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COUNTY OF YUBA, (erroneously sued as YUBA COUNTY DEPT. ADMINISTRATIVE SERVICES and YUBA COUNTY HUMAN RESOURCES), PAT THOMAS, JEFF DELANEY, TARA FLORES, DOUG McCOY and CINDY CLARK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILLY WILDEN,

Plaintiff,

v.

COUNTY OF YUBA, a California Municipality, YUBA COUNTY DEPT. ADMINISTRATIVE SERVICES, YUBA COUNTY HUMAN RESOURCES, PAT THOMAS, JEFF DELANEY, TARA FLORES, DOUG McCOY, CINDY CLARK, STEVE ZANAROLI, and DOES 1 TO 50,
Defendant.

Case No: 2:11-cv-02246-JAM-GGH

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

DATE: 02/22/2012
TIME: 9:30 a.m.
CTRM: 6

Complaint Filed: 08/23/2011
Amended Complaint Filed: 12/08/2011

This matters comes before the Court on a Motion to Dismiss Plaintiff Billy Wilden's Amended Complaint by Defendants COUNTY OF YUBA, PAT THOMAS, JEFF DELANEY, TARA FLORES, DOUG McCOY and CINDY CLARK (collectively "Defendants"). (Doc. #10) Plaintiff filed an Opposition to the Motion. (Doc. #11) Defendants filed a Reply to the Opposition. (Doc. #12)

The hearing on the Motion was held on February 22, 2012. Plaintiff was represented at that hearing by David Collins and Sukhraj Pamma of the Law Offices of David Collins. Defendants were

1 represented by Derek Haynes of Porter Scott. For the reasons set forth below, Defendants' Motion is
2 GRANTED WITHOUT LEAVE TO AMEND.

3 I. Claims for Relief and Procedural History

4 Plaintiff filed his original Complaint on August 23, 2011. (Doc. #1) Defendants filed a
5 Motion to Dismiss that Complaint. (Doc. #7) Rather than filing an Opposition to that Motion,
6 Plaintiff filed an Amended Complaint, which is the subject of the Motion currently before this Court.
7 (Doc. #8) Plaintiff asserts a total of Nine Claims for Relief all stemming from his employment as a
8 Maintenance Worker for YUBA COUNTY.

9 On December 29, 2010, Plaintiff filed a Government Claim with YUBA COUNTY pursuant
10 to California Government Code §910 *et seq.* A copy of that Claim is attached to Plaintiff's Amended
11 Complaint as Exhibit 3. The COUNTY issued a Notice of Rejection and Denial of that Claim on
12 February 24, 2011. A copy of that Notice is attached to Plaintiff's Amended Complaint as Exhibit 4.

13 II. Opinion

14 A. Legal Standard

15 1. Motion to Dismiss

16 A party may move to dismiss an action for failure to state a claim upon which relief can be
17 granted pursuant to Federal Rule of Civil Procedure 12(b)(6). In considering a motion to dismiss, the
18 Court must accept the allegations in the complaint as true and draw all reasonable inferences in favor
19 of the plaintiff. Schauer v. Rhodes, 416 U.S. 232, 236 (1975), overruled on other grounds by Davis
20 v. Scherer, 468 U.S. 183 (1984); Cruz v. Bato, 405 U.S. 319, 322 (1972). Assertions that are mere
21 "legal conclusions" however, are not entitled to the assumption of truth. Ashcroft v. Iqbal, 129 S.Ct.
22 1937, 1950 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). To survive a
23 motion to dismiss, a plaintiff needs to plead "enough facts to state a claim to relief that is plausible on
24 its face." Twombly, 550 U.S. at 570. A complaint is subject to dismissal under Rule 12(b)(6), if it
25 appears from the face of the pleading that the action was filed after the applicable statute of
26 limitations had expired. Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1979).

27 Dismissal is appropriate where the plaintiff fails to state a claim supportable by a cognizable
28 legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Dismissal with

1 prejudice and without leave to amend is appropriate where it is clear the complaint could not be saved
2 by amendment. Eminence Capital L.L.C. v. Aspeon Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

3 B. Claims for Relief

4 1. First Claim for Relief – California Labor Code §1102.5 –
5 Whistleblower Retaliation.

