IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RON TSUR, Plaintiff, v. **INTEL CORPORATION**, Defendant.	Case No. 3:21-cv-655-SI **OPINION AND ORDER**

Shanti S. Lewallen and Lee C. Dudley, LEWALLEN LAW LLC, 65 SW Yamhill Street, Suite 300, Portland, OR 97204; and Andrew J. Horowitz and Bruce C. Fox, OBERMAYER REBMANN MAXWELL & HIPPEL LLP, 525 William Penn Place, Suite 1710, Pittsburgh, PA 15219. Of Attorneys for Plaintiff Ron Tsur.

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Michael H. Simon, District Judge.

Plaintiff Ron Tsur (Tsur) brings this lawsuit against his former employer Defendant Intel Corporation (Intel). In his Amended Complaint, Tsur alleges that Intel violated federal and state laws by: (1) discriminating against Tsur because of his age (Claim One); (2) adopting a facially neutral policy that had a disparate impact on older employees (Claim Two); (3) retaliating against Tsur for reporting and/or opposing age discrimination (Claim Three); and

(4) discriminating against Tsur because of his Israeli national origin (Claim Four). Intel moves for summary judgment on all claims. ECF 61. The Court grants in part and denies in part Intel's motion for summary judgment. For the reasons given below, Tsur may proceed to trial on his first, third, and fourth claims. The Court grants summary judgment in favor of Intel against Tsur's second claim.

STANDARDS

A. Motion for Summary Judgment

A party is entitled to summary judgment if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of establishing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in the non-movant's favor. *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001). Although "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment," the "mere existence of a scintilla of evidence in support of the plaintiff's position [is] insufficient . . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 255 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation and quotation marks omitted).

B. Cat's Paw Doctrine

Under the "cat's paw" theory of liability, the discriminatory animus of a supervisor is imputed to the employer if the supervisor committed an act with discriminatory intent, intended for that act to cause an adverse employment action, and that act is a proximate cause of the

ultimate adverse employment action. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 422 (2011) ("We therefore hold that if a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under [the Uniformed Services Employment and Reemployment Rights Act]." (emphasis in original) (footnotes omitted)); *Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir. 2007) (considering the contours of cat's paw liability and holding that "if a subordinate, in response to a plaintiff's protected activity, sets in motion a proceeding by an independent decisionmaker that leads to an adverse employment action, the subordinate's bias is imputed to the employer if the plaintiff can prove that the allegedly independent adverse employment decision was not actually independent because the biased subordinate influenced or was involved in the decision or decisionmaking process"); *see also Qamhiyah v. Iowa State Univ. of Sci. & Tech.*, 566 F.3d 733, 742 (8th Cir. 2009) ("'[C]at's paw' refers to a situation in which a biased subordinate, who lacks decision-making power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." (quoting *EEOC v. BCI Coca-Cola Bottling Co. of L.A.*, 450 F.3d 476, 484 (10th Cir. 2006)). In addition, Oregon has applied federal precedent on the cat's paw doctrine to its state antidiscrimination and antiretaliation provisions. *Ossanna v. Nike, Inc.*, 365 Or. 196, 209-10 (2019) (holding that "in Oregon statutory employment discrimination and retaliation cases, a plaintiff may assert the 'cat's paw' theory" to impute bias from a supervisor without decisionmaking authority to the ultimate decisionmaker) (citing *Poland*, 494 F.3d at 1182-83).

BACKGROUND

Tsur began working with Intel as a consultant starting in 1984. ECF 69 at 123. In 2011, after about 27 years of contract work with Intel, Tsur joined Intel as a full-time employee. *Id.* As

a full-time employee, Tsur's first supervisor at Intel was Bruce Jones (Jones). Tsur states that during his first one-on-one meeting with Jones, as well as during other meetings later, Jones made derogatory comments about Tsur's age and national origin. For example, Tsur contends that Jones told Tsur: "If you think age is an advantage in this job you are mistaken," *id.* at 105 (Tsur Dep. 225:1-6), "You Israelis have too narrow a view of the world," ECF 81-1 at 14 (Tsur Dep. 232:6-22), and "[Y]ou Israelis speak too directly with coworkers, that is not a good way to conduct business at Intel." *Id.* at 17 (Tsur Dep. 235:2-16).

Tsur requested several times to be transferred away from Jones, all without success. ECF 69 at 107 (Tsur Dep. 254:14-21). Tsur then sent a letter on April 11, 2012, to Aicha Evans (Evans), who was the vice president of the department. ECF 69 at 123-25. Tsur described his background and experience and noted in his letter that he was 59 years old at the time of Jones's comments. *Id.* Tsur highlighted that Jones had stated that he had "never managed anyone who is 10 years older than me" and told Tsur that he "didn't match the profile of [Jones's] team." *Id.* at 124. Tsur noted that Jones had given Tsur a "Satisfactory" performance review (also called a "Focal") for his work throughout 2011, but in Tsur's letter to Evans, Tsur took issue with several of Jones's qualitative comments about Tsur's behavior. *Id.* For example, Jones wrote in the evaluation that Tsur engaged in "building Silos" and "Tom Sawyerism." *Id.* at 125. Tsur explained to Evans that these comments were "ludicrous" and "bad spirited." *Id.*

Jones had also given Tsur a "Stock Share Level" award of 3 (SSL3). ECF 69 at 110-12 (performance review), 116-17 (stock letter and pay letter).[1] Intel has a "Restricted Stock Unit"

[1] Contemporaneous documents indicate that Tsur received his performance evaluation on April 9, 2012. *See* ECF 69 at 124 (letter from Tsur dated April 11, 2012, referring to the evaluation as having been received "This Monday," two days earlier). The parties both use the date of April 9, 2012 when referring to Jones's evaluation of Tsur's performance in 2011. Jones delivered this evaluation to Tsur in April 2012. ECF 64 at 3 (Jones Decl. ¶ 10). Tsur's stock and

(RSU) policy that awards eligible employees with time-vesting stock options as a form of bonus compensation. ECF 65 at 4 (Sanchez Decl. ¶ 9). [2] Supervisors can award employees with stock options on a sliding scale, from "Stock Share Level 1" (SSL1), which offers the most stock options, to "Stock Share Level 5" (SSL5), which provides no stock options. *Id.* (Sanchez Decl. ¶ 11). These stock options vest five years after issuance. ECF 69 at 160 (Begis Aff. 1).[3] Supervisors were encouraged to assign SSL5 awards to five percent of the employees they supervised. *Id.* at 156 (Rees Aff. 4).

In a 2012 email, Tsur stated that he expected his letter to Evans would be kept confidential and hoped that Tsur could resolve his situation with Jones through mediation. *Id.* at 127. Tsur's letter, however, was forwarded to Intel's Human Resources department and given to Deanna Thronson (Thronson), who began an investigation into Tsur's concerns. *Id.* at 99-100 (Thronson 30(b)(6) Dep. 49:12-50:11); *see also* ECF 63 at 2 (Thronson Decl. ¶ 3). Thronson first spoke with Tsur in spring 2012. ECF 63 at 3 (Thronson Decl. ¶ 4).

The parties present differing versions of what was said during Thronson and Tsur's first conversation. Thronson states in her declaration that she asked Tsur about his recitation of Jones's age-related comments about not managing anyone ten years older than himself and Tsur

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pay letters for his 2011 performance, however, are dated March 18, 2012, and indicate that Tsur's pay change became effective on April 1, 2012. ECF 69 at 116-17.

[2] David Sanchez (Sanchez) is an Intel employee who held various Human Resources-related positions and based on this work experience, submitted an affidavit describing Intel's Code of Conduct, Employment Guidelines, compensation, and other internal policies in support of Intel's motion for summary judgment. ECF 65 at 2 (Sanchez Decl. ¶¶ 2-3, 9-11).

[3] Glenn Begis (Begis) was a manager at Intel who submitted an affidavit in support of Tsur's claims against Intel. Begis was also deposed in this action. According to Begis's testimony in deposition, Begis did not work directly with Tsur at Intel. ECF 71-1 at 9-10 (Begis Dep. 109:4-110:3).

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