UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEBORAH MORSE, Plaintiff,	: :	CIVIL ACTION NO. 3:10-CV-01126 (JCH)
v.	:	
PRATT & WHITNEY Defendants.	: :	JANUARY 23, 2013

RULING RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOC. NO. 37)

I. INTRODUCTION

Plaintiff, Deborah Morse ("Morse"), brings this action against Pratt & Whitney ("Pratt"), alleging gender discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), section 46a-58 of the Connecticut General Statutes, and the Connecticut Equal Pay Act, Conn. Gen. Stat. § 31-75 et seq. Specifically, Morse claims she was underpaid and underpromoted in relation to similarly situated male employees and was subject to retaliation by Pratt because of her complaints regarding such treatment.

II. STATEMENT OF FACTS

Morse started working for Pratt in the Tooling Support Services ("TSS") group in 1999. Plaintiff's Local Rule Statement 56(a)(2) ¶ 1, 10. At least since 2007, she held the status of Labor Grade 40. Id. at ¶ 9; p. 7. According to Morse, she performed tasks and duties assigned to her by her supervisor, Mr. Bianchi, which were beyond her job description. Id. at 5. These tasks included negotiating or authorizing customer credit, setting priority for manufacturing supplies, calling suppliers and establishing delivery

priority, creating new business development, making customer visits, and attending trade shows and conferences as well as being accountable for specific sales and EBIT targets, supplier management, coordination of purchase order issuance, customer price and warranty negotiations, and customer credit negotiations for the Pratt Canada customer base. Id. at p. 5-6. According to Morse, these responsibilities were identical to the duties of Grade L5 employees in the TSS division, although she held a non-exempt Grade 40 position.[1] Id. at ¶ 6; p. 6-7.

Morse claims that, sometime in or before 2007, she was given the position and duties of Regional Manager for Pratt Canada, and that she was listed as such on the TSS brochure. Id. However, she states that, while her non-exempt Grade 40 position "theoretically allowed her to be compensated for overtime" and her duties required her to work an additional 15 hours per week overtime, Mr. Bianchi did not approve overtime pay. Id. at 7. Morse claims she informed Joe Muldoon, Director of Maintenance Data, Services and Equipment, in 2007, that she could not perform her duties within a 40 hour work week, and that she either needed to be promoted and receive a higher grade of pay or be compensated for overtime. Id. Morse also claims she complained to Mr. Bianchi and Mr. Lemire, the TSS Regional Manager, that she was undercompensated because she was female, and that both told her that "'girls' who had husbands with jobs did not need to make as much money as men since men were the primary earners in

[1] Pratt asserts in its 56(a)(1) Statement that Morse started working at Pratt as a Labor Grade 38, earning a salary of $33,408, and that she received consistent increases in her salary—from 3 to 8 percent—over the next 11 years. L.R. 56(a)(1) ¶ 4-6. Morse denies these assertions because the document proferred by Pratt to support these statements, namely an employee history form, was "wholly unattested." L.R. 56(a)(2) ¶ 4-6. Because the document was not "authenticated by and attached to an affidavit that meets the requirements of Rule 56(e)," the court does not consider this document in determining whether summary judgment is appropriate. National Union Fire Ins. Co. of Pittsburgh v. Miller, 1989 WL 39677, at *2 (S.D.N.Y. Apr. 14, 1989) (unpublished opinion).

the family." Id. at 8. In addition, Morse claims Mr. Bianchi denied her the opportunity to receive continuing education even though he approved such education for male employees. Id. According to Morse, Mr. Bianchi said he would not approve education compensation for a female employee because she would waste classes on basket weaving, knitting or cooking. Id. at 8-9.

Morse asserts that, in March 2008, she filed an internal complaint claiming gender discrimination in the form of "lack of respect," "job function," "pay," "promotability" and "travel." Id. at ¶ 11. She resubmitted her March 7, 2008 complaint in May 2008, "as follow-up to a meeting and verbal complaint to HR." L.R. 56(a)(2) ¶ 11; see also Def.'s Mem. in Supp. Mot. for Summ. J. at 3 n.3 (calling it a clarification).

Sometime in 2008, Pratt's Compensation group performed a comprehensive study of employee salaries. Id. at ¶ 7. In April 2008, Pratt issued market pay adjustments to 224 salaried employees, including Morse. Id. As a result, Pratt increased Morse's salary by slightly over 20 percent, to $56,038.58. Id. at ¶ 8. Morse received her salary adjustment at the same time as the other employees received salary adjustments. Id. at ¶ 14.

On June 4, 2008, Joseph Muldoon and Cynthia Howard, Manager of Human Resources, met with Morse to discuss Pratt's response to her internal complaint. Id. at ¶ 15. Mr. Muldoon and Ms. Howard explained that Pratt investigated the five areas in her complaint and found she had been treated fairly. Id. at ¶ 16. Ms. Howard explained that her 2008 salary increase was not based on Morse's complaint, but rather on a company-wide compensation review to determine what adjustments were appropriate for all employees. Id. at ¶ 17. Separate from her internal complaint, Morse disclosed to

Pratt that her supervisor, Mr. Bianchi, was her uncle by marriage. Id. at ¶ 19.