6 Plaintiff's First Claim for Relief is for Whistleblower Retaliation under California Labor
7 Code §1102.5 against all Defendants. Defendants moved to dismiss that claim as untimely.
8 Whistleblower Retaliations Claims under California labor Code § 1102.5 must be filed within one
9 year of the alleged retaliatory act. California Code of Civil Procedure § 340(a); Fenters v. Chevron,
10 2009 U.S. Dist. LEXIS 115903, 22-23 (E.D. Cal. 2009). Here, Plaintiff's claim is based on
11 allegations that he was reprimanded on March 3, 2010 and subsequently terminated on July 1, 2010
12 for reporting alleged safety violations. However, he did not file his Complaint until August 23, 2011.

13 In his Opposition, Plaintiff argued that he was excused from complying with the one-year
14 statute of limitations because he filed a Government Claim under California Government Code §910
15 *et seq.* and thus had six months from the date of the rejection of that Claim to file his lawsuit.
16 Plaintiff did not cite to any authorities supporting that proposition, nor is it supported by case law.
17 See Roberts v. County of Los Angeles, 175 Cal.App. 4th 474 (2009)(holding that plaintiffs must
18 comply with the time limits for administrative complaints in addition to all other applicable statutes
19 of limitations.) Plaintiff did not comply with the statute of limitations in this action because he did
20 not file his Complaint until August 23, 2011, which is more than one year after the alleged retaliatory
21 acts.

22 Additionally, Defendants argued that Plaintiff failed to exhaust his administrative remedies
23 before the California Labor Commission as a condition precedent to filing suit under Labor Code §
24 1102.5. Campbell v. Regents the University of California 35 Cal. 4th 311, 333-4 (2005). Plaintiff
25 did not dispute this argument in his Opposition.

26 Plaintiff cannot cure either of these deficiencies by further amendment. Therefore,
27 Defendants' Motion to Dismiss Plaintiff's First Claim for Relief is GRANTED WITH PREJUDICE.

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1 Under California Code of Civil Procedure § 340, there is one-year statute of limitations for
2 slander causes of action. Here, Plaintiff's claim is based on statements that were allegedly made on
3 March 3, 2010 and June 18, 2010. However, he did not file his Complaint until August 23, 2011.

4 Plaintiff also failed to identify the slanderous statements made by each Defendant and did not
5 allege slander in his Government Claim as required under Government Code §§ 905, 911.2, 945 and
6 950.2.

7 Lastly, Defendants are all immune from liability under Government Code §822.2, which
8 immunizes public employees for injuries caused by their misrepresentation, whether or not such
9 representation was negligent or intentional.

10 Plaintiff cannot cure the deficiencies with this claim for relief by further amendment.
11 Therefore, Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief is GRANTED WITH
12 PREJUDICE.

13 5. Fifth Claim for Relief – Intentional Infliction of Emotional Distress.

14 Plaintiff's Fifth Claim for Relief is a state law claim for Intentional Infliction of Emotional
15 Distress against Defendants THOMAS, DELANEY, FLORES, McCOY and CLARK. Plaintiff
16 failed to allege an intentional infliction of emotional distress claim in his Government Claim as
17 required under California Gov. Code §§ 905, 911.2, 945, 950.2. Therefore, he failed to exhaust his
18 administrative remedies. Plaintiff did not address this argument in his Opposition.

19 Additionally, Plaintiff failed to allege facts sufficient to support a claim for intentional
20 infliction of emotional distress. Specifically, he did not identify the conduct by each Defendant that
21 allegedly gives rise to his claim, that they intended to cause or acted with reckless disregard for the
22 probability of causing emotional distress, or that they engaged in outrageous conduct. Hughes v.
23 Pair, 46 Cal.4th 1035, 1050-1051 (2009); Jenken v. G.M. Hughs Electric, 46 Cal.App.4th 55, 80
24 (1996). Plaintiff did not address any of these arguments in his Opposition.

