UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

VALERIE HUGHES, Plaintiff, v. AMERICA'S COLLECTIBLES NETWORK, INC., d/b/a Jewelry Television, et al., Defendants.	)	No.: 3:09-CV-176 (VARLAN/GUYTON)

MEMORANDUM OPINION AND ORDER

This civil action is before the Court on the Motion to Dismiss, or, in the Alternative for Summary Judgment by the Defendant, Kevin Muir ("Motion to Dismiss or for Summary Judgment") [Doc. 19]. Plaintiff Valerie Hughes brought this action against defendant Kevin Muir, among others, asserting federal and state law claims relating to plaintiff's allegation of wrongful termination from America's Collectibles Network, d/b/a Jewelry Television ("JTV"), also a defendant in this action.[1] In the Motion to Dismiss or for Summary Judgment, defendant requests that the Court dismiss this action against him for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2). *See* Fed. R. Civ. P. 12(b)(2). Alternatively, defendant requests that the Court grant summary judgment in defendant's favor, pursuant to Federal Rule of Civil Procedure 56. *See* Fed. R. Civ. P. 56.

[1]In addition to defendant Kevin Muir and defendant JTV, plaintiff has brought this action against several entities that plaintiff alleges are subsidiary companies of defendant JTV [*see* Doc. 1]. Plaintiff has also brought this action against officers of JTV, both in their individual capacity, and as officers and directors of JTV [*Id.*].

Specifically, defendant asserts that plaintiff's claims against him fail as a matter of law because he was in no way associated with any firm or individual in regard to plaintiff's employment or termination from JTV and thus cannot be liable for plaintiff's wrongful termination claims. Plaintiff has responded in opposition [Doc. 24], and defendant has filed a reply [Doc. 26]. The matter is ripe for determination.

The Court has carefully reviewed the pending motion, the supporting, opposing, and reply briefs, and the supporting documents [Docs. 20, 20-1, 24, 26, 26-1], all in light of the applicable law. For the reasons set forth herein, defendant's Motion to Dismiss or for Summary Judgment [Doc. 19] will be **GRANTED**, and all plaintiff's claims as to defendant Kevin Muir are hereby **DISMISSED with prejudice**.

I. Relevant Facts

Plaintiff began her employment with JTV in July 2006 as a show host [Doc. 1, ¶ 27]. Throughout her employment, plaintiff alleges that she was "a model employee," "very productive and efficient," "had no reprimands or other disciplinary notices[,]" and "timely performed all tasks asked of her and . . . properly followed all policies and procedures of her employer." [*Id.*, ¶¶ 29-30, 32]. On May 16, 2008, plaintiff alleges that she was "wrongfully terminated, based upon her age, race, and retaliation" and replaced with a "younger, Caucasian, individual" [*Id.*, ¶¶ 32, 34, 36]. Plaintiff alleges that JTV informed her that her termination was because the company was in the process of restructuring and eliminating jobs. [*Id.*, ¶ 34]. Plaintiff alleges that defendant conspired with JTV as part of a "consulting

function" in regard to her termination and that she was terminated in accordance with a "plan or scheme" contrived by defendant to eliminate targeted employees [*Id.*, ¶¶ 37-38].

Plaintiff describes this alleged "plan or scheme" in more detail in her response to defendant's Motion to Dismiss of for Summary Judgment [Doc. 24]. Plaintiff alleges that defendant used his book, the Employee Termination Guidebook, to "coach[]" JTV to pursue legally and ethically questionable termination practices against "problem employees" such as plaintiff [*Id.*, pp. 1-2]. Plaintiff also alleges that on defendant's website and blog, defendant made a "bona fide claim of complicity" and claimed "at least partial responsibility" for JTV's actions in terminating plaintiff's employment [*Id.*]. Plaintiff asserts that a hyperlink on defendant's website and blog linked it to an online article from the Knoxville News Sentinel reporting a layoff at JTV [*Id.*]. Plaintiff also offers several "quotes" from the website, purporting to show that defendant congratulated JTV on its termination of plaintiff, [*Id.*, p. 2]. Plaintiff also alleges that JTV possessed a "hard copy" of defendant's book at the time of plaintiff's termination [*Id.*, p. 4].

