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

This civil action is before the Court on Defendants' Motion to Dismiss [Doc. 16], filed by defendants America's Collectibles Network, Inc., d/b/a Jewelry Television, et al. (hereinafter referred to collectively as "Defendants").[1] In the motion to dismiss, Defendants move the Court to dismiss, in the entirety, the claims brought by Plaintiff Valerie Hughes for failure to state any claim upon which relief can be granted. Plaintiff has filed a response in opposition [Doc. 22], and Defendants have filed a reply [Doc. 25]. The matter is ripe for determination.

[1]References in this Order to "Defendants" shall include America's Collectibles Network, Inc., d/b/a Jewelry Television ("ACN") and the following entity defendants: Multimedia Commerce Group, Inc., ACN Financing, Inc., ACN Network, Inc., ACN Leasing, Inc., The Gemstore, Inc. by Jewelry Television, JTV.com Internet Company and BBJ Holdings, and all the named individual defendants except for defendant Kevin Muir ("defendant Muir") and defendant XS Goods, Inc. ("defendant XS Goods"). All of the previously listed Defendants, except for defendant Muir and defendant XS Goods, are represented by the same counsel. Defendant Muir is represented by other counsel and counsel for Defendants submits that he has no knowledge of defendant XS Goods or its relationship to Defendants. Counsel for Defendants also submits that defendant JTV.com Interest Company is erroneously listed as a separate entity [*see* Doc. 17, p. 1 n.1].

The Court has carefully reviewed the pending motion to dismiss [Doc. 16], and the responsive and reply pleadings [Docs. 17, 22, 25], all in light of the applicable law. For the reasons set forth herein, Defendants' Motion to Dismiss [Doc. 16] will be **GRANTED**, and Plaintiff's claims are hereby **DISMISSED** in their entirety.

I. Relevant Facts

Plaintiff alleges that she was employed as a show host by defendant America's Collectibles Network, Inc., d/b/a Jewelry Television ("ACN"), beginning in July 2006 [Doc. 1, ¶¶ 27, 31]. Throughout her employment, Plaintiff alleges that she was "a model employee," "very productive and efficient," "had no reprimands or other disciplinary notices[,]" "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 ACN informed Plaintiff that she was terminated because ACN was restructuring and eliminating jobs [*Id.*, ¶ 34]. Plaintiff alleges that ACN conspired with defendant Muir 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 Muir to eliminate targeted employees [*Id.*, ¶¶ 37-38].

II. Defendants' Motion to Dismiss

Defendants assert that Plaintiff's claims should be dismissed, in their entirety, against all Defendants because Plaintiff has failed to state a short and plain statement of facts upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Fed.

R. Civ. P. 12(b)(6). In Paragraph 18 of her complaint, Plaintiff asserts violations of federal and state statutes, including: the Tennessee Human Rights Act (the "THRA"), T.C.A. §§ 4-21-101, *et seq.*; the Age Discrimination in Employment Act (the "ADEA"), 29 U.S.C. §§ 621, *et seq.*; Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq.*; and the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*[*see id.*, ¶ 18].[2] Plaintiff also asserts retaliation for whistleblowing and asserts violations of the following: "[a]ll laws prohibiting race, sex, age, or other forms of discrimination;" "[a]ll common law claims;" "[a]ll claims for fraud and punitive damages;" "[a]ll claims for fraud and punitive damages;" "[a]ll claims for wrongful discharge;" "[a]ll claims denying [Plaintiff] the right of free speech and retaliation for her free speech . . ." [*see id.*, ¶ 18]. Defendants assert that, except for the section titled "General Allegations," and Count I, Count II, and Count III of Plaintiff's complaint, counts which concern the THRA, the ADEA, and ERISA, the complaint does not allege a factual basis for any of the other statutes listed in Paragraph 18. Further, Defendants assert, as to the "General Allegations," Count I, Count II, and Count III, Plaintiff has failed to allege the elements of prima facie claims and failed to allege any facts with the specificity necessary to survive a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

[2]Plaintiff also asserts violations of the Older Workers' Benefits Protection Act, the Equal Pay Act, and the Fair Labor Standards Act [*see* Doc. 1, ¶ 18]. However, Plaintiff does not mention these statutes again in her complaint, nor does she state the elements of these claims or plead any factual allegations in relation to these statutes. Consequently, the Court will not address plaintiff's alleged violations of these statutes.