25 Plaintiff cannot cure the deficiencies with this claim for relief by further amendment.
26 Therefore, Defendants' Motion to Dismiss Plaintiff's Fifth Claim for Relief is GRANTED WITH
27 PREJUDICE.

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1 untimely.

2 Alternatively, Defendants argued that Plaintiff failed to plead sufficient facts. Plaintiff names
3 McCOY, DELANY, CLARK, FLORES and YUBA COUNTY as Defendants to this claim.
4 However, the only act alleged in support of the claim was purportedly done by CLARK. As to
5 CLARK, Defendants argued that Plaintiff failed to plead facts establishing that she made any
6 misrepresentations or engaged in any other act that interfered with Plaintiff's employment
7 opportunity. Plaintiff did not address these arguments in his Opposition.

8 Plaintiff cannot cure the deficiencies with this claim for relief by further amendment.
9 Therefore, Defendants' Motion to Dismiss Plaintiff's Seventh Claim for Relief is GRANTED WITH
10 PREJUDICE.

11 8. Eighth Claim for Relief – Breach Of The Covenant Of Good Faith And
12 Fair Dealing

13 Plaintiff's Eighth Claim for Relief is for an alleged breach of the Covenant of Good Faith and
14 Fair Dealing based on the termination of his employment. A prerequisite to any such claim is the
15 existence of a contractual relationship between the parties. Smith v. City and County of San
16 Francisco, 225 Cal.App.3d 38, 48 (1990). However, under California law, the terms of public
17 employment are governed entirely by statute, not by contract, and thus, as a matter of law, there can
18 be no express or implied in fact contract between Plaintiff and the COUNTY. Portman v. County of
19 Santa Clara, 995 F.2d 898, 905 (9th Cir. 1993). Given Plaintiff cannot plead a contractual
20 relationship with the County governing his employment, he likewise cannot state a claim for breach
21 of the Covenant of Good Faith and Fair Dealing arising from his termination. Plaintiff did not
22 address this argument in his Opposition.

23 Plaintiff cannot cure the deficiencies with this claim for relief by further amendment.
24 Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Claim for Relief is GRANTED WITH
25 PREJUDICE.

26 9. Ninth Claim For Relief – ERISA §510.

27 Plaintiff's Ninth Claim for Relief is for an alleged violation of ERISA § 510, which precludes
28 adverse actions taken for the specific intent of interfering with ERISA rights. There are no facts

1 alleged in Plaintiff's Amended Complaint to support a claim that Plaintiff was terminated to deprive
2 him of his benefits under ERISA. All the facts alleged in the Amended Complaint go to alleged
3 retaliation for reporting safety violations. Plaintiff did not address this argument in his Opposition.

4 Alternatively, Defendants also argued that the Claim is untimely. There is one-year statute of
5 limitations for all claims pled under ERISA § 510. Burrey v. Pacific Gas & Electric Co., 159 F.3d
6 388, 396-397 (9th Cir. 1998). Here, Plaintiff alleges that he was terminated on July 1, 2010, but he
7 did not file his Complaint until August 23, 2011. As a result, the Claim is untimely. Plaintiff again,
8 did not address this argument in his Opposition.

9 Plaintiff cannot cure the deficiencies with this claim for relief by further amendment.
10 Therefore, Defendants' Motion to Dismiss Plaintiff's Ninth Claim for Relief is GRANTED WITH
11 PREJUDICE.

12 10. Defendant STEVE ZANAROLI.

13 STEVE ZANAROLI was named as a Defendant in Plaintiff's Amended Complaint. At the
14 hearing on Defendants' Motion to Dismiss, Plaintiff's counsel asked the Court to dismiss
15 ZANAROLI as a Defendant, with prejudice. Accordingly, ZANAROLI is hereby DISMISSED
16 WITH PREJUDICE.

17 III. Order.

18 For all of the foregoing reasons, Defendants' Motion to Dismiss Plaintiff's Amended
19 Complaint is GRANTED WITH PREJUDICE.

20
21 **IT IS SO ORDERED.**

22 Dated: 3/1/2012

23 /s/ John A. Mendez
24 The Hon. John A. Mendez
25 U.S. District Court Judge
26 Eastern District of California