Pratt claims that Morse was happy about her raise and declined to pursue her internal complaint any further. L.R. 56(a)(1) ¶ 18. Morse denies this claim and instead asserts that she wrote Ms. Howard to request that her compensation be applied retroactively for at least the two years prior. L.R. 56(a)(2) ¶ 18. In addition, Pratt recommended that Morse no longer work directly under her uncle and either move to a similar position within the company or stay in her current position and report to a different supervisor. Id. at ¶ 20. As a result, Morse began reporting to a new supervisor, Gary Hile, to whom she was happy reporting. Id. at ¶ 22-23. According to Morse, she also received an email from Mr. Muldoon in June 2008, informing her that she was not responsible for certain job duties, particularly those that separated the grade L5 employees from the lower level clerical employees. See Pl. Aff. at ¶23; Pl. Mem. in Opp'n. Mot. for Summ. J., Ex. 4. In addition, Morse claims that, after having attended a trade show in September 2007, and having been told she was supposed to attend a trade show in 2008, that promise "was taken back" at some point after she filed her complaint, and they sent another employee instead. Pl. Dep. at 112. In August 2008, Pratt fired Mr. Bianchi. L.R. 56(a)(1) at ¶ 24. Morse then began reporting to John Lemire, the TSS Regional Manager, with whom Morse got along well. Id. at ¶ 25.

Pratt claims that in May 2009, Morse resigned and moved to Tennessee with her husband, as she had long planned to do when her husband retired. L.R. 56(a)(1) ¶ 27. Morse's husband retired from Pratt in May 2008, after accepting a voluntary separation package. L.R. 56(a)(2) ¶ 28. Morse claims that she did not "resign" In May 2009, id. at ¶ 1, 27, although she submitted a letter of resignation. See Morse Dep. at 13. Instead,

she claims she continued working from home after she left Pratt on May 29, 2009. Id. According to Morse, she informed Mr. Bianchi and Mr. Muldoon sometime before her husband retired in May 2008 that he was ill and that, if he was still alive when he was eligible to retire, she wanted to move to Tennessee with him and continue to work for Pratt from home. Id. at 10. According to Morse, Mr. Bianchi and Mr. Muldoon assured her she could work from home. Id. However, Morse claims that Mr. Bianchi withdrew her request to work from home in July 2008 after she refused to withdraw the complaint she filed with the Connecticut Commission on Human Rights and Opportunities. Id. at 11. According to Morse, Mr. Lemire reassured her before she left Pratt in May 2009, that he would arrange for her to work part-time from home. Id. However, Morse claims that, after moving to Tennessee and working for Pratt for six weeks, she was never paid and, therefore, she ceased working. Id.

III. STANDARD OF REVIEW

A motion for summary judgment "may properly be granted . . . only where there is no genuine issue of material fact to be tried, and the facts as to which there is no such issue warrant judgment for the moving party as a matter of law." In re Dana Corp., 574 F.3d 129, 151 (2d Cir. 2009). Thus, the role of a district court in considering such a motion "is not to resolve disputed questions of fact but only to determine whether, as to any material issue, a genuine factual dispute exists." Id. In making this determination, the trial court must resolve all ambiguities and draw all inferences in favor of the party against whom summary judgment is sought. See Loeffler v. Staten Island Univ. Hosp., 582 F.3d 268, 274 (2d Cir. 2009).

"[T]he moving party bears the burden of showing that he or she is entitled to

summary judgment." United Transp. Union v. Nat'l R.R. Passenger Corp., 588 F.3d 805, 809 (2d Cir. 2009). Once the moving party has satisfied that burden, in order to defeat the motion, "the party opposing summary judgment . . . must set forth 'specific facts' demonstrating that there is 'a genuine issue for trial.'" Wright v. Goord, 554 F.3d 255, 266 (2d Cir. 2009) (quoting Fed. R. Civ. P. 56(e)). "A dispute about a 'genuine issue' exists for summary judgment purposes where the evidence is such that a reasonable jury could decide in the non-movant's favor." Beyer v. County of Nassau, 524 F.3d 160, 163 (2d Cir.2008) (quoting Guilbert v. Gardner, 480 F.3d 140, 145 (2d Cir. 2007)); see also Havey v. Homebound Mortg., Inc., 547 F.3d 158, 163 (2d Cir. 2008) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)) (stating that a non-moving party must point to more than a mere "scintilla" of evidence in order to defeat a motion for summary judgment).

IV. DISCUSSION

A. Gender Discrimination in Violation of Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 states, "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e–2(a). Morse alleges that Pratt discriminated against her with respect to her compensation as well as by failing to promote her. The court considers both claims in turn.