III. Analysis

A. Standard of Review

A party may move to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure Rule 12(b)(6). *See* Fed. R. Civ. P. 12(b)(6). In determining whether to grant a motion to dismiss, all well-pleaded allegations must be taken as true and be construed most favorably toward the non-movant. *Trzebuckowski v. City of Cleveland*, 319 F.3d 853, 855 (6th Cir. 2003). While a court may not grant a Rule 12(b)(6) motion based on disbelief of a complaint's factual allegations, *Lawler v. Marshall*, 898 F.2d 1196, 1199 (6th Cir. 1990), the court "need not accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). While a complaint need not contain detailed factual allegations, the plaintiff must provide the grounds for his or her entitlement to relief, and this "requires more than labels and conclusions, and a formulaic recitation of the elements of a case of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (abrogating *Conley v. Gibson*, 355 U.S. 41 (1957)). Further, a complaint will not suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Twombly*, 550 U.S. at 557.

In *Ashcroft v. Iqbal*, — U.S.— , —, 129 S.Ct. 1937, 1949 (2009), the United States Supreme Court reaffirmed its prior holding in *Twombly* and stated that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). The Supreme Court then proceeded to explain the two principles underlying these statements:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.

Id. at 1949-50 (citations omitted). Accordingly when a complaint states no more than conclusions, such "are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. *Id.* at 1950; *see also Courie v. Alcoa Wheel & Forged Products*, 577 F.3d 625, 629-30 (6th Cir. 2009) (stating that the standard for a motion to dismiss is to screen out cases that "while not utterly impossible, are 'implausible'").

B. Age Discrimination Under the THRA and the ADEA

Plaintiff has alleged violations of the ADEA and the THRA based on age discrimination. *See* 29 U.S.C. §§ 621, *et seq.;* T.C.A. §§ 4-21-101, *et seq.* The Tennessee legislature has made clear that the purpose of the THRA is to "[p]rovide for execution within Tennessee of the policies embodied in the federal Civil Rights Acts of 1964 . . . and [the ADEA] of 1967, as amended . . . ." T.C.A. § 4-21-101(a). Thus, the Court will apply the same analysis to Plaintiff's age-based discrimination claim brought under the THRA as

Plaintiff's age-based discrimination claim brought under the ADEA. *Bender v. Hecht's Dep't Stores*, 455 F.3d 612, 620 (6th Cir. 2006) (applying the same analysis to an age-based discrimination claim brought under the THRA as an age-based discrimination claim brought under the ADEA); *Newman v. Fed. Express Corp.*, 266 F.3d 401, 406 (6th Cir. 2001) ("Tennessee courts have 'looked to federal case law applying the provisions of the federal anti-discrimination statues as the baseline for interpreting and applying' [the THRA]" (citation omitted)).

Claims under the THRA and the ADEA may be established through direct or circumstantial evidence. *See, e.g., Rowan v. Lockheed Martin Energy Sys., Inc.*, 360 F.3d 544, 547-48 (6th Cir. 2004) (stating that a plaintiff may establish age-based discrimination by direct or circumstantial evidence); *Wilson v. Rubin*, 104 S.W.3d 39 (Tenn. Ct. App. 2002) (same). The Court discerns no direct evidence of age-based discrimination in Plaintiff's complaint. Accordingly, Plaintiff must establish her claims based on circumstantial evidence. Claims based on circumstantial evidence under the THRA and the ADEA are analyzed under the burden-shifting framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *See, e.g. Martin v. Toledo Cardiology Consultants, Inc.*, 548 F.3d 405, 410-11 (6th Cir. 2008) (applying the burden-shifting framework to an ADEA claim); *Barnes v. Goodyear Tire & Rubber Co.*, 48 S.W.3d 705, 708 (Tenn. 2000) (applying the burden shifting framework to a THRA claim).

