reasonable jury could conclude that Defendants' decision to focus on the concrete evidence (i.e., surveillance footage, text messages, and Book4Time records) instead of Plaintiff's unsupported allegations,

was made in the face of a "perceived risk" that said decision "would violate federal law." *See EEOC v. Harbert-Yeargin, Inc.*, 266 F.3d 498, 513 (6th Cir. 2001) (quoting *Kolstad*, 527 U.S. at 536).

In light of all the facts, no reasonable jury could find Defendants acted with malice or with reckless indifference to Plaintiff's federally protected rights. Defendants' Motion for Summary Judgment as to Plaintiff's claim for punitive damages is therefore **GRANTED**.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment (ECF No. 40) is **DENIED** as to Plaintiff's retaliation claim; **GRANTED** as to Plaintiff's hostile work environment claim; and **GRANTED** as to Plaintiff's claim for punitive damages.

IT IS SO ORDERED this 28th day of August, 2020.

s/ Mark Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE