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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Miguel Garcia,

) No. CV-12-0840-PHX-FJM

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Plaintiff,

) **ORDER**

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vs.

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Honeywell International Inc.; Honeywell
Aerospace de Mexico SA de CV,

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Defendants.

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The court has before it defendant Honeywell International Inc.’s motion to dismiss (doc. 17), plaintiff’s response (doc. 18), and defendant’s reply (doc. 19).

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Plaintiff worked for Honeywell Aerospace De Mexico (“Honeywell Mexico”) in Mexicali, Mexico, reporting to Frank Muscolino, director of service sales based in Phoenix, Arizona. He was employed from July 2007 until June 9, 2009, when his employment was terminated. He returned to Honeywell Mexico for one day on March 16, 2010, to discuss reinstatement or a severance payment. Complaint ¶ 40. The parties were unable to reach agreement and plaintiff was escorted from the facility. Id.

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On April 23, 2012, plaintiff filed this action against Honeywell International, a Delaware corporation, and Honeywell Mexico, a “Mexican entity.” He alleges in Counts 1

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1 through 5 claims for discrimination, harassment, retaliation, unlawful employment practices,
2 and wrongful termination under Title VII. In Count 6, he asserts a claim for intentional
3 infliction of emotional distress. Defendants argue that plaintiff's Title VII claims must be
4 dismissed because plaintiff failed to exhaust his administrative remedies, and that Count 6
5 must be dismissed for failure to state a claim.

6 II

7 Before bringing a Title VII action, a plaintiff must exhaust the administrative remedies
8 available under 42 U.S.C. § 2000e-5. Section 2000e-5(e)(1) requires that a charge of
9 discrimination or retaliation be brought within 300 days of the discriminatory or retaliatory
10 act.

11 Plaintiff filed his EEOC charge on December 25, 2010.¹ Therefore, plaintiff's claims
12 are barred to the extent they are based on any act that occurred before February 28, 2010.
13 Defendants argue that the complaint is devoid of any allegations of discriminatory or
14 retaliatory conduct that occurred within the requisite time period. We agree.

15 Plaintiff purports to bring Title VII claims based on his termination in June 2009, as
16 well as events that occurred before his termination. He does not allege that any
17 discriminatory or retaliatory conduct occurred after February 28, 2010. Although he alleges
18 that he met with defendants on March 16, 2010 to discuss reinstatement or severance pay,
19 there are no allegations of discrimination associated with this meeting. Complaint ¶ 40.
20 Plaintiff's filing of a complaint with the Mexican labor board, see Response at 2, does not
21 satisfy the Title VII exhaustion requirement. Because plaintiff did not timely exhaust his
22 administrative remedies, his Title VII claims are barred. Counts 1 through 5 are dismissed.²

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24 ¹Plaintiff asserts in his response to the motion to dismiss that he filed his EEOC
25 complaint on November 12, 2010. Response at 3. The difference in date does not affect our
26 analysis.

27 ²Plaintiff labels Count 5 as "Wrongful Termination/Breach of Contract/Back Pay/Title
28 VII." To the extent that he is attempting to assert a state law wrongful termination claim, the
claim is barred by the one-year statute of limitations in A.R.S. § 12-541(3), (4).

1 **III**

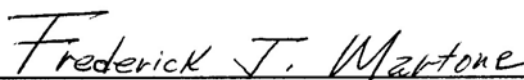
2 Defendant also argues that plaintiff's claim of intentional infliction of emotional
3 distress ("IIED") is barred by the two-year statute of limitations. Under Arizona law, an
4 IIED claim must be brought within two years of the act giving rise to the claim. A.R.S. § 12-
5 542. Defendant contends that the complaint does not allege any conduct occurring within
6 the limitations period that could support an IIED claim. Plaintiff filed the complaint on April
7 23, 2012. Therefore, any conduct supporting his IIED claim must have occurred after April
8 23, 2010 to fall within the statute of limitations. It is undisputed that plaintiff was not
9 employed by Honeywell Mexico after June 9, 2009.

10 Even if plaintiff had timely filed his IIED claim, the allegations in the complaint are
11 insufficient as a matter of law to state a claim. In order to state an IIED claim, the plaintiff
12 must show that defendant's acts were "so outrageous in character and so extreme in degree,
13 as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly
14 intolerable in a civilized community." Mintz v. Bell Atl. Sys. Leasing Int'l Inc., 183 Ariz.
15 550, 553-54, 905 P.2d 559, 562-63 (Ct. App. 1995) (stating that it is "extremely rare to find
16 conduct in the employment context that will rise to the level of outrageousness necessary to
17 provide a basis for recovery for the tort of [IIED]"). The allegations in the complaint cannot
18 be characterized as either extreme or outrageous. Count 6 is dismissed for failure to state a
19 claim.

20 **IV**

21 **IT IS ORDERED GRANTING** defendant's motion to dismiss (doc. 17). Because
22 no amendment could remedy the exhaustion or statute of limitations defects, the complaint
23 is dismissed with prejudice.

24 DATED this 4th day of October, 2012.

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27 Frederick J. Martone
28 United States District Judge