Both the THRA and the ADEA make it unlawful for employers to "discharge any individual or otherwise discriminate against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a); *see* Tenn. Code Ann. § 4-21-101(a)(3). To establish a prima facie claim of age-based discrimination, a plaintiff must show the following: (1) membership in a protected class; (2) an adverse employment action; (3) qualification for the position of employment; and (4) that a person substantially younger than the plaintiff replaced or was selected over him or her, or that the position remained open while the employer sought other applicants. *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 311-13 (1996); *see also Ricks v. Potter*, No. 1:06CV2476, 2009 WL 805151 (N.D. Ohio Mar. 27, 2009). A plaintiff may also satisfy the fourth prong of the prima facie claim by showing that the plaintiff was "treated differently from similarly situated employees outside the protected class." *Mitchell v. Vanderbilt Univ.*, 389 F.3d 177, 181 (6th Cir. 2004)).

In her complaint, Plaintiff alleges that ACN is an employer under the THRA and the ADEA and alleges that she was an employee and a member of a protected group during her employment with ACN within the meaning of these statutes [Doc. 1, ¶¶ 39-45, 47-49]. Plaintiff also alleges that Defendants subjected Plaintiff to "a pattern of harassment, because of her age, race, and sex," acted "with knowledge of and willful disregard of [the law], used Plaintiff's age, race and sex rather than her skills and productivity as determining factors" [*Id.*, ¶¶ 42, 50], and Plaintiff's age, race, and sex were determining factors in Defendants' decision to discharge her [*Id.*, ¶ 43].

Plaintiff does not allege, anywhere in her complaint, what her age is—only stating that she was in a protected group at the time of her termination.[3] The ADEA and the THRA prohibit discrimination on the basis of age—not class or group membership. *See* 29 U.S.C. § 623(a); *see* Tenn. Code Ann. § 4-21-101(a). An inference of age-based discrimination cannot be drawn from the assertion that a replacement employee was in an unprotected group when all that is alleged is that Plaintiff was in a "protected group." Moreover, beyond asserting that she was subjected to a "pattern" of discrimination, Plaintiff has provided no facts illustrative of this "pattern," has not alleged that any of the more than ten individual defendants, officers and employees of ACN, engaged in discriminatory conduct towards Plaintiff,[4] and has not provided the Court with any other facts from which this Court could infer that age-based discrimination took place. As stated by the Supreme Court in *Twombly*, and reaffirmed in *Iqbal*, without any facts, bare, conclusory assertions of discrimination—nothing more than formulaic recitations of the elements of a discrimination

[3]In Plaintiff's response to Defendants' motion to dismiss, Plaintiff quotes paragraphs 40 through 42 of her complaint regarding her claims under the THRA and adds several factual allegations that were not included in her complaint, including the allegation that she is 43 years old [Doc. 22, pp. 1-2, 4]. This does not alter the Court's analysis for three reasons: (1) because Plaintiff has neither filed an amended complaint nor moved to file an amended complaint to correct any deficiencies; (2) because an allegation that Plaintiff was 43 years old does not comport with the ADEA and the THRA statement that a plaintiff must be replaced by "someone substantially younger" in order to raise the inference of age-based discrimination, *O'Connor*, 517 U.S. at 312-13; and (3) Plaintiff has not otherwise provided the Court with any other facts by which it could infer that age-based discrimination occurred.

[4]Plaintiff alleges that Margaret Davis and Bill Lane, who are not listed as defendants, told Plaintiff that she was being terminated because ACN was in the process of restructuring and job elimination [Doc. 1, ¶ 34]. This, without more, does not raise an inference of discrimination.

claim—are not entitled to be assumed as true by a court. *See Iqbal*, 129 S. Ct. at 1951 ("[It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."). Accordingly, Plaintiff has failed to state a claim of age-based discrimination under the ADEA or the THRA.

C. Race and Gender Discrimination Under Title VII and the THRA

Plaintiff has also alleged violations of Title VII and the THRA based on race and gender discrimination. Title VII provides that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C. § 2000e-2(a). The THRA has similar provisions regarding race-based and gender-based discrimination in employment. *See* Tenn. Code Ann. § 4-21-401. The Supreme Court of Tennessee has held that "an analysis of claims under the THRA is the same as under Title VII of the Federal Civil Rights Act." *Lynch v. City of Jellico*, 205 S.W.3d 384, 399 (Tenn. 2006). Thus, the Court equally addresses Plaintiff's THRA claims in its discussion of her Title VII claims.

