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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICARDO APOLINARIO,
Plaintiff,
v.
UNITED HEALTHCARE WORKERS-
WEST SERVICE EMPLOYEES
INTERNATIONAL UNION, CTW, CLC, et
al.,
Defendants.

Case No. [13-cv-04219-VC](#)

ORDER OF DISMISSAL

Re: Dkt. No. 33

Defendant United Healthcare Workers-West Service Employees International Union ("the union") moves to dismiss Plaintiff Ricardo Apolinario's claim for breach of the duty of fair representation. The motion is granted.

To the extent Apolinario's claim is based on events related to his suspension (*see* Compl. ¶¶ 11-19), his claim is time-barred. The statute of limitations for claims against a union for breach of the duty of fair representation is six months, and Apolinario was suspended more than nine months before filing his complaint. *See, e.g., Stone v. Writer's Guild of Am. West*, 101 F.3d 1312, 1314 (9th Cir. 1996).

With respect to his termination, Apolinario has failed to plead sufficient facts to support a plausible claim that the union's conduct was "arbitrary, discriminatory, or in bad faith," *Beck v. UFCW, Local 99*, 506 F.3d 874, 879 (9th Cir. 2007) (internal quotation marks omitted). The complaint alleges that the union initially filed a grievance on Apolinario's behalf, withdrew the grievance, informed him of the withdrawal, and permitted him to appeal it. These specific allegations contradict Apolinario's more general statement that the union "clearly ignored" his claim (Compl. ¶ 27). Furthermore, Apolinario fails to provide any factual allegations that would support his contention that the union "failed to conduct even a minimal investigation of [his] grievance," a contention that is also undermined by the complaint's more specific allegations about the union's conduct. (*Id.*). Apolinario's remaining allegations—for example, that the union's

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actions were "clearly . . . arbitrary and in bad faith" (Compl. ¶ 26)—are even more conclusory and therefore do not aid him in stating a plausible claim. Accordingly, the union's motion to dismiss is granted. Given that Apolinario has already had an opportunity to amend his complaint to address the same deficiencies at issue here, his claim against the union is dismissed with prejudice.

IT IS SO ORDERED.

Dated: July 10, 2014



VINCE CHHABRIA
United States District Judge