1. Unequal pay for equal work

"A claim of unequal pay for equal work under Title VII . . . is generally analyzed

under the same standards used in an EPA [Equal Pay Act] claim." Tomka v. Seiler Corp., 66 F.3d 1295, 1312 (2d Cir. 1995). "In addition to the requirements that are generally the same as those under the EPA, 'a Title VII plaintiff must also produce evidence of discriminatory animus in order to make out a prima facie case of intentional sex-based salary discrimination.'" Belfi v. Prendergast, 191 F.3d 129, 139 (2d Cir. 1999) (citing Tomka, 66 F.3d at 1313). Therefore, to make out a prima facie case for unequal pay for equal work under Title VII, a plaintiff must show "(1) she was a member of a protected class, (2) she was qualified for the job in question, (3) she was paid less than men for the same work, and (4) the employer's adverse employment decision occurred under circumstances that raise an inference of discrimination." Belfi, 191 F.3d at 140.

Pratt appears to concede that Morse meets the first two elements of her prima facie case.[2] See Def.'s Mem. in Supp. Mot. for Summ. J. at 11 (contesting only prongs three and four of Morse's prima facie case). However, Pratt argues that Morse was not underpaid for the years preceding her 2008 pay increase, and that it did not pay similarly situated men and women differently. Id.

Pratt relies on the salaries of its employees after the 2008 salary adjustment to argue that Morse was not paid substantially less than similarly situated men. See Def.'s Mem. in Supp. Mot. for Summ. J. at 13. However, because Morse is alleging she was

[2] Pratt states that to establish a prima facie case based on underpayment, Morse must show "(1) she was within a protected group; (2) she was qualified for the job; (3) she suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination." Def.'s Mem. in Supp. Mot. for Summ. J. at 11. Pratt argues that Morse fails to meet prongs three and four of her prima facie case. Although Pratt fails to present the exact standard for unequal pay claims under Title VII, the court construes its argument that Morse did not suffer an adverse employment action as one that Morse was not underpaid in comparison to similarly situated male employees under prongs three and four of the analysis.

discriminated prior to the 2008 adjustment, the relevant salaries are those prior to April 2008. Of the two other TSS employees at the same pay grade as Morse—Labor Grade 40—and title—"Lead Tech, Eng/Mthds.Stds"—one was female and one was male.[3] L.R. 56(a)(2) ¶ 30. Prior to the adjustment, Morse and the female employee received salaries of $46,451 and $48,456, respectively. Id. The male employee received $60,000.[4] Id. Therefore, there is evidence that would allow a reasonable jury to conclude that Morse was paid less than men for the same work.[5] See Heap v. County of Schenectady, 214 F.Supp.2d 263, 271 (N.D.N.Y. 2002) (stating that "similarly

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[3] At oral argument, Pratt claimed that individuals of the same pay grade and title are not necessarily "similarly-situated." However, in arguing in its Motion for Summary Judgment that Morse could not show that she was paid less than similarly situated men, Pratt referred specifically to the employees within TSS who were Labor Grade L7 and lower—which included employees at Labor Grade 40—and argued that, among that group of employees, Morse was not paid "substantially" less. See Def.'s Mem. in Supp. Mot. Summ. J. at 13. The court does not see how Pratt can now argue that employees within that group of employees are not "similarly-situated" to Morse. Further, Morse submitted evidence suggesting that employees of the same pay grade perform similar duties. See Morse Aff. at ¶ 23 (explaining the duties that separated grade L5 employees from lower level clerical employees). Making all inferences in favor of the plaintiff, the court finds that Morse has met her prima facie burden to establish that the male employee at Labor Grade 40 was "similarly situated" to her.

[4] Pratt claims that Morse has not presented admissible evidence that similarly situated males were paid more than her. See Def.'s Reply at 2 n.2 (stating that Morse's claim is based on a hearsay statement from a coworker who allegedly told her about other people's salaries). However, Pratt presented in its Local Rule 56(a)(1) statement, which Morse admitted was true, the percentage increases and 2008 salaries of TSS employees. L.R. 56(a)(2) at ¶ 30.

[5] Morse appears to also claim that she was paid less than male employees who performed the same tasks as her, but were given a higher pay grade. See L.R. 56(a)(2) at 6. In determining whether employees are similarly situated, "jobs which are 'merely comparable' are insufficient to satisfy a plaintiff's prima facie burden." Heap, 214 F.Supp.2d at 271. Morse must "show that the two positions are 'substantially equal' in skill, effort, and responsibility." Fayson v. Kaleida Health, Inc., 2002 WL 31194559, at *9 (W.D.N.Y. Sept. 18, 2002). Because there is evidence to allow a reasonable jury to conclude that a male employee with the same pay grade as Morse received greater compensation, the court will not consider whether the additional male employees to whom Morse refers were similarly situated for purposes of establishing a prima facie case. See Hernandez v. Kellwood Co., 2003 WL 22309326, at *9 (S.D.N.Y. Oct. 8, 2003) (after dismissing unequal pay claim as time barred against first similarly situated male employee, the court held the plaintiff made out a prima facie case by showing she received less pay than one other similarly situated male employee); see also Detrick v. H&E Machinery, Inc., 934 F.Supp. 63, 69 (W.D.N.Y. 1996) (although plaintiff failed to show the two positions were substantially similar, the court found the plaintiff met her burden under the third prong by showing she was paid less than her male successor); Simpson v. Merchants & Planters Bank, 441 F.3d 572, 577-79 (8th Cir. 2006) (finding a reasonable jury could have found that female plaintiff was paid less than one other male for equal work).

situated" positions are those that are "substantially equal").

Pratt also argues that Morse has not presented evidence that any alleged underpayment occurred under circumstances giving rise to an inference of discrimination. See Def.'s Mem. in Supp. Mot. for Summ. J. at 12. Morse argues that her 20 percent salary adjustment, which was the highest adjustment of any TSS employee and given a little over a month after she first complained that she was undercompensated because of her gender, suggests that Pratt agreed "she was due an extraordinary adjustment to her compensation." Plaintiff's Mem. in Opp'n. Mot. for Summ. J. at 8. She also claims that her salary adjustment raises an inference of discrimination because, of the three highest increases given to employees within TSS, two of those went to women. Id. Pratt contends that the adjustment does not suggest an inference of discrimination because "three additional TSS employees received increases of more than 15%, and two of those employees . . . were men." Def.'s Mem. in Supp. Mot. for Summ. J. at 13. The adjustment alone does not present a genuine issue of material fact as to whether Morse was underpaid under circumstances giving rise to an inference of discrimination as it only suggests Morse was previously underpaid, not that she was underpaid because of her gender.

However, Morse also claims that her supervisors, Mr. Bianchi and Mr. Lemire, told her that "'girls' who had husbands with jobs did not need to make as much money as men since men were the primary earners in the family." L.R. 56(a)(2) at 8. In addition, Morse alleges that Pratt had a practice of denying female employees, including herself, continuing education opportunities, while granting such benefits to male employees. See Pl.'s Mem. in Opp'n Mot. for Summ. J. at 4; see also Pl. Aff. at ¶ 14.

Taking Morse's version of events as true, a reasonable jury could find that the circumstances surrounding Morse's underpayment give rise to an inference of gender discrimination.[6]

Pratt claims that, "even if Plaintiff could establish a prima facie case of gender discrimination," it has "identified a legitimate business reason for its decision to raise Plaintiff's pay by more than 20% in April 2008," namely that it raised many employees' salaries based on an internal study. See Def.'s Mem. in Supp. Mot. for Summ. J. at 14. However, once Morse established a prima facie case, the burden shifted to Pratt to present a legitimate business reason for why Morse was paid less than similarly situated male employees, not for why she received a pay increase in 2008. See e.g., Fayson v. Kaleida Health, Inc., 2002 WL 31194559, at *6 (W.D.N.Y. Sept. 18, 2002) (unpublished opinion) (finding that the defendant "articulated a legitimate nondiscriminatory reason for Fayson's wage disparity"). Because Pratt failed to meet this burden, and a reasonable jury could find that Morse introduced evidence sufficient to establish her prima facie case, Pratt's Motion for Summary Judgment on Morse's Title VII unequal pay claim is denied.

2. Failure to Promote

Morse also claims Pratt discriminated against her based on her gender by failing to promote her to the same job grades as similarly situated male employees. In failure-

[6] Pratt makes much of the "fact" that Morse admitted in her deposition that she felt Mr. Bianchi treated her differently because he was her uncle. See Mem. in Supp. Mot. for Summ. J. at 14; Pl. Dep. at 46. However, Morse only stated that she thought her uncle did not want people to think he was giving her favors, "so he was harder on me than anyone else." Pl. Dep. at 46. Making all inferences in Morse's favor, the evidence only shows that Mr. Bianchi held Morse to a higher performance standard. There are no facts to support the notion that Mr. Bianchi paid Morse less than similarly situated men because she was his niece. Therefore, to the extent that Pratt is arguing Morse cannot show gender discrimination because any mistreatment was due to "reverse nepotism," the record before the court does not support its argument.

to-promote cases brought under Title VII, courts follow the burden-shifting Title VII analysis first announced in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146-149, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506-511, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993); Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-256, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). To establish a prima facie case, the plaintiff must show (1) that she was in a protected group, (2) she applied for a position for which she was qualified, (3) she was subject to an adverse employment decision, and (4) that the decision occurred under circumstances giving rise to an inference of discrimination. See e.g., Byrnie v. Town of Cromwell, Bd. of Educ., 243 F.3d 93, 101 (2d Cir.2001).

Pratt argues that Morse cannot make out a prima facie case because there is no evidence that she ever applied for a promotion. See Def.'s Mem. in Supp. Mot. for Summ. J. at 11-12 n.5; see also Brown v. Coach Stores, Inc., 163 F.3d 706, 710 (2d Cir. 1998). In Brown, the Second Circuit set forth the standard for promotion cases, requiring a plaintiff to "allege that she or he applied for a specific position or positions and was rejected therefrom, rather than merely asserting that on several occasions she or he generally requested promotion." Id. at 710. The only evidence Morse has put forth concerning a request for a promotion is her request in 2007 to Mr. Muldoon to either promote her to a higher pay grade and salary given her duties as the Account Manager for Pratt Canada, or to compensate her for overtime, L.R. 56(a)(2) at 7, and her requests to Mr. Bianchi that he increase her pay and job grade. Morse Aff. at ¶ 12. These conversations do not meet the requirements of Brown. Therefore, Pratt's Motion

for Summary Judgment on Morse's Title VII failure to promote claim is granted.

B. Unlawful Retaliation in Violation of Title VII of the Civil Rights Act of 1964

Morse claims Pratt retaliated against her for instigating an internal complaint for gender discrimination as well as for filing a complaint with the Connecticut Commission on Human Rights and Opportunities ("CHRO"). The same McDonnell Douglas burden-shifting analysis applies to Morse's claim for retaliation. Joiner v. Chartwells and Compass Group North America, 500 F.Supp.2d 75, 82 (D. Conn. 2007). "A plaintiff makes a prima facie showing of retaliation by establishing 'participation in a protected activity known to the defendant; an employment action disadvantaging the plaintiff; and a causal connection between the protected activity and the adverse employment action.'" Id. (quoting Quinn v. Green Tree Credit Corp., 159 F.3d 759, 769 (2d Cir. 1998). A protected activity "refers to action taken to protest or oppose statutorily prohibited discrimination." Id. (quoting Cruz v. Coach Stores, Inc., 202 F.3d 560, 566 (2d Cir. 2000).

Morse engaged in protected activity when she filed an internal complaint with the Human Resources Department at Pratt and when she filed her complaint with the CHRO. See e.g., Wilburn v. Fleet Financial Group, 170 F.Supp.2d 219, 236 (D. Conn. 2001) (stating that protected activity refers to "action taken to protest or oppose statutorily prohibited discrimination, such as filing a sexual harassment complaint with a government agency"); Barlow v. Connecticut, 319 F.Supp.2d 250, 263 (D. Conn. 2004) (considering internal complaints as protected activity).

However, with regard to the second element of a prima facie case, Pratt contests Morse's allegations of disadvantageous employment actions. According to Pratt, Morse

testified at her deposition that the basis of her retaliation claim was:

> "(1) a third party, Bob Moraniec, who worked for a shipping company with which Pratt & Whitney did business, told her that Bianchi 'was going around telling people keep an eye on me, wanted to trip me up so he could terminate me;' (2) she overheard coworkers in the lavatory saying that Bianchi was allegedly 'telling people in other departments that I had to work with that the only reason I filed a complaint was because I was having an affair with my attorney and sleeping around on my husband and trying to make big money off of Pratt so I could retire, divorce my husband, take my husband for everything he was worth, and run off with my attorney;' and (3) after allowing Plaintiff to attend her first trade show in September 2007, Bianchi later allowed Plaintiff's female coworker, Kim Hiller, to attend a 2008 trade show in Texas, rather than allowing Plaintiff to attend."

Def.'s Reply at 4. First, Pratt argues that Morse's first two complaints cannot be considered on a motion for summary judgment because they constitute hearsay and are inadmissible. See Def.'s Mem. in Supp. Mot. for Summ. J. at 16. The court agrees. See Rizzo-Puccio v. College Auxiliary Services, Inc., 71 F.Supp.2d 47, 57 (N.D.N.Y. 1999) (disregarding statements made by co-workers to plaintiff because the statements constituted hearsay that would be inadmissible at trial). Second, Pratt argues in its Reply that additional claims of retaliatory conduct presented in Morse's opposition to its Motion for Summary Judgment may not be considered by the court because the allegations contradict prior deposition testimony, specifically Morse's testimony that the three reasons above were the basis of her retaliation claim. Def.'s Reply at 5.

Morse claims in her opposition papers, with support from her own attached affidavit, that "after her complaint . . . [she] was stripped of many of her duties as manager of Pratt Canada." Pl. Mem. in Opp'n Mot. for Summ. J. at 7. In addition, she claims that "she was denied future continued employment with Pratt as a result of her refusal to withdraw her pending CHRO complaint." Id.

"It is well settled in this circuit that a party's affidavit which contradicts his own

prior deposition testimony should be disregarded on a motion for summary judgment." Mack v. United States, 814 F.2d 120, 124 (2d Cir. 1987). However, "when only a limited quantity of deposition testimony is available and other material submitted to oppose summary judgment was only arguably contradictory, the other material could be examined for summary judgment purposes." Susko v. Romano's Macaroni Grill, 142 F.Supp.2d 333, 337 (E.D.N.Y. 2001); see also Hayes v. New York City Dept. of Corrections, 84 F.3d 614, 619 (2d Cir. 1996) (allowing consideration of "only arguably contradictory" testimony when "defense counsel did not ask questions at the first deposition sufficient to elicit the specific content" at issue in the subsequent testimony).

Although a close call, Morse's claim that she was stripped of many of her duties as a result of her internal complaint is only "arguably contradictory" to her deposition testimony. She asserted in her deposition that a basis of her retaliation claim is that Mr. Bianchi prevented her from attending a 2008 trade show, which she considered to be one of her duties. Pl. Dep. at 111-112. Furthermore, because Pratt attached excerpts from Morse's deposition testimony, the court cannot determine that counsel confirmed that Morse presented all of the reasons for which she was bringing a suit for retaliation. See Hayes, 84 F.3d at 619.

Pratt further argues that, even if the court considers Morse's Affidavit, she has not presented sufficient evidence to allow a reasonable jury to find she was "stripped of her duties." Def.'s Reply at 5. Morse cites to an email sent from Mr. Muldoon after she lodged her internal complaint, stating what is "[s]pecifically NOT included in . . . [her] responsibilities," including new business development, customer visits, trade show and conference attendance, accountability for specific sales and EBIT targets, supplier

management, coordination of purchase order issuance, customer price or warranty negotiation, and approval of customer credit. Pl. Mem. in Opp'n Mot. for Summ. J., Ex. 5. Morse admits that those duties were "beyond her job description," and that she performed them at the direction of Mr. Bianchi, who was ultimately fired by Pratt for "requiring subordinates to perform duties and task[s] that were not part of their job description[s]." L.R. 56(a)(2) at p. 5, 9. However, she also claimed that she performed these duties at the instruction of both Mr. Bianchi and Mr. Muldoon. Id. Because the record is unclear, there is an issue of material fact as to whether Mr. Muldoon knew of and condoned Morse's greater responsibilities, and later took those responsibilities away after she submitted her complaint.

As additional evidence of Pratt's stripping of her duties, Morse claims that she was supposed to attend a 2008 trade show, but that Mr. Bianchi sent Kim Hiller instead once Morse submitted her complaint. See Pl. Dep. at 112. According to Morse, she was given the title of Regional Manager of Pratt Canada, which would have entitled her to perform such duties as attending trade shows. L.R. 56(a)(2) at p.6; see also Pl. Dep. at 112.. Pratt states that Morse was not a manager, but a sales representative, as she admitted in her deposition. Def.'s Reply at 5; see also Pl. Dep. at 86. However, Morse cites to a 2008 TSS brochure which lists her and Ms. Hiller as Regional Managers of Pratt Canada. See L.R. 56(a)(2) at p. 6. According to Morse, Ms. Hiller was listed beneath her on the TSS brochure as her "sales representative." See Pl. Dep. at 112.

According to Morse, the Regional Manager is the person who attends the trade show. Id. Although a close call—Morse admits that, as of June 2008, she was training Ms. Hiller in anticipation of her leaving Pratt, Pl. Mem. in Opp'n Mot. for Summ. J., Ex.

4; see also Pl. Aff. at ¶ 24—a reasonable jury could find, taking as true Morse's assertion that she was the Regional Manager and Ms. Hiller was a sales representative, that Mr. Bianchi stripped Morse of her responsibility of attending the trade show after she submitted her internal complaint.

Coupled together, the alleged elimination of Morse's various duties may constitute an adverse employment action under the second prong of Morse's prima facie case.

> "An adverse employment action is a materially adverse change in the terms and conditions of employment .... To be 'materially adverse,' a change in working conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities ... Such a change 'might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices ... unique to a particular situation.'"

Weeks v. New York State (Div. of Parole), 273 F.3d 76, 85 (2d Cir.2001), abrogated on other grounds by Nat'l R.R. Passenger **340* Corp. v. Morgan, 536 U.S. 101, 108-114, 122 S.Ct. 2061, 153 L.Ed.2d 106(2002) (quoting Galabya v. New York City Bd. of Educ., 202 F.3d 636, 640 (2d Cir.2000)). A change in job responsibilities can constitute an adverse employment action where it substantially diminishes an employee's material responsibilities. See Treglia v. Town of Manlius, 313 F.3d 713, 717-18, 720 (holding that a police officer who was removed from enforcement duties and confined to desk duty, among other actions, had established an adverse employment action); see also Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 70 (2006) ("Common sense suggests that one good way to discourage an employee . . . from bringing discrimination charges would be to insist that she spend more time performing the more

arduous duties and less time performing those that are easier or more agreeable"). Viewing the evidence in a light favorable to Morse, the court finds a genuine issue of material fact as to whether the change of duties –those that differentiate the Grade 40 and L5 employees—substantially diminished Morse's material employment responsibilities, thereby constituting an adverse employment action.