A plaintiff may establish a claim of race or gender discrimination under Title VII by presenting either direct evidence of discrimination or circumstantial evidence supporting an inference of discrimination. *DiCarlo v. Potter*, 358 F.3d 408, 414 (6th Cir. 2004). Because Plaintiff has not alleged any direct evidence of discrimination based on race or gender, the Court will apply the tripartite burden-shifting framework established by the Supreme Court in *McDonnell Douglas*. *See Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 593 (6th

Cir. 2007). Under the *McDonnell Douglas* framework, a plaintiff bears the initial burden of demonstrating a prima facie claim of discrimination. *Id.* To establish a prima facie claim for race-based or gender-based discrimination, a plaintiff must prove: (1) that he or she is a member of a protected class; (2) that he or she suffered an adverse employment action; (3) that he or she was qualified for the position in question; and (4) he or she was replaced by a person outside the protected class or that a similarly-situated individual not from the protected class was treated more favorably. *See, e.g., McDonnell Douglas*, 411 U.S. 802; *Sybrandt v. Home Depot, U.S.A., Inc.*, 560 F.3d 553, 557 (6th Cir. 2009) (applying the same legal standards to a Title VII discrimination claim as a claim brought under the THRA).

In her complaint, Plaintiff alleges that ACN is an employer within the meaning of the THRA [Doc. 1, ¶ 40]. Plaintiff does not allege that any of the other entity defendants or individual defendants are employers within the meaning of the THRA and does not allege that ACN or any of the other entity defendants or individual defendants are employers within the meaning of Title VII. Plaintiff alleges that she was an employee and a member of a protected group and that she was terminated because of her race and sex [*Id.*, ¶¶ 41-42]. Plaintiff also alleges that she was "terminated and replaced with a younger, Caucasian individual" [*Id.*, ¶ 36].

Nowhere in her complaint does Plaintiff allege what her race is—she alleges only that a Caucasian individual replaced her.[5] Similar to the Court's analysis of Plaintiff's age-based

[5]Because of Plaintiff's name and the use of the word "she" in her complaint, the Court assumes that Plaintiff's gender is female. Plaintiff's response to Defendants' March 8, 2010motion

discrimination claims under the ADEA and the THRA, Plaintiff's allegations in relation to her claims under Title VII and the THRA are equally insufficient. Plaintiff has not plead any facts that might raise the inference of either race-based or gender-based discrimination—no facts illustrative of a "pattern of harassment" and no facts alleging that any of the individually named defendants acted in a discriminatory manner towards Plaintiff. Therefore, Plaintiff's allegations fall short of the plausible claims for relief required by *Iqbal*. As such, the Court determines that Plaintiff has also failed to state a claim for her allegations of race and gender discrimination under Title VII and the THRA.

D. An ERISA Violation

Plaintiff has also alleged a violation of § 510 ERISA. *See* 29 U.S.C. § 1140. Section 510 provides that:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act.

29 U.S.C. § 1140. *Coomer v. Bethesda Hosp., Inc.*, 370 F.3d 499, 506 (6th Cir. 2004). Thus, ERISA prohibits employers from retaliating against an employee who avails himself or

---

to dismiss confirms this, and she also states that she is an "African-American female." [Doc. 22, pp. 1-2]. This allegation of Plaintiff's race is not in the complaint. However, this allegation in her responsive pleading does not alter the Court's analysis for the following reasons: (1) this is an essential element of a prima facie claim under Title VII and the THRA and Plaintiff has neither amended her complaint to include this allegation nor filed a motion to amend, and (2) because Plaintiff has not provided the Court with any other facts regarding her allegations of a pattern of harassment [*see id*.].

herself of an ERISA right and prohibits employers from interfering with an employee's attainment of an ERISA right. *Id.*; *see* 29 U.S.C. § 1140.