Defendant denies plaintiff's allegations of any "consulting function," "plan or scheme" and denies any association with JTV, its officers and employees, or with plaintiff. In a declaration attached to the Motion to Dismiss or for Summary Judgment [Doc. 20-1], defendant declares that he has only visited the state of Tennessee on one occasion, that he has no business in Tennessee, owns no property in Tennessee, and that he has never served as a consultant to any individual or firm in Tennessee [*Id.*, ¶ 3]. Defendant also declares that

he has never been employed by JTV and never worked for JTV in either a consultant or independent contractor capacity. [*Id.*, ¶ 4] Further, defendant declares that

> To the best of my knowledge, I have had no communication of any kind at any time with JTV or any of its officials, employees, lawyers or representatives or with any of the defendants. To the best of my knowledge, I have never met any individual defendant in this case. I have never conferred with anyone about [plaintiff] or any employee of JTV. I have never heard of [plaintiff] until I received the complaint in this case. I have had no association whatsoever with any of the corporate defendants in this case.

[*Id.*, ¶ 5]**.**

Defendant does not dispute that he wrote a book about employee terminations [Doc. 26, p. 1]. However, defendant asserts that plaintiff has failed to connect any actions or conduct by defendant, or any specific text from the book to plaintiff's termination [*Id.*, p. 4]. Defendant has also submitted an image of defendant's website and blog, employeetermination911.com [Doc. 26, p. 5]. Based on this image, defendant asserts that plaintiff's alleged "quotes" from the blog do not appear anywhere in the blog post and plaintiff's assertions that defendant was complacent or claimed at least partial responsibility for JTV's layoffs are not supported by the text on the blog or any other facts or evidence [*see* Doc. 26, p. 5; Doc. 26-1]. Defendant also argues that nothing on the blog supports plaintiff's allegations of a "conspiracy" to violate plaintiff's civil rights and the hyperlink and accompanying text to the Knoxville News Sentinel article were only on the blog because the

text is automatically generated as a marketing device so visitors to the website and blog can find out more about defendant's book [*Id.*, p. 6; Doc. 26-1, ¶ 3].[2]

II. Analysis

A. Standard of Review Pursuant to Federal Rule of Civil Procedure 12(b)(2)

The standards for determining a motion for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2), are well established in the United States Court of Appeals Sixth Circuit. *Dean v. Motel 6 Operating LP*, 134 F.3d 1269, 1271-72 (6th Cir. 1998). When a motion to dismiss has been filed for lack of personal jurisdiction, the court "may determine the motion on the basis of the affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion." *Id.* (quoting *Serras v. First Tennessee Bank Nat'l Ass'n*, 875 F.2d 1212, 1214 (6th Cir. 1989)). If the district court does not hold an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdiction in its pleadings and affidavits, which must be considered in the light most favorable to plaintiff. *Id.* (quoting *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1262 (6th Cir. 1996)). "Dismissal in this procedural posture is proper only if all the specific facts which the plaintiff alleges collectively fail to state a prima facie case for jurisdiction." *CompuServe*, 89 F.3d at 1262.

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[2]Defendant explains in the declaration accompanying his reply brief that the phrase quoted by plaintiff and supporting her allegations that defendant claimed at least partial responsibility for plaintiff's termination "is a marketing sentence that the blog reader may click to find out more about the Employee Termination Guidebook and then purchase it. This marketing phrase was first used on August 17, 2007, with the first blog post, and therefore could not have been written as a reference to JTV as that was before the May 2008 layoffs. The phrase appeared in 104 previous blog postings before the JTV blog posting." [*see* Doc. 26-1, ¶ 3].

Tennessee's long-arm statute permits personal jurisdiction on "[a]ny basis not inconsistent with the Constitution of this State or of the United States." T.C.A. § 20-2-214(a)(6) (2007). To establish that a defendant is subject to personal jurisdiction, the Due Process Clause requires that a defendant "have certain minimum contacts" with the forum state, such that the exercise of personal jurisdiction "does not offend traditional notions of fair play and substantial justice." *Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147, 150 (6th Cir. 1997) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Personal jurisdiction cannot be established over a non-resident defendant consistent with the Due Process Clause unless the defendant is subject to either general or specific jurisdiction in the state in which the case is pending. *See Helicopteros Nacionales de Columbia, S.A. v. Hall ("Helicopteros")*, 466 U.S. 408, 418 (6th Cir. 1984). General jurisdiction is present when a defendant's contacts with the forum state are "substantial" and "continuous and systematic," such that a state may exercise personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum state. *See Youn v. Track, Inc.*, 324 F.3d 409, 418 (6th Cir. 2003); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n.15 (1985). Specific jurisdiction is when "a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." *Youn*, 324 F.3d at 418 (quoting *Helicopteros*, 466 U.S. at 414 n.8).

B. Specific Personal Jurisdiction

Plaintiff's allegations against defendant are allegations of specific personal jurisdiction. The Sixth Circuit utilizes a three-part test to determine whether exercising specific personal jurisdiction would violate the requirements of the Due Process Clause:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968).

Considering the collective facts in a light most favorable to plaintiff, the Court concludes that plaintiff has stated a prima facie case for this Court's specific personal jurisdiction over defendant. Plaintiff has alleged that defendant wrote a "guidebook" targeted to employers and relating to employee terminations. Plaintiff has also alleged that defendant planned and schemed with JTV, marketed his services to JTV, and consulted with JTV regarding JTV's termination of plaintiff. Plaintiff has also alleged that a "disturbing similarity [exists] between the text of [defendant's] termination guidebook and the words and deeds of the Plaintiff's immediate supervisors on the day of her termination." [Doc. 24, p. 5]. Such allegations, if true, withstand the relatively light burden required to state a prima facie case of personal jurisdiction based on a Rule 12(b)(2) motion to dismiss and predicated only on the basis of affidavits.

Taken as true, plaintiff's allegations state that defendant conspired with JTV, directed his conduct towards an employer and an employee located in Tennessee, and that the consequence of such conduct was felt in Tennessee. Such allegations are sufficient to state a substantial enough connection with this state for the Court to exercise specific personal jurisdiction. While the Court notes that plaintiff has not provided any evidentiary support, such as an affidavit, or other such evidence, for her factual allegations, such proof is not required pursuant to the Court's standard of review of a Rule 12(b)(2) motion predicated on affidavits alone. Accordingly, the Court finds that plaintiff's allegations do not collectively fail to state a prima facie case of specific personal jurisdiction. *See CompuServe*, 89 F.3d at 1262.

C. Standard of Review Pursuant to Federal Rule of Civil Procedure 56

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 n.2 (1986). The court must view the facts and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002). To establish a genuine issue as to the existence of a particular element, the non-moving party must point to evidence in the record upon which a reasonable finder of fact could find in its

favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Accordingly, the court must look "beyond the pleadings and must assess the proof to determine whether there is a genuine issue for trial. *Burchett*, 310 F.3d at 942; *see also Matsushita*, 475 U.S. at 587. The genuine issue must also be material; that is, it must involve facts that might affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248.

The judge's function at the point of summary judgment is limited to determining whether sufficient evidence has been presented to make the issue of fact a proper question for the fact finder. *Anderson*, 477 U.S. at 249. The judge does not weigh the evidence, judge the credibility of witnesses, nor determine the truth of the matter. *Id.* Thus, "[t]he inquiry performed is the threshold inquiry of determining whether there is the need for trial - whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250.

D. Plaintiff's Claims Against Defendant

Defendant has moved, in the alternative, for summary judgment in regard to plaintiff's claims for wrongful termination as such claims relate to defendant. Defendant asserts that he was not associated with any firm or individual in regard to the employment or termination of plaintiff, and thus, because plaintiff has alleged no viable claim of liability against him, defendant is entitled to judgment as a matter of law.

As an initial matter, the Court notes that defendant has filed two declarations in which he declares he had no involvement or contact with JTV or its employees in any matter, including employment decisions, and had no involvement with or knowledge of plaintiff before the commencement of this litigation [Docs. 20-1, 26-1]. Plaintiff has not submitted an affidavit or declaration supporting the factual assertions in her complaint but states, in her response, that she "would show" all her allegations [Doc. 24, pp. 4, 6].

Plaintiff states, in her response, that "an affidavit alone cannot realistically stand as sufficient proof of the lack of Defendant's meaningful . . . conspiracy with [JTV] to affect the wrongful termination of the Plaintiff." [Doc. 24, p. 4]. However, the Court notes that in a motion for summary judgment, the moving party is not required to "support its motion with affidavits or other similar materials *negating* the opponent's claim." *Celotex*, 477 U.S. at 323 (emphasis in original). In a motion for summary judgment, once the moving party submits that there are no genuine issues of material fact, the non-moving party must then point to evidence in the record upon which a reasonable finder of fact could find in its favor. *See Anderson*, 477 U.S. at 248. Once a proper motion for summary judgment is made, "an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). Accordingly, once defendant submitted that there were no genuine issues of material fact regarding defendant's involvement with JTV and resulting liability for plaintiff's claims, in order to defeat defendant's request for summary judgment, plaintiff was required to set out specific facts

showing that disputed issues of material fact exist. *See Celotex*, 477 U.S. at 325 (stating that a "party opposing summary judgment [cannot] resist a properly made motion by reference only to its pleadings").

Further, pursuant to Federal Rule of Civil Procedure 56(f), "[i]f a party opposing [a motion for summary judgment] shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) deny the motion; (2) order a continuance to enable affidavits to be obtained, depositions to be taken , or other discovery to be undertaken; or (3) issue any other just order." Fed. R. Civ. P. 56(f). Here, plaintiff has not requested more discovery, has not filed an affidavit, and is relying only on the unsworn allegations in her responsive brief [Doc. 24]. To the extent plaintiff's statement, that she "would show" all her allegations, could be construed as a request for more discovery, plaintiff's request clearly has not been made with the requisite precision. The burden is on the party seeking additional discovery to demonstrate why such discovery is necessary. *See Summers v. Leis*, 368 F.3d 881, 887 (6th Cir. 2004) (stating that mere recitations of the same conclusory allegations contained in a complaint are not sufficient to survive a motion for summary judgment). In other words, under Rule 56(f), "[b]are allegations or vague assertions of the need for discovery are not enough." *Summers*, 368 F.3d at 887 (citing *United States v. Cantrell*, 92 F. Supp. 2d 704, 717 (S.D. Ohio, 2000)). Rather, to fulfill the requirements of Rule 56(f), the party must describe with "'some precision the materials he hopes to obtain with further discovery, and exactly how he expects those materials would help him in opposing summary judgement.'" *Id.* (quoting *Simmons Oil Corp. v. Tesoro*

Petroleum Corp., 86 F.3d 1138, 1144 (Fed. Cir. 1996); *see also Ball v. Union Carbide Corp.*, 385 F.3d 713, 720 (6th Cir. 2004); *Everson v. Leis*, 556 F.3d 484, 493 (6th Cir. 2009). Plaintiff's assertion that she "would show" her allegations fails to satisfy either requirement.

In her complaint, plaintiff asserts that defendant was involved in JTV's wrongful termination of plaintiff because defendant engaged in a "consulting function" with JTV and planned or schemed with JTV in regard to plaintiff's termination [*see* Doc. 1]. In her response to defendant's Motion to Dismiss or for Summary Judgment, plaintiff makes the following allegations of fact to support her claim. First, JTV possessed a hard copy of defendant's book at the time of plaintiff's termination. Second, defendant claimed at least partial responsibility for plaintiff's termination on his blog. Third, the existence of "disturbing similarit[ies]" between the text of defendant's book and the "words and deeds" of plaintiff's supervisors at JTV. Fourth, plaintiff's termination occurred as JTV was preparing for an initial public offering and preparing to defend itself against an impending class action lawsuit. Finally, defendant marketed his services to JTV and JTV used defendant's services to violate plaintiff's rights.

In his declaration, defendant does not dispute that he has written a book about employee termination [Doc. 20-1, ¶ 6]. However, defendant argues, plaintiff has failed to provide facts or evidence to support plaintiff's claim that JTV or any of its employees used defendant's book or attempted to formulate any employment termination decisions in light of the information contained in defendant's book. Accordingly, defendant submits that he cannot be a defendant in this matter pursuant to 42 U.S.C. § 1985(3) and liable for plaintiff's

claims of wrongful termination [*see* Doc. 1, ¶ 22]. *See* 42 U.S.C. § 1985(3) (describing persons liable for a conspiracy to interfere with the civil rights of another). Moreover, defendant asserts that even if it was determined that JTV possessed or owned defendant's book and used language contained in the book to terminate plaintiff, such a finding does not give rise to any rational inference of defendant's involvement in the termination or defendant's involvement in a conspiracy.

First, and in regard to plaintiff's assertion that JTV possessed a hard copy of defendant's book at the time of plaintiff's termination—this allegation, standing alone, does not give rise to the inference that defendant was involved in plaintiff's termination. Notwithstanding the fact that plaintiff has not submitted any competent evidence, affidavit, declaration, or otherwise to support this claim, the allegation that JTV "possess[ed]" defendant's book, also does not give rise to the inference that defendant conspired with JTV or consulted with JTV in its termination of plaintiff. A finding that a company or individual's possession or ownership of a particular book is enough to implicate the author of that book in wrongdoing by the book's possessor or owner reaches too far. Further, an allegation that defendant conspired with JTV to violate plaintiff's civil rights would require some "act in furtherance of the object of such conspiracy." 42 U.S.C. § 1985(3). The allegation that JTV may have possessed or owned defendant's book and used such book to violate plaintiff's civil rights is not an act, by defendant, in furtherance of a conspiracy to violate plaintiff's rights.

Second, the Court now turns to plaintiff's assertion of "disturbing similarit[ies]" between the text of defendant's book and the "words and deeds" of officers at JTV. In regard to this assertion, plaintiff has not provided the Court with any documents, affidavits, or declarations pertaining to what was stated to plaintiff on the day of her termination and by which the Court could determine whether such statements raise a disputed issue of fact regarding "disturbing similarities" between the text of defendant's book and the words and deeds of officers at JTV. Plaintiff has only provided short quotes from various sections of defendant's book without any explanation as to how these quotes were used by JTV in plaintiff's termination or any showing how such quotes were used to violate plaintiff's rights [*see* Doc. 24, p. 2; Doc. 26-1, p. 8].[3] Plaintiff has also asserted that she was labeled a "'problem employee' and a 'bad apple' per Defendant's text." [Doc. 24, p. 6]. However, these allegations, without more, do not support plaintiff's allegation that defendant was involved in her termination. Not only do such allegations seem to be common terminology in relation to employer/employee relationships and criticisms of individuals in general, without some evidence to show involvement or "an act in furtherance" of a violation of plaintiff's civil rights, plaintiff has not raised the inference that defendant was involved in her termination so as to give rise to a genuine issue of material fact to defeat defendant's request for summary judgment.

[3]Defendant has provided the Court with the pages from his book from where the quotes were taken [*see* Doc. 26-1, pp. 4-8].

Third, and presumably the basis for plaintiff's allegation of defendant's involvement, plaintiff has alleged that defendant claimed"partial responsibility" for plaintiff's termination on his website by the inclusion of a phrase and a hyperlink to the Knoxville News Sentinel discussing JTV's layoff of employees. In his declaration, defendant explained the appearance of the phrase cited by plaintiff and the hyperlink to the news article [*see* Doc. 20-1]. Defendant has also provided the Court with an image of the blog and submits that both the phrase and the hyperlink resulted from an automatically generated marketing phrase and hyperlink that defendant had no role in placing on the website [*see id.*]. Plaintiff has not provided any evidence to contradict defendant's explanations, only stating in her response that the phrase and hyperlink constitute evidence of defendant's claim of "bona fide complicity with [JTV's] actions and claim of "at least partial responsibility [Doc. 24, pp. 2-3]. Given defendant's explanations, the Court's consideration of the image of the blog, the text, the hyperlink, and the lack of any contradictory evidence submitted by plaintiff, the Court cannot conclude that plaintiff has met his burden of showing that a genuine issue of material fact exists in this regard.