As to the third prong of Morse's prima facie case, a plaintiff can show a causal connection between her protected activity and the alleged retaliatory actions by demonstrating that the actions occurred soon after the protected activity. See Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir.1996). In order to prove a causal connection in this manner, the temporal proximity must be "very close." See Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273-74, 121 S.Ct. 1508, 149 L.Ed.2d 509 (2001) (citing cases holding that gaps between protected activity and adverse employment action as short as three or four months are insufficiently close to prove causation). According to Morse, Mr. Muldoon emailed her on June 5, 2008, regarding her limited responsibilities. See Pl. Mem. in Opp. Mot. for Summ. J., Ex. 5. This email exchange took place one month after Morse clarified her internal complaint, and only a day after Morse met with Mr. Muldoon and the Director of Human Resources, Cynthia Howard, regarding her complaint. See L.R. 56(a)(2) ¶ 11, 15; Def.'s Mem. in Supp. Mot. for Summ. J. at 3 n.3. The short timeframe from both the May filing of the complaint and the follow-up meeting is such that a reasonable jury could infer retaliation. See Treglia, 313 F.3d at 720 (finding temporal proximity when the plaintiff engaged in continued protected activity such as preparing a witness list to corroborate charges of discrimination). Furthermore, the 2007 trade show that Morse attended was held in

September. See Pl. Dep. at 112. Making all inferences in favor of Morse and, assuming the 2008 trade show took place sometime in or around September, a reasonable jury could find that there is a small enough window between Morse's refusal to withdraw her July 18, 2008, CHRO complaint, and Mr. Bianchi's decision to send Ms. Hiller in Morse's place two months later so as to raise an inference of retaliation.

The court next considers Morse's additional claim that she was denied future continued employment from home as a result of her refusal to withdraw her CHRO complaint. According to Morse, she submitted her complaint to the CHRO on July 17, 2008. Pl. Aff. at ¶ 20. Morse claims that in response, Mr. Bianchi "demanded she withdraw the Complaint" and, when she refused, he "withdrew the request" for her to work from home.[7] L.R. 56(a)(2) at p. 11. She asserts that sometime in the spring of 2009, Mr. Lemire reassured her that she could in fact work from home. Id.; see also Morse Aff. at ¶ 26. However, after she left Pratt, allegedly to work from home, on May 29, 2009, L.R. 56(a)(2) at ¶ 1, Pratt never paid her for her services.

Taking Morse's version of events as true, she has introduced evidence which would allow a reasonable jury to find that she suffered an adverse employment action, as the refusal to allow Morse to continue working at home may constitute a "material change in the terms and conditions of her employment," particularly given Morse's claim that she wanted to work from home to care for her ill husband. See id. at p. 11; see

[7] At oral argument, Pratt argued that Morse's Affidavit, stating that Mr. Bianchi requested that she withdraw her complaint in July 2008, is contradictory to Morse's deposition testimony and should, therefore, not be considered by the court. In Morse's deposition, she responded that she believed that she and Mr. Bianchi, "were not talking to each other or communicating" from January 2008 until May 2009. The court does not believe that this statement is necessarily contradictory to Morse's assertions in her Affidavit. See Hayes, 84 F.3d at 620 (considering testimony that does not "directly contradict" a prior statement). Although the two may not have been "talking to each other," that does not mean that no words were spoken by one of them during that almost year and a half period.

also Burlington Northern, 548 U.S. at 69 (stating that "a schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young mother with school-age children").

Furthermore, a reasonable jury could find temporal proximity sufficient to infer that the refusal was due to Morse's initiation of her CHRO complaint. Taking Morse's version of events as true, there is a "very close" timeframe between the filing of Morse's CHRO complaint and Mr. Bianchi 's withdrawal of the request that Morse be allowed to work from home in Tennessee upon her husband's retirement. L.R. 56(a)(2) at ¶18; see also Clark County, 532 U.S. at 273 ("The cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close,'" with as little as three to four months considered too long.) Although Mr. Lemire supposedly indicated he would allow Morse to work from home, his later actions, as alleged by Morse, did nothing to override Mr. Bianchi's decision to withdraw the request for Morse to telecommute. Even though Morse was ultimately prevented from working from home in May 2009, 11 months after she submitted her CHRO complaint, a court may overlook a longer gap in time between protected conduct and an adverse employment action where "the pattern of retaliatory conduct begins soon after the filing of the [ ] complaint and only culminates later in actual discharge." Marx v. Schnuck Markets, Inc., 76 F.3d 324, 329 (10th Cir.1996) (Fair Labor Act retaliation claim) (citing Jackson v. RKO Bottlers of Toledo, Inc., 743 F.2d 370, 377 n. 4 (6th Cir.1984) (Title VII case)). Making all inferences in Morse's favor, a reasonable jury could find that Mr. Bianchi prevented Morse from

working from home in retaliation for submitting and refusing to withdraw her CHRO complaint and that Mr. Lemire abided by that decision.

Since Morse has established a prima facie case, the burden shifts to Pratt to offer a non-discriminatory reason for the change in Morse's duties and the refusal to allow her to work from home. See e.g., Texas Dept. of Community Affairs v. Burdine, 450 U.S. 249, 254 (1981). As to the former, Pratt claims that Mr. Muldoon merely clarified Morse's responsibilities and eliminated the duties that she was performing that were not under her purview. See Defs.' Reply at 5. As for Pratt's refusal to allow Morse to work from home, Pratt suggests that Morse was not allowed to work from home because she submitted a letter of resignation and, therefore, ended her employment with Pratt. See id. at 6.

The burden then shifts back to Morse "to demonstrate that the proferred reason was not the true reason for the employment decision." Burdine, 450 U.S. at 256. Morse has presented evidence from which a fact-finder could conclude that these reasons were pretexts to cover unlawful retaliation. There is a material issue of fact as to whether Mr. Muldoon, along with Mr. Bianchi, assigned Morse the tasks that he ultimately informed her in his June 5, 2008, email were not under her purview. L.R. 56(a)(2) at p. 5. Therefore, a reasonable jury could find that Mr. Muldoon eliminated, rather than clarified, Morse's duties. In addition, Morse has introduced evidence that she did not resign from Pratt, but rather thought she was continuing her employment from home in a different capacity. See id. at 11. As Pratt has not introduced Morse's letter of resignation into the record, there is a material issue of fact as to (1) what understanding Morse had with Pratt, and in particular, Mr. Lemire, and (2) when Morse

submitted the letter of resignation—in May 2009, before she left to work from home, or after Pratt stopped paying her for her work in Tennessee. If Mr. Lemire told Morse that she could work from home, but instead abided by Mr. Bianchi's decision to withdraw the request for Morse to work from home, a reasonable jury could find that Pratt retaliated against Morse for refusing to withdraw her CHRO complaint. Therefore, Pratt's Motion for Summary Judgment as to Morse's retaliation claim is denied.

C. Gender Discrimination and Disparate Pay in Violation of Connecticut Law

In addition to her Title VII claims, Morse alleges discrimination in compensation on the basis of sex, in violation of the Connecticut Equal Pay Act, and gender discrimination, in violation of section 46a-58 of the Connecticut General Statutes.

Claims brought pursuant to the Connecticut Equal Pay Act are analyzed under the same standard as the Federal Equal Pay Act, 29 U.S.C. § 206(d). See Grudier v. Hendel's, Inc., 2008 WL 1924971, at *1 (D. Conn. 2008) (unpublished opinion) (articulating and considering the same showing for both the Federal and Connecticut Equal Pay Acts). Therefore, because the court denied Pratt's Motion for Summary Judgment on Morse's Title VII unequal pay and retaliation claims, the court similarly denies Pratt's Motion for Summary Judgment on Morse's claim pursuant to the Connecticut Equal Pay Act.[8] See Tomka, 66 F.3d at 1312.

As for Morse's claim pursuant to section 46a-58 of the Connecticut General

[8] Pratt argues that Morse cannot recover based on her claim that she had been subject to unfair pay "for years," because section 46a-82 of the Connecticut General Statutes requires complaints to be filed within 180 days of the alleged act of discrimination. Pratt confirmed at oral argument that it is only raising its statute of limitations defense in relation to Morse's claim of gender discrimination for underpayment pursuant to section 46a-58 of the Connecticut General Statutes. Pratt raises no similar statute of limitations defense pursuant to Morse's claims under the Connecticut Equal Pay Act. Furthermore, under the Connecticut Equal Pay Act, a plaintiff has two years to bring suit, or three years if the violation was intentional or committed with reckless indifference. Conn. Gen. Stat. § 31-76.

Statutes, the Connecticut Supreme Court held in Commission on Human Rights and Opportunities v. Truelove and Maclean, Inc., 238 Conn. 337, 346 (1996), that section 46a–58(a) does not encompass claims of discriminatory employment practices that fall within the purview of section 46a–60. See Hill v. Pinkerton Sec. & Investigation Services, Inc., 977 F.Supp. 148, 154 (D. Conn. 1997) (granting summary judgment because "the more specific, narrowly tailored cause of action embodied in section 46a-60 supersedes the general cause of action in section 46a-58(a) . . . [and therefore] plaintiff has failed to state a cause of action"). Therefore, to the extent that Morse brings her claim of gender discrimination for failure to promote or underpayment pursuant to section 46a-58, Pratt's Motion for Summary Judgment is granted.

V. CONCLUSION

For the reasons discussed above, Pratt's Motion for Summary Judgment (Doc. No. 37) is **DENIED** as to Morse's Title VII claims for unequal pay for equal work and retaliation as well as her claim pursuant to the Connecticut Equal Pay Act, Conn. Gen. Stat. § 31-75. Pratt's Motion for Summary Judgment is **GRANTED** as to Morse's Title VII claim for failure to promote as well as her claims pursuant to section 46a-58 of the Connecticut General Statutes.

SO ORDERED.

Dated at New Haven, Connecticut this 23rd day of January, 2013.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge