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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

2:10-CV-1465 JCM (LRL)

KEVIN KUNEMUND,

Plaintiff,

v.

MOUNTAIN VIEW HOSPITAL, et al.,

Defendants.

ORDER

Presently before the court is defendants Tracy Benson’s, Mountain View Hospital’s, and Rose Smith’s motion to dismiss plaintiff’s complaint with prejudice. (Doc. #14). The plaintiff has responded (doc. #19), and the defendants replied (doc. #21).

Plaintiff filed the instant complaint on October 25, 2010, alleging three claims for relief: (1) a Title VII claim of retaliation against defendant Mountain View Hospital and the individual defendants, (2) “stalking” against individual defendant Tracy Trainer, and (3) “breaking and entering” against individual defendant Abby Janolino an unnamed party.¹ (Doc. #5). On February

¹ The court declines to consider the following purported claims against the individual defendants first-noted in the opposition to the motion to dismiss (doc. #19): N.R.S. § 200.575 against defendant Tracy Trainer, N.R.S. § 205.067 against defendant Abby Janolino, and N.R.S. § 40.750 against defendants Rose Smith and Tracy Benson. *See Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007) (articulating the general rule that, in considering a motion to dismiss, the court generally considers “only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice”). Although plaintiff states in the opposition to the motion to dismiss that those claims were added in an “amendment” to the complaint, no such “amendment” is on file with the court. This court denied plaintiff’s motion to

1 18, 2011, the parties met for an early neutral evaluation conference before Magistrate Judge
2 Johnston. (Doc. #42). No settlement was reached, and the case was returned to the normal litigation
3 track. Accordingly, the court now reviews the motions to dismiss on the merits.

4 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
5 as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
6 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Where a
7 complaint pleads facts that are ‘merely consistent’ with a defendant’s liability, it ‘stops short of the
8 line between possibility and plausibility of entitlement to relief.’” *Id.* (citing *Bell Atlantic*, 550 U.S.
9 at 557). However, where there are well pled factual allegations, the court should assume their
10 veracity and determine if they give rise to relief. *Id.* at 1950.

11 **I. Claim 1: Title VII of the Civil Rights Act of 1964**

12 Plaintiff’s first claim for relief alleges that the individual defendants retaliated against him
13 in violation of Title VII of the Civil Rights Act of 1964 for filing a complaint against defendant
14 Mountain View Hospital. (Doc. #5, p. 4). Specifically, plaintiff alleges that the defendants broke into
15 his home, stalked him, interfered with future employment opportunities, and tried to manipulate him
16 into dropping his complaint. (*Id.*). The defendants urge the court to dismiss the complaint with
17 prejudice, arguing that Title VII does not support a claim against the individual defendants.

18 To establish retaliatory discharge under Title VII, an employee must show (1) he engaged in
19 a protected activity, (2) he was subsequently subjected to an adverse employment action, and (3) that
20 a causal link exists between the two. *Dawson v. Entek Intern.*, 630 F.3d 928, 936 (9th Cir. 2011).
21 However, such an action may be properly alleged only against an employer, as “[t]he statutory
22 scheme itself indicates that Congress did not intend to impose individual liability on employees.”
23 *Miller v. Maxwell’s Int’l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993).

24 Here, the plaintiff has alleged that he engaged in a protected activity by filing a complaint
25 and that he was subsequently subjected to negative treatment by the individual defendants. This

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27 amend his complaint (doc. #39), and any proposed additions made therein are not considered by the
28 court as it now addresses the instant motion to dismiss.

1 claim must fail as Title VII imposes only liability on employers, not employees, and the motion to
2 dismiss is granted with prejudice as to the individual defendants.

3 **II. Claims 2 and 3: Section 1983**

4 The defendants have interpreted the final two claims for relief as alleging violations of
5 plaintiff's civil rights under 42 U.S.C. § 1983. Although the plaintiff has not cited 42 U.S.C. § 1983
6 in the substance of the claims, the complaint, titled "Civil Rights Complaint pursuant to 42 U.S.C.
7 § 1983," suggests that defendants' assumption is correct.

8 Specifically, plaintiff's second claim alleges that individual defendant Tracy Trainer violated
9 his civil rights by stalking him while his complaint against Mountain View Hospital was being
10 investigated. (Doc. #5, p. 5). Plaintiff states that Trainer drove around his neighborhood, drove past
11 his house, and stared at him. (*Id.*). Plaintiff's third claim alleges that "a friend or relative of Abby
12 Janolino's invaded my home when I was not home to send me a message that I better drop the case
13 against her." (Doc. #5, p. 6).

14 To state a claim for relief under § 1983, the plaintiff must establish that he was "deprived of
15 a right secured by the Constitution or laws of the United States, and that the alleged deprivation was
16 committed under color of state law." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999).
17 "[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct,
18 no matter how discriminatory or wrongful." *Id.* at 50 (internal citations omitted). Accordingly,
19 plaintiff must show that the "allegedly unconstitutional conduct is fairly attributable to the State."
20 *Id.* at 50.

21 The defendants move to the court to dismiss both claims two and three with prejudice
22 because the individual defendants were not acting under color of state law when the alleged
23 violations occurred. Plaintiff seemingly agrees with this argument as to the individual defendants,
24 stating that "[o]nly defendant Mountain View hospital is being sued under 42 U.S.C. § 1983." (Doc.
25 #19, p. 2).

26 The court accepts plaintiff's representation that it does not wish to pursue a § 1983 claim
27 against any of the individual defendants. However, even if such a claim were alleged, the court
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