In order to establish a prima facie claim under § 510 of ERISA, a plaintiff must show the existence of (1) prohibited employer conduct (2) taken for the purpose of interfering (3) with the attainment of any right to which the employee may become entitled. *Crawford v. TRW Automotive U.S. LLC*, 560 F.3d 607, 613 (6th Cir. 2009) (quoting *Smith v. Ameritech*, 129 F.3d 857, 865 (6th Cir. 1997)). In proving the causation prong of the prima face claim, a plaintiff must show that the employer had the specific intent to violate ERISA when it took the employment action that adversely affected the plaintiff. *Ameritech*, 129 F.3d at 865; *see also Hamilton v. Starcom Mediavest Group, Inc.*, 522 F.3d 623, 628 (6th Cir. 2008). In other words, "a motivating factor in the defendant's action was the purpose of interfering with the plaintiff's entitlement to benefits" under ERISA. *Abbot v. Pipefitters Lcoal Union No. 522 Hosp., Medical, & Life Ben. Plan*, 94 F.3d 236, 242 (6th Cir. 1996).

Plaintiff has alleged that she was a participant in an ERISA health benefits plan with ACN [Doc. 1, ¶ 53], that Defendants "willfully and intentionally terminated the Plaintiff in order to avoid paying health care expenses," and terminated Plaintiff "for the purpose of interfering with her protected rights to receive ERISA benefits . . . ." [*Id.*, ¶ ¶ 54-55].

However, such allegations are not enough to establish a prima facie claim under ERISA. Plaintiff has only made conclusory statements, supported by no factual allegations as to Defendants' alleged violation of ERISA. While Plaintiff is not required to state detailed factual allegations, she must provide the factual grounds for any entitlement to relief, and this

"requires more than labels and conclusions, and a formulaic recitation of the elements of a case of action." *Twombly*, 550 U.S. at 555. As the United States Court of Appeals for the Sixth Circuit has stated, "[a] plaintiff does not state a prima facie case of § 510 interference if the plaintiff demonstrates 'only that he lost the opportunity to accrue new benefits.'" *Bingaman v. Procter & Gamble Co.*, No. 04-3584, 2005 WL 1579703, at *8 (6th Cir. July 6, 2005) (quoting *Majewski v. Automatic Data Processing, Inc.*, 274 F.3d 1106, 1113 (6th Cir. 2001)). Rather, a § 501 plaintiff must also establish that his employer "had the specific intent of avoiding ERISA liability when it discharged him. Otherwise, every employee discharged by a company with an ERISA plan would have a claim under § 510." *Id.* Accordingly, the Court determines that Plaintiff has also failed to state a prima facie claim for a violation of ERISA .

E. Other Paragraph 18 Claims

The Court will now address Plaintiff's other assertions in Paragraph 18 of the complaint [Doc. 1, ¶ 18], including Plaintiff's assertions of retaliation, unspecified common law claims, and a claims for fraud and punitive damages. Defendants characterize Paragraph 18 as a "laundry list" of all the possible claims an employee can assert against an employer. The Court agrees. Ever since the Supreme Court's holding in *Twombly*, and the more recent holding in *Iqbal*, it has been clear that a complaint must state a plausible claim for relief and a complaint based only on legal conclusions, conclusory statements, or recitations of essential the framework of legal claims is not a complaint that will survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure. The Court also notes that this is not a case where, despite having failed to plead the technical elements of a prima facie claim, the plaintiff has plead *facts* sufficient to support each element of a prima facie claim. Instead, in this case, factual allegations are missing from the complaint almost entirely and the only allegations are legal conclusions and conclusory recitations of the elements of Plaintiff's claims, and thus, this Court cannot find that such a complaint states claims for which relief may be granted. *See Trzebuckowski*, 319 F.3d at 855. Accordingly, Plaintiff has failed to state a claim for which relief may be granted as to the other asserted violations contained in Paragraph 18.

IV. Conclusion

Accordingly, and for the reasons stated herein, Defendants' Motion to Dismiss [Doc. 16] is hereby **GRANTED** and Plaintiff's claims are hereby **DISMISSED** in their entirety. The Clerk of Court is **DIRECTED** to close this case. An appropriate order will be entered.

ORDER ACCORDINGLY.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE