

part, again dismissing Mullenix's Title VII retaliation claim with prejudice, but finding that under Rule 12(h)(2) of the Federal Rules of Civil Procedure, the University was precluded from seeking dismissal of Mullenix's Equal Pay Act retaliation claim under Rule 12(b)(6) because the University had not sought dismissal of that claim in its first motion to dismiss. In response, the University filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, reasserting its arguments that Mullenix's Equal Pay Act retaliation claim warrants dismissal.

II. STANDARD OF REVIEW

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c) (“Rule 12(c)”). “A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6).” *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008). “[T]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.” *Hughes v. Tobacco Inst., Inc.*, 278 F.2d 417, 420 (5th Cir. 2001). “In analyzing the complaint, [the court] will accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999). Viewing the facts in that light and as pleaded, a motion for judgment on the pleadings should not be granted if the complaint provides “enough facts to state a claim to relief that is plausible on its face.” *Jebaco, Inc. v. Harrah's Operating Co.*, 587 F.3d 314, 318 (5th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, the court will not “accept as true conclusory allegations or unwarranted deductions of fact.” *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

III. ANALYSIS

To state a claim for retaliation under the Equal Pay Act, Mullenix must sufficiently allege facts demonstrating: (1) that she engaged in protected activity; (2) that she suffered an adverse employment action; and (3) that there was a causal connection between her participation in the protected activity and the adverse employment action. *See Wiley v. Am. Elec. Power Serv. Corp.*, 287 F. App'x 335, 339 (5th Cir. 2008). The required elements of a retaliation claim under the Equal Pay Act are the same as a retaliation claim under Title VII. *Thibodeaux-Woody v. Houston Cmty. Coll.*, 593 F. App'x 280, 285 (5th Cir. 2014).

The University asserts that Mullenix has failed to plead sufficient facts to create a plausible inference of retaliation under the Equal Pay Act. The court agrees. In its previous orders dismissing Mullenix's Title VII retaliation claim, the court ruled that Plaintiff's amended complaint does not support the plausible inference of a causal connection between Mullenix's participation in the protected activity and the alleged adverse employment actions. "Close timing between an employee's protected activity and an adverse action against [her] may provide the 'causal connection' required." *Swanson v. Gen. Servs. Admin.*, 110 F.3d 1180, 1188 (5th Cir. 1997) (quoting *Armstrong v. City of Dallas*, 997 F.2d 62, 67 (5th Cir. 1993)). Based on Mullenix's amended complaint, the timing is not close enough to permit a plausible inference that Mullenix's low compensation was causally connected to her previous reporting of equal-pay violations at the law school.

A plaintiff may also show causation by relying on "a chronology of events from which retaliation may plausibly be inferred." *Brady v. Hous. ISD*, 113 F.3d 1419, 1424 (5th Cir. 1997) (quoting *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995)). As the court previously held when

dismissing Mullenix's Title VII retaliation claim, Mullenix's pleading alleges a list of retaliatory acts without any connective facts to assert a plausible causal connection. As a result, Mullenix's Equal Pay Act retaliation claim does not allege sufficient facts to demonstrate a causal connection between her participation in the protected activity and the alleged adverse employment action.

Mullenix asserts that the University possessing knowledge of the protected activity is sufficient to establish causation and survive dismissal at this stage. The court disagrees. As the University points out in its reply, knowledge of the protected activity is required to survive dismissal, but it is not by itself sufficient to establish the causal element of a retaliation claim. *See, e.g., Sherrod v. American Airlines, Inc.*, 132 F.3d 1112, 1122 (5th Cir. 1998). To survive dismissal, Mullenix must plead facts that plausibly demonstrate the University's knowledge of her participation in the protected activity and plausibly support the University's alleged employment action as being at least partly based on this knowledge. As the court held when dismissing Mullenix's Title VII discrimination claim, the facts plead in the amended complaint still fail to "bridge [the] gap" between Mullenix's protected activities and the alleged adverse employment actions. The court will grant the University's motion for judgment on the pleadings and dismiss Mullenix's retaliation claim under the Equal Pay Act.¹

¹ Mullenix also argues that the University's Rule 12(c) motion is an abuse of process and should be denied because substantial discovery has already occurred. In the alternative, Mullenix asserts that the court should convert the University's motion for judgment on the pleadings to a motion for summary judgment given that discovery has commenced and is ongoing. The court disagrees. Since a Rule 12(c) motion is subject to the same standard as a motion to dismiss under Rule 12(b)(6), "the inquiry focuses on the allegations in the pleadings and not on whether the plaintiff actually has sufficient evidence to succeed on the merits." *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 209 (5th Cir. 2009) (citing *Ferrer v. Chevron Corp.*, 484 F.3d 776, 782 (5th Cir. 2007)) (internal quotations omitted). The court does have the discretion to treat a Rule 12(c) motion as one for summary judgment by considering matters outside of the pleadings. FED. R. CIV. P. 12(d). Based on the procedural history, the court's prior rulings, and applicable law, however, the court

IV. CONCLUSION

IT IS THEREFORE ORDERED that Defendant's Motion for Judgment on the Pleadings filed April 14, 2021 (Doc. #68) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff Linda Susan Mullenix's retaliation claim under the Equal Pay Act is **DISMISSED WITH PREJUDICE**.

Plaintiff Linda Susan Mullenix's Equal Pay Act and Title VII sex discrimination claims remain pending before the court.

SIGNED this 7th day of June, 2021



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

will deny Mullenix's request to convert the University's Rule 12(c) motion to a motion for summary judgment and limit review of the motion to the pleadings.