**REDACTED - ECF VERSION**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| JULIE A. GASKINS<br><br>Plaintiff,<br><br>vs.<br><br>WILLIAMS & CONNOLLY LLP<br><br>Defendant. | ) | Case No. 1:08-cv-01576-RWR |

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Julie Gaskins ("Plaintiff") joined Williams & Connolly LLP ("Williams & Connolly" or the "Firm") as a legal secretary after having been fired from her previous law firm job. Once at Williams & Connolly, she complained about and quit working for every attorney with whom she was paired, and after less than two years – when the complaints about the quality of her work increased – she just stopped coming to work. She has not one shred of factual support for her allegation that she was discriminated against, and her retaliation claims are patently insufficient. The undisputed facts demonstrate that Plaintiff was treated fairly, paid fairly and allowed to remain on the payroll even though she stopped coming to work for almost two months before she quit.

Relying on a rumor she heard relatively early in her tenure with Williams & Connolly, Plaintiff came to the incorrect but adamant belief that she made less money than a Caucasian secretary with less legal experience. After she complained about the nonexistent pay disparity, which the Firm assured her did not exist, she began to believe, wrongly, that every difficult encounter at the Firm and virtually every instance of daily friction with others was retaliation for

this complaint. Her allegations against the Firm are so numerous and far-reaching as to be inherently incredible: she has accused almost everyone with whom she had substantial contact of some degree of racism or retaliation, both during her employment and long after she resigned from her position.[1] Her own testimony does not even support her claims, which are made of whole cloth.

Plaintiff's kitchen-sink Complaint alleges that Williams & Connolly discriminated against her on the basis of race and retaliated against her in violation of Title VII and Section 1981. *See* Amended Complaint ("Compl.") ¶¶ 31-38. She claims that: (1) she was paid less than a Caucasian secretary because she is African-American; (2) the Firm assigned her to the most "difficult" attorneys because of her race; (3) she was subjected to a racially motivated comment by two associates; (4) she was retaliated against during and after her employment for complaining about her pay and for filing a charge with the EEOC; and (5) she worked in a hostile work environment and was forced to resign. *See* Compl. ¶¶ 11-30. None of Plaintiff's claims survives scrutiny.

Plaintiff admits that her pay discrimination allegations are based solely on a rumor she heard about the pay of a Caucasian secretary. As was explained to Plaintiff at the time, that rumor *was false*. The specific Caucasian secretary who was the subject of the rumor *made less money* than Plaintiff. Furthermore, it is undisputed that African-American secretaries, on average, made more money than Caucasian secretaries during the relevant time period (Plaintiff's tenure with the Firm).

[1] In fact, and though she has not included such a preposterous claim in her Complaint, Plaintiff even went so far as to suggest in her deposition that Williams & Connolly had something to do with a fire that caused damage to her apartment after she filed her lawsuit. *See* Gaskins Dep. Tr. at 394:2-395:13.

Plaintiff's claim that she was assigned to work with "difficult" attorneys because she is African-American also fails; she applied to work with all but one of the attorneys with whom she was paired, and she was allowed to be re-assigned *each time* she requested. Even if she had been forced to work with so-called "difficult" attorneys, Plaintiff's own opinion of which attorneys are "difficult" is just that, an opinion. Attorney assignments do not rise to the level of an adverse employment action. Furthermore, the evidence shows that more Caucasian secretaries than African-American secretaries worked for the attorneys Plaintiff claims are "difficult."

Plaintiff's claim that she was subjected to a racially motivated comment is wholly without factual support. She overheard (from behind a seven-foot wooden cubicle at a distance) *and misunderstood* a conversation that was not directed toward her. This isolated incident, even if the Court were to accept Plaintiff's version of the conversation for purposes of this motion, cannot support a hostile work environment claim. Nor can Plaintiff establish that she was forced to resign from the Firm after coming to work for only four full days in the last one and a half months she was with Williams & Connolly.

Last, none of Plaintiff's retaliation claims has merit. Plaintiff seeks to hold Williams & Connolly liable for everything about her job that she did not like after she complained about her pay, from an e-mail that was not directed to her to an alleged delay in reimbursement of her parking expenses after she resigned from the Firm. Her claims cannot survive summary judgment. She has not and cannot establish a causal connection between any protected activity and the alleged adverse employment actions, and she has presented no evidence that Williams & Connolly's legitimate reasons for its actions were a pretext for retaliation. For all of these reasons, and those set forth more fully below, summary judgment in favor of Williams & Connolly is warranted.

## STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

Additionally, the "nonmoving party may not rely solely on allegations or conclusory statements." *Ransom v. Ctr. for Nonprofit Advancement*, 514 F. Supp. 2d 18, 24 (D.D.C. 2007) (citing *Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999)). The nonmoving party must present specific facts that would enable a reasonable jury to find in its favor. *Id*. "If the evidence 'is merely colorable, or is not significantly probative, summary judgment may be granted.'" *Id*. (quoting *Anderson*, 477 U.S. at 249-50). There is no dispute of material fact precluding the entry of summary judgment for Williams & Connolly. Plaintiff's allegations and conclusory statements lack any supporting evidence, and none of what she complains about constitutes an adverse employment action. No reasonable jury could find for Plaintiff on any of her claims, and thus summary judgment is warranted.

## ARGUMENT

### I. PLAINTIFF CANNOT ESTABLISH A *PRIMA FACIE* CASE OF RACE DISCRIMINATION

Plaintiff has presented no evidence to support her claims that Williams & Connolly paid her less or assigned her to work for "difficult" attorneys because she is African-American.[2] She

[2] As the Court is well aware, in a disparate treatment discrimination case like this one, the charging party must show that a similarly situated employee not in a protected class was treated more favorably than the charging party. *See Reeves v. Sanderson Plumbing Prods., Inc*., 530

admits that her claims are based solely on rumors and unsupported beliefs – neither of which is sufficient to establish a *prima facie* case of race discrimination under either Title VII or Section 1981.[3] *See Ransom*, 514 F. Supp. 2d at 24.

### A. Plaintiff's Salary Was Higher Than That of the Secretary About Whom She Complains

Plaintiff admits that a demonstrably false rumor is the only evidence she has to support her claim that she was paid less than a Caucasian secretary at Williams & Connolly. *See* Statement of Material Undisputed Facts ("SOF") ¶ 11. Although she cannot remember who told her, and although she cannot remember any specifics of the conversation, she bases her pay discrimination claim on the fact that someone told her that [redacted], who is Caucasian, had been hired by Williams & Connolly in 2000 at a salary of $50,000 even though she had no legal experience. *See* SOF ¶ 11. After hearing this rumor, Plaintiff surmised that [redacted] must be making more money than she was in 2006, and Plaintiff believed this was unfair because she had more legal experience than [redacted]. *See* SOF ¶ 11.

The undisputed facts are that the rumor was false. In 2006, Plaintiff *made more money* than [redacted], even after [redacted] had accumulated five years of experience with the Firm. *See* SOF ¶ 12. In addition, Plaintiff was hired by Williams & Connolly at a *substantially*

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U.S. 133, 142 (2000); *Morgan v. Fed. Home Loan Mortgage Corp.*, 328 F.3d 647, 650-51 (D.C. Cir. 2003). The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment decision. If the employer meets its burden, the charging party must proffer sufficient evidence to meet her "ultimate burden of persuading the trier of fact that the defendant intentionally discriminated" against her. *Reeves*, 530 U.S. at 142-43 (citations omitted).

[3] "The D.C. Circuit has held that the standards and order of proof in Section 1981 cases are identical to those governing Title VII disparate-treatment cases." *Carter v. George Washington Univ.*, 180 F. Supp. 2d 97, 103 (D.D.C. 2001) (citing *Berger v. Iron Workers Reinforced Rodmen Local*, 843 F.2d 1395, 1412 n.7 (D.C. Cir. 1998)), *aff'd*, 387 F.3d 872 (D.C. Cir. 2004).

*higher salary* than [redacted], whose hiring salary, contrary to the rumor, was actually $[redacted].[4] *See* SOF ¶ 12.

Williams & Connolly uses objective and job-related criteria to determine secretarial salaries, including years of experience, tenure, performance and the market for legal secretaries in Washington, D.C. *See* SOF ¶ 14. Plaintiff has presented no evidence to the contrary. In fact, a straightforward mean analysis of the salaries of African-American secretaries and Caucasian secretaries during the relevant time period (2005-2007) demonstrates that in each of these years, on average, African-American secretaries at Williams & Connolly earned more than non-African-American secretaries. Schuler Dec. ¶ 16. Plaintiff's pay claim cannot survive based on this unrefuted evidence. *Halcomb v. Office of the Senate Sergeant-at-Arms of the U.S. Senate*, 563 F. Supp. 2d 228, 240 (D.D.C. 2008) (explaining that in order to establish a *prima facie* case of discrimination based on pay, a plaintiff must first establish that a pay disparity exists).

### B. There is No Evidence That Williams & Connolly Assigned Plaintiff to Work With "Difficult" Attorneys

Plaintiff's disparate treatment claim that she was assigned to "difficult" attorneys because she is African-American fails at every level. As an initial matter, it is undisputed that open assignments are posted at Williams & Connolly, and secretaries apply for assignments with attorneys for whom they want to work. *See* SOF ¶ 4. If a secretary is dissatisfied with an

[4] Plaintiff claimed in her deposition that [redacted]'s starting salary was also more than that of another African American secretary, [redacted], who Plaintiff claims should have made more money because she was "obviously more qualified." Gaskins Dep. Tr. at 165:17-22. Plaintiff claims that she was concerned about a "pattern that could be developing." Gaskins Dep. Tr. at 166:13-15. Alhough Plaintiff is of the opinion that [redacted] was "obviously more qualified" than [redacted], in fact, [redacted] came to Williams & Connolly directly out of college, Gaskins Dep. 165:17-22; 166:1-18; Scott Dec. ¶ 44, and the only work experience she had prior to joining Williams & Connolly was on-campus student employment and a part-time waitressing position. Scott Dec. ¶ 44. [redacted]'s starting salary was $[redacted]. Scott Dec. ¶ 44.

assignment, she can request reassignment, and the Firm will attempt to accommodate the request. *See* SOF ¶ 4. Plaintiff has admitted that she applied for positions with each of the attorneys for whom she worked, except for perhaps Ms. Duval, but that assignment was made in order to accommodate her request to move away from Ms. Jobes. *See* SOF ¶¶ 6, 7. She also admitted that all four of her requests for re-assignment were granted. *See* SOF ¶ 5.

Further, even if Plaintiff had been involuntarily assigned to work for the so-called "difficult" attorneys,[5] such assignments do not amount to adverse employment actions. *See Halcomb*, 563 F. Supp. 2d at 240 (explaining that "a claim of an undesirable assignment, without any effect on salary, benefits, or grade, is similar to claims regarding lateral transfers, and thus does not constitute an adverse action."); *Nichols v. Truscott*, 424 F. Supp. 2d 124, 136 (D.D.C. 2006) (explaining that adverse employment actions do not include "purely subjective injuries such as dissatisfaction with reassignment, public humiliation, or loss of reputation." (internal quotation marks and citations omitted); *see also Brown v. Brody*, 199 F.3d 446, 457 (D.C. Cir. 1999) ("Mere idiosyncrasies of personal preference are not sufficient to state an injury.").

Moreover, even if a fact finder were to accept Plaintiff's own opinion of which attorneys are "difficult" to work with, and even if assignment to a "difficult" attorney could somehow be considered an adverse employment action, which it cannot, Plaintiff cannot show that any similarly situated employee who is not in a protected class was treated more favorably. *See*

[5] Plaintiff testified in her deposition that she cannot name all of the so-called "difficult" attorneys who work at Williams & Connolly, but she does believe that all of the attorneys with whom she worked at the Firm happened to be the "difficult" ones. Gaskins Dep. Tr. at 109:14-110:2; 113:3-8. Despite her beliefs, she has never explained her definition of the term "difficult," but she has admitted that "difficult" does not mean the attorney exhibits racial bias. For example, she claims that one of the attorneys for whom she worked, [redacted], was known to be "difficult" because she was told that "when she did not like you or if you got on her bad side she made your life very difficult." Gaskins Dep. Tr. at 199:17-20. However, she explained that [redacted]'s "difficult" nature was not based on race because [redacted] could make life difficult for both African-American and Caucasian secretaries. Gaskins Dep. Tr. at 200:1-3.

*Willingham v. Gonzales*, 391 F. Supp. 2d 52, 59 (D.D.C. 2005) (granting summary judgment because plaintiff failed to show that any similarly situated employee received more favorable treatment). Here, the undisputed evidence demonstrates that Caucasian secretaries worked for the so-called "difficult" attorneys far more than African-American secretaries did. *See* Scott Dec. ¶¶ 7, 8, 22; Gaskins Dep. Tr. at 102:8-105:5; 282:4-18. In sum, Plaintiff has put forth no evidence to support her claim of disparate treatment in attorney assignments.

## II. PLAINTIFF CANNOT MAKE OUT A HOSTILE WORK ENVIRONMENT CLAIM

Plaintiff claims that on one occasion during her tenure, she thought she overheard someone say something that sounded to her like a racial slur.[6] *See* SOF ¶ 26. She complained to the Firm under its Anti-Harassment Policy and the matter was immediately and thoroughly investigated by the Firm's Harassment Complaint Committee. *See* SOF ¶¶ 28, 29. All three witnesses involved in the matter refuted Plaintiff's allegations. *See* SOF ¶¶ 30, 31. However, out of an abundance of caution, the Firm counseled the individuals Plaintiff complained about to avoid conversations that could be misinterpreted. *See* SOF ¶ 32. The Firm's response was nothing short of exemplary.

Even if one assumes that the conversation Plaintiff overheard occurred exactly as she claims, well-settled case law requiring "severe and pervasive" comments or conduct bars Plaintiff's claim for a racially hostile work environment. The Supreme Court has held that for harassment to be actionable, the workplace must be "permeated with discriminatory intimidation, ridicule, and insult" and this behavior must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v.*

[6] Though Plaintiff has not set out a separate hostile work environment count in her Amended Complaint, she does allege that she was "force[sic] to work in a hostile work environment." *See* Compl. ¶ 25.

*Forklift Sys.*, 510 U.S. 17, 21 (1993) (internal quotations omitted). A single and isolated comment, like the comment alleged by Plaintiff here, falls far short of this legal standard. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 768 (1998) (citing *Johnson v. Bunny Bread Co.*, 646 F.2d 1250, 1257 (8th Cir. 1981) (no violation of Title VII from infrequent use of racial slurs)); *Bundy v. Jackson*, 641 F.2d 934, 943 n.9 (D.C. Cir. 1981) ("isolated manifestations of a discriminatory environment, such as a few ethnic or racial slurs do not raise a [Title VII] cause of action.").[7] Further, the isolated comment Plaintiff relies upon was something she overheard, not a comment that was directed at her. *See Kelley v. Billington*, 370 F. Supp. 2d 151, 159 (D.D.C. 2005) ("[w]hen the alleged harassment is directed at others it is considered less hostile"; granting employer's motion for summary judgment on plaintiff's hostile work environment claims because only one of six incidents was directed specifically at plaintiff).

The undisputed facts demonstrate that Williams & Connolly immediately investigated Plaintiff's complaint to the Harassment Committee regarding the alleged racial comment, and though the evidence demonstrated that no racial slur had been used and that the conversation was merely one discussing the pronunciation of a new associate's name, the Firm counseled the attorneys involved to avoid conversations that could be misinterpreted by others. *See* SOF ¶¶ 29, 32. Based on these facts, and Plaintiff's admissions that she was not subjected to any other derogatory comments regarding her race during her tenure at Williams & Connolly, *see* Gaskins Dep. Tr. at 141:2-6; 146:9-12; 399:9-400:2, Plaintiff's hostile work environment allegation

[7] *See also King v. Pierce Assocs*., 601 F. Supp. 2d 245, 248-49 (D.D.C. 2009) (granting defendant's motion to dismiss because even if the single instance of alleged harassment, in which a co-worker punched plaintiff in the face and called him the "n" word were true, the single instance would not be sufficient to state a claim for hostile work environment under Title VII); *Odeyale v. Aramark Mgmt. Servs. Ltd. P'ship*, 518 F. Supp. 2d 179, 184 (D.D.C. 2007) (dismissing plaintiff's claims of a hostile work environment because, although offensive, being called the "n" word and a "chicken" on one occasion was not sufficiently severe and pervasive to constitute a hostile work environment).

cannot stand. *See Kelley*, 370 F. Supp. 2d at 157 (explaining that incidents that were not "related to plaintiffs' protected status … therefore were not racial harassment.").

## III. WILLIAMS & CONNOLLY DID NOT RETALIATE AGAINST PLAINTIFF DURING HER EMPLOYMENT OR AFTER SHE RESIGNED

Plaintiff's retaliation allegations, though numerous, are as meritless as her allegations of discrimination and hostile work environment. Although she has no evidence other than her own unsubstantiated opinions, Plaintiff claims she was retaliated against based on: (1) an e-mail that her supervising attorneys sent to each other; (2) her failure to receive other positions in the Firm that she applied for; (3) her receipt of a raise that was one percent less than she expected; (4) her beliefs that after her resignation, the Firm required her to sign a release before it would supply information regarding her employment to third parties; and (5) the Firm not timely reimbursing her for parking. These claims fail as a matter of law.

To allege a claim of retaliation, Plaintiff must demonstrate that (1) she engaged in protected activity; (2) she suffered an adverse employment action; and (3) that there is a causal connection between the adverse action and the protected activity. *Taylor v. Small*, 350 F.3d 1286, 1292 (D.C. Cir. 2003). The Supreme Court has explained that "those (and only those) employer actions that would have been materially adverse to a reasonable employee or job applicant can constitute retaliation." *Burlington N. and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006). "[T]hat means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Id*. For those allegations that arguably could rise to the level of an adverse action, Plaintiff has the burden of persuasion to show that Williams & Connolly's legitimate non-retaliatory reasons for the actions are a pretext and that retaliation is the real reason. *See Montgomery v. Chao,* 546 F.3d 703, 706 (D.C. Cir. 2008); *Baloch v. Kempthorne*, 550 F.3d 1191, 1198-1201 (D.C. Cir.

2008) (affirming summary judgment on plaintiff's claim of retaliation when plaintiff offered no evidence even suggesting that employer's rationale was pretextual). Plaintiff has *no evidence* to support any claim that the Firm's actions were a pretext for retaliation.

### A. The E-mail Exchange Between Plaintiff's Paired Attorneys Did Not Constitute an Adverse Action

In an e-mail, Ms. Reyes, who did not know that Plaintiff had access to Ms. Duval's e-mails, told Ms. Duval that she was so angry about a mistake that Plaintiff had made that she was "through the roof." Ms. Duval responded "[d]o not make her quit," to which Ms. Reyes replied, "[y]ou would be ballistic if this happened to you." *See* SOF ¶ 19. It is undisputed that Ms. Reyes did not know that Plaintiff could read Ms. Duval's e-mails. For that reason alone, Ms. Reyes' e-mail cannot be retaliation. *See* SOF ¶ 19.

Also, while Plaintiff may have been upset when she read the e-mail exchange, such an e-mail exchange does not meet the legal standard for an adverse action. For example, in *Baloch v. Kempthorne*, the Court explained that even "profanity-laden yelling" and "verbal altercations" by a supervisor are not adverse actions for purposes of retaliation claims. 550 F.3d at 1199. Here, the e-mail between Ms. Reyes and Ms. Duval did not involve profanity and was not even directed to Plaintiff. *See* SOF ¶ 21. It thus cannot constitute retaliation. *See also Recio v. Creighton Univ.*, 521 F.3d 934, 940-41 (8th Cir. 2008) (affirming summary judgment because non-actionable petty slights do not meet the significant harm standard to support a claim of retaliation); *Somoza v. Univ. of Denver*, 513 F.3d 1206, 1218 (10th Cir. 2008) ("[Plaintiffs] may have had to withstand colleagues that do not like them, are rude, and may be generally disagreeable people. However, [a] court's obligation is not to mandate that certain individuals

work on their interpersonal skills and cease engaging in inter-departmental personality conflicts.").[8]

### B. Plaintiff Was Not Promoted Because She Was Not the Most Qualified Candidate For the Positions She Desired

As set forth in Williams & Connolly's Statement of Undisputed Facts, Plaintiff applied for a number of positions with the Firm, all beginning after she requested not to work with Ms. Reyes and Ms. Duval. *See* SOF ¶¶ 44-48. She did not meet the minimum qualifications for one of these positions,[9] and she admitted in her deposition that in two instances, the individuals chosen for the jobs (Recruiting Manager and Contract Attorney Manager) were more qualified than she was. *See* SOF ¶¶ 46, 48. Nevertheless, she continues to claim that she was retaliated against when she was not selected for the remaining position (Human Resources Manager). Her only evidence in support of this claim is her opinion. *See Drumgold v. Howard University*, No. 1:99cv02255 (PLF), 2005 WL 975761, at *4 (D.D.C. Apr. 25, 2005) ("[C]onclusory, self-serving assertions that are uncorroborated by any other evidence" are insufficient to establish that defendant's proffered reasons for failing to promote plaintiff were a pretext for retaliation). She *believes* that she was "equally qualified if not more so" than the person hired for the position, Karen Gregory, and she *believes* that she was not hired for the position because she had made a

[8] Similarly, Plaintiff's claim that Ms. Duval told Plaintiff that she would not get past a motion to dismiss if she pursued her pay discrimination claim is not retaliation. *See Johnson v. Weld County*, 594 F.3d 1202, 1216-17 (10th Cir. 2010) (affirming summary judgment for employer; "merely suggesting on one occasion to an employee that she 'not get the lawyers involved' simply does not rise to the level of material adversity necessary to sustain a retaliation claim[.]") (citations omitted).

[9] The paralegal position she sought required a bachelor's degree, which Plaintiff did not have. *See* SOF ¶ 44.

complaint about her pay five months earlier, but she admits that she has no evidence other than her own opinion to support her allegation. *See* Gaskins Dep. Tr. at 279:3-12.[10]

Even a cursory comparison of Plaintiff's and Ms. Gregory's qualifications demonstrates that Plaintiff's qualifications were far less impressive. Ms. Gregory had served as the Firm's Employment Manager for two years, managing all aspects of recruiting and hiring for the Firm while supervising and assisting in the daily operations for Human Resources. *See* SOF ¶ 45. She also had significant human resources experience at a variety of other jobs in her 22-year career. *See* SOF ¶ 45. In contrast, Plaintiff had served as file clerk, then a secretary and later, for approximately two years, an office manager at a small law firm with a handful of attorneys. *See* SOF ¶ 45. That Williams & Connolly wanted a candidate who had more than this limited experience, given the size of the Firm (an approximate head count of 640 individuals) and the significant responsibilities of the Human Resources Manager position, is more than reasonable. *See Aka v. Washington Hosp. Ctr.*, 156 F.3d 1284, 1294 (D.C. Cir. 1998) (en banc) (fact finder may infer pretext only if "a reasonable employer would have found the plaintiff to be significantly better qualified for the job"); *Marshall v. District of Columbia Water and Sewer Auth.*, No. 01-01915, 2006 WL 2711537, at *3 (D.D.C. Sept. 21, 2006) (summary judgment is appropriate where employer's decision not to select plaintiff was not based on race but, rather, on its assessment that the other candidates were more qualified than plaintiff). Here, there is no basis for a court to engage in "judicial micromanagement of business practices" by second-

[10] Q: Assuming even your assumption that you were equally qualified, you don't have any basis to believe that race or your complaints about pay played any part in the decision that was made, do you?
A: Yes, I do. I think that that played a great part in it.
Q: But you don't have any evidence to support that other than your own belief, do you?
A: Other than my own belief, no.

guessing the Firm's decision to promote Ms. Gregory.[11] There is no evidence in the record that the Firm's stated non-retaliatory reasons for selecting other candidates are false, particularly because the factual basis for those reasons is uncontested. Plaintiff cannot adduce evidence that would permit a reasonable fact finder to believe that retaliation was the true reason for her failure to be selected.

### C. Plaintiff's 2007 Raise Was Based on Legitimate, Performance-Related Criteria

Plaintiff claims that Williams & Connolly "lowered" her raise in 2007 because she had engaged in protected activity. Gaskins Dep. Tr. at 136:10-11. This claim, however, is utterly devoid of factual support. First and foremost, Plaintiff has not established a causal connection between any protected activity and the decision regarding her 2007 raise, nor can she show that Williams & Connolly's legitimate reason for awarding her a slightly smaller raise in 2007 (4.5%) than in 2006 (5.06%) was a pretext for retaliation.

Plaintiff has admitted that she does not know how Williams & Connolly calculates annual raises. Gaskins Dep. Tr. at 160:4-10. Despite her own personal lack of understanding, it is undisputed that the Firm uses uniformly applied criteria to determine pay increases. *See* SOF ¶¶ 9, 10. A portion of the increase is determined based on the secretary's performance evaluation, and a smaller portion is based on the "extra service award," which is arrived at using a host of objective factors such as volunteering for standby shifts on weekends or weeknights,

[11] *See also Hamilton v. Howard Univ.*, 960 A.2d 308, 314 (D.C. 2008) ("[T]he emphasis is on the need for evidence: As courts are not free to second-guess an employer's business judgment, a plaintiff's mere speculations are insufficient to create a genuine issue of fact regarding [an employer's] articulated reasons for [its decisions]."; affirming summary judgment for employer on retaliation claims brought under the D.C. Human Rights Act) (internal quotation marks and citations omitted); *Skelton v. ACTION*, 668 F. Supp. 25, 26 (D.D.C. 1987) (granting employer's motion for summary judgment in age discrimination case; it is "not within the Court's province to second-guess an employer's" good faith business decisions), *aff'd*, No. 87-5353, 1988 WL 156306 (D.C. Cir. May 12, 1988), *cert. denied*, 489 U.S. 1052 (1989).

and working overtime. *See* SOF ¶ 10. Plaintiff received a smaller "extra service award" for her work in 2006, and thus her 2007 raise was smaller by one half of one percent. *See* SOF ¶ 39.

In contrast with her efforts the prior year, in 2006 Plaintiff only worked 40.75 hours of overtime (as compared to75.25 in 2005), she volunteered for weekday evening standby approximately nine times (as compared to 21 times in 2005) and for weekend standby just one time (as compared to four times in 2005). *See* SOF ¶ 39. Ms. Gregory, Williams & Connolly's Human Resources Manager, computed the service award in early October 2006. *See* SOF ¶ 40. Plaintiff has presented no evidence to suggest that her 2007 raise amount was due to anything other than her diminished extra service factor in 2006. For this reason, she cannot demonstrate that Williams & Connolly's proffered reason for the 4.5% raise was a pretext for retaliation. *See Beckford v. Geithner*, 661 F. Supp. 2d 17, 25 (D.D.C. 2009) (explaining that "[t]he Court cannot second-guess an employer's personnel decision absent demonstrably discriminatory motive.") (internal quotation marks and citations omitted).

### D. Plaintiff Has No Evidence to Support Her Post-Resignation Retaliation Claims

Plaintiff claims that the Firm retaliated against her after she resigned by requiring her to sign a release before it would supply information relating to her employment and by delaying her parking reimbursement. As to her claim about a reference, Plaintiff has admitted that she has no evidence to suggest that the Firm treated her any differently than any other former employee. Gaskins Dep. Tr. at 380:8-19. With respect to her parking reimbursement, the record is clear that it was mailed to her *two business days* after she submitted the proper paperwork. *See* SOF ¶ 58. Plaintiff's claims of post-resignation retaliation are frivolous.

**1. The Firm Did Not Retaliate By Asking Plaintiff for a Release**

Plaintiff has absolutely no evidence that the Firm shared any information other than her dates of employment, position and salary to any potential employer, yet she believes she was retaliated against because the Firm asked for a release before it supplied information regarding her employment to third parties.[12] It is undisputed, however, that the Firm requires all former employees to sign a release before the Firm supplies information to prospective employers or other third parties. *See* SOF ¶ 51. The Firm will confirm this information without a release, but it will not supply it unless it obtains employee permission. *See* SOF ¶ 51. This practice is more than reasonable, and certainly not retaliatory.

When the Firm asked Plaintiff to sign the release, it was treating her as it treated all other legal secretaries. *See Preda v. Nissho Iwai Am. Corp.,* 128 F.3d 789, 792 (2d Cir. 1997) (finding no retaliation where all employees including plaintiff were asked to sign a confidentiality agreement and holding that because plaintiff could not establish he was treated differently than similarly situated employees, his retaliation claim with respect to the confidentiality agreement fails as a matter of law). Plaintiff's belief to the contrary is wholly unsupported and cannot form the basis of a legitimate retaliation claim.

[12] She also speculates that Williams & Connolly did not comply with its policy relating to references. She claims that "someone" at the Firm told a potential employer why she left the Firm, yet she has no evidence to support this belief and she concedes that she was hired by a firm for which Ms. Schuler provided the reference. Gaskins Dep. Tr. at 96:9-18. A non-moving party "cannot rely on mere speculation or compilation of inferences to defeat a motion for summary judgment." *Robinson-Reeder v. Am. Council on Educ.*, 674 F. Supp. 2d 49, 52, 55 (D.D.C. 2009). Like Plaintiff, the plaintiff in *Robinson-Reeder* contended that her former employer provided "negative and defamatory job references to potential employers" because she went on several job interviews but remained unemployed. *Id.* at 61. The court granted summary judgment, concluding there was no evidence in the record corroborating the allegations and the allegations were nothing more than speculation. *Id.* at 60-62. The same result is warranted here, particularly since Plaintiff in fact did obtain a job with Williams & Connolly's reference.

### 2. Plaintiff Was Promptly Reimbursed for Her Parking Expenses

The correspondence between Plaintiff and the Firm relating to her parking reimbursement is lengthy, but the facts unequivocally demonstrate that Plaintiff herself, not Williams & Connolly, is responsible for any delay in the reimbursement of her parking expenses. *See* SOF ¶¶ 54-58. Although she claims in her Amended Complaint that "it took the firm nearly 3 months to return [her] money," Compl. ¶ 28, it is undisputed – in fact Plaintiff *admits* – that the Firm promptly reimbursed her once it received the appropriate documentation. *See* Gaskins Dep. Tr. at 406:15-18 (Q: "And you did receive the reimbursement at that point once the form was submitted, right?" A: "Yes.").

Plaintiff lost her receipt for parking and then, although it was provided to her immediately, she failed to return the appropriate form (which employees can use if they lose or misplace their receipts) to receive payment. *See* SOF ¶¶ 54, 55. It is undisputed that two business days after Plaintiff submitted the required documentation, Williams & Connolly's benefits manager mailed Plaintiff the reimbursement check via certified mail. *See* SOF ¶ 58.

Furthermore, even if the delay in reimbursement for one month of parking expenses (amounting to a total of $171.08) could be attributed to Williams & Connolly, which it cannot, such a delay is not something on which a retaliation claim can be based. *See Burton v. Batista*, 339 F. Supp. 2d 97, 113 (D.D.C. 2004) (delay in processing pay increase, which was corrected, does not amount to an adverse action for purposes of a retaliation claim). This retaliation claim is silly, at best.

