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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGELA ALLEN,

No. C 10-04492 WHA

Plaintiff,

v.

**ORDER DENYING  
DEFENDANT'S MOTION  
FOR ATTORNEY'S FEES**

DOLLAR TREE STORES, INC., aka,  
DOLLAR TREE STORES, DOES 1 to 10,

Defendant.

**INTRODUCTION**

In this sexual harassment and wrongful termination action, defendant brings the present motion for attorney's fees in the amount of \$18,256. Because the underlying action was not unreasonable, frivolous, meritless or vexatious, the motion for attorney's fees is **DENIED**.

**STATEMENT**

Plaintiff Angela Allen worked for Defendant Dollar Tree Stores, Inc., from May 2006 to September 2009. Plaintiff alleges that she had a sexual relationship with Jamie Wells, a district store manager, from July 2007 to August 2008. After this relationship ended, plaintiff was transferred from the Oakland store to the El Cerrito store. Plaintiff alleges that Mary Flagner, the manager of the El Cerrito store who also had a sexual relationship with Wells, made several false accusations against plaintiff. In June 2009, plaintiff was transferred back to the Oakland store. Plaintiff alleges that in July 2009, Wells and the district manager falsely accused her of threatening two other employees with a knife. On September 8, 2009, plaintiff was allegedly

1 wrongfully terminated because of a discrepancy between the amount of money in the cash register  
2 and the amount on the register tape, despite timely reporting this discrepancy.

3 Plaintiff filed an administrative complaint with the California Department of Fair  
4 Employment and Housing on June 21, 2010. Plaintiff subsequently filed suit in state court on  
5 July 28, 2010. Plaintiff asserted six causes action: (1) violation of California Government Code  
6 Sections 12920, 12921, and 12940; (2) harassment violation of California Government Code  
7 Section 12940; (3) retaliation for prior sexual harassment complaint; (4) breach of implied in fact  
8 contract; (5) breach of implied covenant of good faith and fair dealing; and (6) wrongful  
9 termination. On November 5, defendant removed the action. After removal, defendant responded  
10 to the complaint by filing a motion to dismiss. The motion was granted on December 8. Plaintiff  
11 was granted leave to and subsequently did file a motion for leave to file an amended complaint.  
12 That motion was denied and the action was dismissed on January 20. Defendant now seeks to  
13 recover attorney's fees incurred to defend this action.

#### 14 ANALYSIS

15 Federal Rule of Civil Procedure 54(d) provides that a prevailing party is entitled to  
16 attorney's fees when authorized by statute, rule, or other grounds. Under the Fair Employment  
17 and Housing Act, "[a] court, in its discretion, may award to the prevailing party reasonable  
18 attorney's fees and costs, including expert witness fees, except where the action is filed by a  
19 public agency or a public official, acting in an official capacity." CAL. GOV. CODE § 12965(b).  
20 Attorney's fees may be awarded to a prevailing defendant "only where the action brought is found  
21 to be unreasonable, frivolous, meritless or vexatious." *Christiansburg Garment Co. v. Equal*  
22 *Emp't Opportunity Comm'n*, 434 U.S. 412, 421 (1978) (citation omitted). "[T]he term 'meritless'  
23 is to be understood as meaning groundless or without foundation, rather than simply that the  
24 plaintiff has ultimately lost his case." *Jersey v. John Muir Med. Ctr.*, 97 Cal. App. 4th 814, 831  
25 (2002) (citation omitted).

26 Defendant argues that each of the FEHA claims plaintiff asserted against defendant was  
27 frivolous, unreasonable, or groundless. *First*, defendant argues that plaintiff's sexual harassment  
28 claim was groundless because it was founded upon plaintiff's consensual sexual relationship with

1 Wells, which cannot support a sexual harassment claim. Although it is true that plaintiff failed to  
2 allege that the relationship between her and Wells was not consensual, she did allege that Wells  
3 subsequently took adverse action toward her based on their former sexual relationship. For  
4 example, she alleged that Wells and the district manager falsely accused her of threatening two  
5 other employees with a knife. Furthermore, she alleged that she was wrongly fired — allegedly at  
6 the advice of Wells, human resources, and loss prevention — because of a discrepancy between  
7 the amount of money in the cash register and the amount on the register tape, despite timely  
8 reporting this discrepancy. Although plaintiff did not properly state a claim for sexual  
9 harassment, her allegation was not so groundless as to warrant attorney’s fees.

10 *Second*, defendant argues that plaintiff’s sexual harassment claim was groundless because  
11 her sexual relationship with Wells ended outside of the applicable one-year limitations period. It  
12 is true that according to Section 12960(d), “No complaint may be filed after the expiration of one  
13 year from the date upon which the alleged unlawful practice or refusal to cooperate occurred.”  
14 It is also true that the relationship between plaintiff and Wells ended in 2008, outside of this  
15 limitations period. Plaintiff, however, alleged that Wells took adverse action toward her within a  
16 year of filing either her administrative complaint on June 21, 2010, or her state court complaint on  
17 July 28, 2010. For one, plaintiff alleged that Wells and the district manager falsely accused her of  
18 threatening two other employees with a knife in July 2009. In addition, she alleged that she was  
19 wrongly fired because of a discrepancy between the amount of money in the cash register and the  
20 amount on the register tape on September 8, 2009. Although these events did not save plaintiff’s  
21 sexual harassment claim from the statute of limitations, her sexual harassment claim was not  
22 groundless.

23 *Third*, defendant argues that plaintiff’s discrimination claim under FEHA was groundless  
24 and frivolous because “[n]either Plaintiff’s association with Wells, her prior sexual relationship  
25 with Wells, nor Flagler’s purported jealousy with respect to those relationships are protected by  
26 the FEHA” (Br. 8). As explained above, plaintiff alleged that Wells took adverse action toward  
27 her based on their former sexual relationship. Although plaintiff did not properly state a claim for  
28 sexual harassment, her allegation was not so groundless or frivolous as to warrant attorney’s fees.

