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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK CATO,

No. C-11-05156 DMR

Plaintiff(s),

**ORDER DISMISSING CASE WITH  
PREJUDICE**

v.

COMMUNITY JOB PROGRAM,

Defendant(s).

Plaintiff Mark Cato brings this employment discrimination case against Defendants Community Job Program (“CJP”) and San Francisco Private Industry Council. [Docket No. 1.] According to the complaint, on or about July 20, 2005, a manager sexually harassed him during the course of his employment at the YMCA Café. After he reported the incident to CJP Employment Specialist Anna Kelleher, she reassigned him to work at Goodwill Industries. A month later, she tried to convince Plaintiff to return to his job at the café. According to Plaintiff, she threatened to terminate his relationship with CJP if he did not comply. When Plaintiff returned to the YMCA Café, the manager again sexually harassed him. After Plaintiff again complained to Kelleher about the sexual harassment, she expelled him from CJP.

Plaintiff filed a complaint with the Federal Equal Employment Opportunity Commission (“EEOC”) on March 29, 2011. On October 6, 2011, Plaintiff also filed a discrimination complaint

1 with the California Department of Fair Employment and Housing (“DFEH”). Plaintiff claims to  
2 have received a Notice of Right to Sue letter from the EEOC on October 19, 2011.

3 Plaintiff, proceeding *pro se*, brought suit in this Court on October 20, 2011, claiming, *inter*  
4 *alia*, job discrimination and retaliation on the basis of sex and race under Title VII, wrongful  
5 termination, unpaid wages, and the intentional infliction of emotional distress. The case originally  
6 was assigned to the Honorable Laurel Beeler. Plaintiff simultaneously filed a motion for leave to  
7 proceed *in forma pauperis*, which the court granted. [Docket Nos. 2, 6.] The U.S. Marshal  
8 attempted to serve Defendants on December 30, 2011, but failed because Plaintiff had not provided  
9 the correct address. [See Docket Nos. 8, 12.] On February 27, 2012, the court ordered Plaintiff to  
10 provide the Court with correct addresses for Defendants. [Docket No. 13.] He provided new  
11 addresses on March 6, 2012. [Docket No. 16.] However, the U.S. Marshal again failed to serve  
12 Defendants because the addresses were incorrect. [Docket Nos. 19-20.] On June 5, 2012, Judge  
13 Beeler referred the matter to the undersigned to determine whether this case is related to *Cato v.*  
14 *Goodwill Industries of San Francisco*, C-11-2553 DMR. Because this case is identical to the  
15 earlier-filed case, the court related the two matters. For the reasons below, the court dismisses this  
16 case with prejudice.

## 17 II. The Legal Standard for Dismissal for Failure to State a Claim

18 When evaluating whether to dismiss a case for failing to state a claim pursuant to Federal  
19 Rule of Civil Procedure 12(b)(6), the court must “accept as true all of the factual allegations  
20 contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation  
21 omitted), and may dismiss the case “only where there is no cognizable legal theory” or there is an  
22 absence of “sufficient factual matter to state a facially plausible claim to relief.” *Shroyer v. New*  
23 *Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250  
24 F.3d 729, 732 (9th Cir. 2001)) (quotation marks omitted) (citing *Ashcroft v. Iqbal*, 556 U.S. 662,  
25 678-79 (2009)). A claim has facial plausibility when a plaintiff “pleads factual content that allows  
26 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
27 *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged to demonstrate an  
28 “entitle[ment] to relief require[] more than labels and conclusions, and a formulaic recitation of the

1 elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2005)  
2 (brackets in original) (quotation marks omitted) (citing *Papasan v. Allain*, 478 U.S. 265, 286  
3 (1986)); see *Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001) (“Conclusory allegations of law  
4 . . . are insufficient to defeat a motion to dismiss.” (citation omitted)).

5 As a general rule, a court may not consider “any material beyond the pleadings” when ruling  
6 on a Rule 12(b)(6) motion. *Lee*, 250 F.3d at 688 (citation and quotation marks omitted). However,  
7 in certain circumstances, the court may consider extrinsic evidence without converting the motion  
8 into a motion for summary judgment. *Id.* (citation omitted); see Fed. R. Civ. P. 12(d) (“If, on a  
9 motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by  
10 the court, the motion must be treated as one for summary judgment under Rule 56.”). For example,  
11 the court may examine “material which is properly submitted as part of the complaint.” *Lee*, 250  
12 F.3d at 688 (citation and quotation marks omitted). If a document’s authenticity is not contested and  
13 the complaint “necessarily relies” on it, the court may take that document into account even if it is  
14 not physically attached to the complaint. *Id.* (citation and quotation marks omitted).

### 15 III. Analysis

16 “[D]istrict courts may dismiss an action *sua sponte* on [statute of] limitations grounds in  
17 certain circumstances where the facts supporting the statute of limitations defense are set forth in the  
18 papers plaintiff himself submitted.” *Donell v. Keppers*, No. 10-CV-2613, 2011 WL 6098025, at \*4  
19 (S.D. Cal. Dec. 6, 2011). Plaintiff has failed to state facially plausible claims in his complaint,  
20 because each claim is time barred by its respective statute of limitations.

21 An individual seeking redress under Title VII in California must file an administrative charge  
22 with the EEOC within 300 days of the alleged unlawful employment practice before commencing a  
23 civil employment discrimination suit in Federal court. 42 U.S.C. § 2000e-5(f); *E.E.O.C. v. Cal.*  
24 *Psychiatric Transitions, Inc.*, 644 F. Supp. 2d 1249, 1264 (E.D. Cal. 2009). In this case, Plaintiff  
25 filed his charge with the EEOC approximately five-and-a-half years after the alleged incidents at  
26 issue. Because he did not present his allegations to the EEOC within the allotted time, he did not  
27 properly exhaust his administrative remedies and may not bring his Title VII claims before the  
28 Court.

1 Plaintiff's claims of employment discrimination that could fall under the California Fair  
2 Employment and Housing Act fail for the same reason. Statute requires a complainant to file a  
3 complaint with the California Department of Fair Employment and Housing within a year of the  
4 alleged discriminatory acts. Cal. Gov't Code § 12960(d); *see also* § 12940. Plaintiff filed his  
5 complaint with the DFEH over five years after the date of the alleged acts, making his claims time  
6 barred under California law.

7 Plaintiff does not specify the nature of his claim for unpaid wages, but the statute of  
8 limitations on the claim has passed under Federal and California law. Under the Fair Labor  
9 Standards Act, 29 U.S.C. § 201 *et seq.*, a party must commence an action for unpaid wages within  
10 two or three years after the cause of action has accrued, depending on the nature of the alleged  
11 violation. *Id.* § 255(a). Under California law, a similar action must begin within two, three, or four  
12 years of the date of accrual, depending on the alleged violation. *Cuadra v. Millan*, 17 Cal. 4th 855,  
13 859 (1998). Again, in this case Plaintiff waited nearly six years to file suit.

14 Under California law, claims for wrongful employment termination, the intentional infliction  
15 of emotional distress, and other actions sounding in negligence have a two-year statute of  
16 limitations. Cal. Civ. Proc. § 335.1. Plaintiff cannot proceed with these claims, because he filed  
17 them nearly four years too late.

18 **IV. Conclusion**

19 Because Plaintiff's claims are time barred, the court finds that he has failed to state a claim  
20 upon which relief can be granted. The court ORDERS this case DISMISSED with prejudice.

21  
22 IT IS SO ORDERED.

23  
24 Dated: June 15, 2012