## IV. PLAINTIFF WAS NOT CONSTRUCTIVELY DISCHARGED

Although Plaintiff claims she cannot remember details of her last two months of work at Williams & Connolly, and although she resigned from her employment after being absent for all but a few days of her last month and a half with the Firm, she seeks to hold the Firm liable for

her decision to resign. Gaskins Dep. Tr. at 399:9-400:2.[13] She has not, however, alleged any actions by the Firm that meet the standard for constructive discharge.

To establish constructive discharge, Plaintiff needs to prove both intentional discrimination and that the Firm tolerated or created such onerous and discriminatory working conditions that a reasonable person would be driven to resign. *See Katradis v. Dav-El of Washington, D.C.*, 846 F.2d 1482, 1485 (D.C. Cir. 1988) (plaintiff "must show, not only discrimination, but also that 'the employer deliberately [made] working conditions intolerable and [drove] the employee into an involuntary quit'") (citation omitted); *Sisay v. Greyhound Lines, Inc.*, 34 F. Supp. 2d 59, 65-66 (D.D.C. 1998) (denial of promotions and ultimate demotion, beratings from supervisor, and unfavorable work assignments did not establish constructive discharge); *Lake v. Baker*, 662 F. Supp. 392, 404 (D.D.C. 1987) (noting that to establish constructive discharge, a plaintiff must show that her employer deliberately made her working conditions "so intolerable that a reasonable person in her situation would have concluded she was forced to resign. Under this 'reasonable person' test it is not enough that [a plaintiff] actually and subjectively viewed her working conditions as intolerable; her situation must be measured by more objective standards.") (citations omitted). Plaintiff has pointed to no evidence of conditions that a reasonable person would find intolerable. Although she suggested in her deposition that the Firm's request that she complete FMLA leave papers after her failure to

[13] Q: But in January of '07 there was no incident or anything that happened that made work difficult or intolerable during those four full days and three partial days that you were there, was there?
…
A: Again, I cannot remember exactly what my duties were on those days, other than closing out files. I think that's what I was doing at that point.
Q: Okay. So you're agreeing with me, nothing noteworthy about those days?
…
A: Nothing I can remember, no.

come to work for almost six weeks also forced her to resign, *see* Gaskins Dep. Tr. at 317:1-5, this allegation is also wholly insufficient to meet the intolerableness standard. An employer's request for an employee to complete paperwork is not an adverse action, and it is certainly not an aggravating factor justifying a conclusion that the employee has no option but to resign. *See, e.g., Hussain v. Principi*, 344 F. Supp. 2d 86, 104-107, & 104 n.25 (D.D.C. 2004) (plaintiff was not retaliated against when he was asked to provide additional medical leave paperwork, nor was he compelled to resign), *aff'd sub nom. Hussain v. Nicholson*, 435 F.3d 359 (D.C. Cir. 2006); *Baloch v. Kempthorne*, 550 F.3d at 1198 (in the context of a retaliation claim, no adverse action when employer required that a physician certify the problem and date of treatment each time employee submitted a medical leave request).

Plaintiff chose to resign, a choice that she was certainly entitled to make. But it was, ultimately, her *choice*, and not a basis for a constructive discharge claim.

## V. CONCLUSION

Plaintiff was not discriminated against in pay, as she made just as much as if not more than Caucasian secretaries of similar experience, as do the other African-American secretaries at Williams & Connolly; she was not discriminated against in her assignments, as she requested her attorney pairings and was always granted reassignment when she asked for it; she was not discriminated against or retaliated against in promotions, as even she admits that the successful applicants for the positions were more qualified except in one case, where the undisputed evidence is that the Human Resources manager applicant who received the job clearly was more experienced and qualified. The fact that Plaintiff misconstrued a stray comment did not create a hostile work environment as a matter of law. Nor did the Firm retaliate against Plaintiff in any way: reading an e-mail not intended for you that the sender does not know you can access is not retaliation; and receiving better than average raises two years in a row based on objective

criteria, with the later raise being half of one percent lower than the former, is also not retaliation. The fact that Plaintiff filed a complaint alleging that the Firm's adherence to its neutral reference policy and parking reimbursement procedures were retaliatory acts is just further confirmation that she sees every act, however innocent or minor, as a perceived slight and has no understanding of the law.

As detailed above, there are no genuine issues of material fact for trial. No jury could return a verdict for Plaintiff on this record and therefore Williams & Connolly respectfully requests that this Court grant summary judgment on Plaintiff's claims as a matter of law.

Respectfully submitted,

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Dated: June 25, 2010

**REDACTED - ECF VERSION**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 2010, I electronically filed a REDACTED version of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties registered with the CM/ECF system, and served via U.S. Mail, first-class, postage-prepaid, the CONFIDENTIAL-FILED UNDER SEAL version of the foregoing document, exhibits and declarations in support to:

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