Fourth, the Court now turns to plaintiff's argument regarding the timing of plaintiff's termination—that plaintiff's termination occurred as JTV was preparing an initial public offering and preparing to defend itself against a class action lawsuit. To the extent plaintiff urges the Court to find that this contemporaneous occurrence of events makes in "apparent that JTV had a demonstrable need for the services of an individual such as [defendant] and readily consumed them[]" [Doc. 24, p. 5], thus raising the inference of defendant's

involvement in plaintiff's termination, the Court cannot do so. While a business climate like the one described by plaintiff may give rise to an employer's incentive to downsize or engage in a reduction in force, such circumstances, alone, do not give rise to a genuine issue of material fact by which plaintiff would be able to defeat defendant's request for summary judgment. Moreover, such an allegation does not give rise to even a rational inference that this defendant would be involved in JTV's decision to terminate plaintiff's employment.

Finally, plaintiff has alleged that defendant "marketed his services to [JTV] and that [JTV] procured those services with the intent to terminate its employees and to execute a conspiracy to systematically deprive those employees of their rights in a manner consistent with [defendant's] instruction and consultation." [Doc. 24, p. 6]. However, beyond excerpted phrases from defendant's book and unsupported assertions that plaintiff's termination was consistent with positions advanced in defendant's book, plaintiff has not provided the Court with any evidence, beyond conclusory statements in the responsive pleading, which would create a genuine issue of material fact. Defendant has asserted, in his declaration, that he never had any contact, in a consultative function or otherwise, with JTV or its employees, and that he was not aware nor had any contact with plaintiff prior to the commencement of this action [*see* Doc. 20-1; Doc. 26-1]. Plaintiff has not countered these assertions with any countervailing proof and thus has not established a genuine issue of disputed material fact.

In sum, plaintiff's allegations are not supported by credible evidence, do not give rise to a rational inference that defendant was involved in plaintiff's termination, and thus, cannot withstand defendant's request for summary judgment. Accordingly, plaintiff has failed to

establish a genuine issue of disputed material fact as to whether defendant was in any way associated with any firm or individual, including JTV, in regard to the employment and termination of plaintiff.

E. Request for Attorneys' Fees

Defendant has requested attorneys' fees in this action. Plaintiff has brought this case under 42 U.S.C. § 1985(3), a civil rights statute which makes 42 U.S.C. § 1988 applicable. *See* 42 U.S.C. § 1988(b). Section 1988 provides that "[i]n any action or proceeding to enforce a provision of . . . [§ 1985] . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." *Id.* Under this provision, a prevailing defendant may recover attorneys' fees when a plaintiff bringing suit under one of the covered statutes asserts claims that are "groundless, without foundation, frivolous, or unreasonable." *See Karam v. City of Burbank*, 352 F.3d 1188 (9th Cir. 2003) (discussing attorneys' fees pursuant to an action brought under § 1983) (internal quotations omitted). However, the Court does not consider this action as rising to the level required for an award of attorneys' fees pursuant to § 1988, and therefore declines to exercise its discretion and award defendant attorneys' fees in this action.

III. Conclusion

Accordingly, and for the reasons stated herein, defendant's Motion to Dismiss or for Summary Judgment [Doc. 19] is hereby **GRANTED** as plaintiff has failed to establish, as a matter of law, that defendant was in any way associated with plaintiff's termination from

JTV. Accordingly, plaintiff's claims against defendant Kevin Muir will be **DISMISSED with prejudice**. Defendant's request for attorneys' fees is also hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE