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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RYAN PETERS,)	Civil No. 08cv1657-L(NLS)
)	
Plaintiff,)	ORDER GRANTING GUAJOME
)	ENTITY DEFENDANTS’ MOTION
v.)	TO DISMISS AND DISMISSING
)	PLAINTIFF’S AMENDED
BOARD OF TRUSTEES OF THE VISTA)	COMPLAINT
UNIFIED SCHOOL DISTRICT, <i>et al.</i>)	
)	
Defendants.)	
_____)	

Plaintiff filed a complaint alleging violations of his constitutional and statutory rights under federal and California law while he was a student at Guayome Park Academy Charter School and Vista Unified School District.¹ Defendants Board of Trustees of Guajome Park Academy and Guajome Park Academy Board Charter School (collectively “Guajome Entity Defendants”) filed a motion to dismiss the amended complaint. Defendants Board of Trustees of the Vista Unified School District, Vista Unified School District, Jim Gibson, David Hubbard, Dave Cowles and Chuck Cowles (collectively “Vista Defendants”) joined in Guajome Entity Defendants’ motion. Plaintiff opposed the motion. For the reasons which follow, the motion is **GRANTED** and this action is **DISMISSED**.

Plaintiff alleged six causes of action: (1) violation of his constitutional rights under 42

¹ Although Plaintiff filed the action *pro se*, he has since then secured representation by counsel.

1 U.S.C. § 1983; (2) violation of California Government Code Section 44807; (3) violation of
2 California Constitution, Article I, Section 28; (4) violation of state and federal law based on
3 racial and disability harassment and retaliation; (5) discrimination and retaliation based on
4 disability; and (6) discrimination and retaliation based on race. It appears that Plaintiff's fourth,
5 fifth and sixth causes of action are based on the Americans with Disabilities Act, 42 U.S.C.
6 § 12131 *et seq.* ("ADA"), Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, and Title VI of the Civil
7 Rights Act, 42 U.S.C. § 2000d *et seq.* Plaintiff alleged that while he was a student at Guayome
8 Park Academy Charter School and Vista Unified School District he was harassed based on his
9 race and disability, retaliated against for complaining about harassment, and was not provided
10 with a safe learning environment. Plaintiff requested compensatory and punitive damages. On
11 August 11, 2009 the court dismissed Plaintiff's claims based on 42 U.S.C. §§ 1983 and 2000d as
12 time-barred.

13 Guajome Entity Defendants seek to dismiss the remaining claims. Their motion is based
14 on Federal Rule of Civil Procedure 12(b)(6). A Rule 12(b)(6) motion to dismiss tests the
15 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "While a
16 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
17 allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires
18 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
19 will not do. Factual allegations must be enough to raise a right to relief above the speculative
20 level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks,
21 brackets and citations omitted). In reviewing a motion to dismiss under Rule 12(b)(6), the court
22 must assume the truth of all factual allegations and must construe them in the light most
23 favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir.
24 1996). Legal conclusions need not be taken as true merely because they are cast in the form of
25 factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987); *W. Mining*
26 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Similarly, "conclusory allegations of law
27 and unwarranted inferences are not sufficient to defeat a motion to dismiss." *Pareto v. Fed.*
28 *Deposit Ins. Corp.*, 139 F.3d 696, 699 (9th Cir. 1998).

1 Guajome Entity Defendants argue that Plaintiff's claims based on the ADA and the
2 Rehabilitation Act are time-barred. "A motion to dismiss based on the running of the statute of
3 limitations period may be granted only 'if the assertions of the complaint, read with the required
4 liberality, would not permit the plaintiff to prove the statute was tolled.'" *Supermail Cargo, Inc.*
5 *v. United States*, 68 F.3d 1204, 1206-07 (9th Cir. 1995), quoting *Jablon v. Dean Witter & Co.*,
6 614 F.2d 677, 682 (9th Cir. 1980). The untimeliness must appear beyond doubt on the face of
7 the complaint before a claim will be dismissed as time-barred. *See Supermail Cargo*, 68 F.3d at
8 1206-07.

9 According to the allegations in the amended complaint, the events giving rise to this
10 action started before February 2000 and continued until April 22, 2002, when Plaintiff's parents
11 permanently removed him from Guayome Park Academy Charter School.² (Am. Compl. at 15-
12 21.) Neither the ADA nor the Rehabilitation Act, the only remaining federal claims, includes its
13 own statute of limitations. When a federal statute does not contain a statute of limitations,
14 federal courts routinely borrow analogous statutes of limitations of the forum state. *Hardin v.*
15 *Straub*, 490 U.S. 536, 538 (1989). The California statute which could be considered most
16 analogous to the ADA and Rehabilitation Act is the Unruh Civil Rights Act, California Civil
17 Code Section 51, *et seq.* *Kramer v. Regents of the Univ. of Cal.*, 81 F. Supp. 2d 972 (N.D. Cal.
18 1999). The longest statute of limitations which could apply to the Unruh Civil Rights act is the
19 three-year statute of limitations in California Civil Code Section 338. *Olympic Club v. Those*
20 *Interested Underwriters at Lloyd's London*, 991 F.2d 497, 502 n.11 (9th Cir. 1993); *but see W.*
21 *Shield Investigations & Sec. Consultants v. Super Ct. (Eymil)*, 82 Cal.App.4th 935, 952-53
22 (2000); *Gatto v. County of Sonoma*, 98 Cal.App.4th 744, 754-59 (2002).

23 The statute of limitations was tolled until Plaintiff reached the age of majority, which in
24 California is 18 years of age. (See discussion in the Aug. 11, 2009 order at 3-4 and authorities
25 cited therein.) Guajome Entity Defendants assert that this action was filed more than three years
26 after Plaintiff turned 18. Although Plaintiff's birth date is not alleged in the amended complaint,
27

28 ² Elsewhere in the Amended Complaint Plaintiff alleges he was removed from
Guayome Park Academy Charter School in 2003. (Am. Compl. at 14.)

1 the amended complaint references Dr. Jeanne Feldman’s November 17, 1997 evaluation, which
2 identifies Plaintiff’s date of birth as August 24, 1987. (Am. Compl. at 9 & Guajome Entity
3 Defs’ Ex. 1.) When ruling on a motion to dismiss, the court may consider documents referenced
4 in but not attached to the complaint when authenticity is not contested. *Branch v. Tunnell*, 14
5 F.3d 449, 453-54 (9th Cir. 1994), overruled on other grounds, *Gailbraith v. County of Santa*
6 *Clara*, 307 F.3d 1119 (9th Cir. 2002); *In re Stac Elec. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th
7 Cir. 1996). Plaintiff does not contest the authenticity of Dr. Feldman’s evaluation or dispute that
8 his date of birth is August 24, 1987. Accordingly, more than three years passed between the date
9 of Plaintiff’s majority and the filing of this action.

10 Plaintiff argues that California’s three-year statute of limitations does not apply and that
11 his claims are timely pursuant to the four-year catch-all federal statute of limitations, 28 U.S.C. §
12 1658. The federal statute provides in pertinent part:

13 Except as otherwise provided by law, a civil action arising under an Act of
14 Congress enacted after the date of the enactment of this section may not be
commenced later than 4 years after the cause of action accrues.

15 28 U.S.C. § 1658(a). Plaintiff’s ADA and Rehabilitation Act claims are timely if they are
16 subject to the four-year statute of limitations. The statute applies if the claims arose under an
17 Act of Congress enacted after December 1, 1990. *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S.
18 369, 372 (2004). Plaintiff maintains that his claims arise under the ADA Amendments Act of
19 2008, Pub. L. No. 110-325. The claims, however, are based on events occurring prior to 2003 –
20 years before the enactment of the ADA Amendments Act of 2008. The act does not apply to
21 Plaintiff’s claims because it is not retroactive. *Becerril v. Pima County Assessor’s Office*, __
22 F.3d __, 2009 WL 4067450 (9th Cir. 2009).

23 Because Plaintiff’s ADA and Rehabilitation Act claims do not arise under the ADA
24 Amendments Act of 2008, California’s three-year statute of limitations applies. As discussed
25 above, the claims are barred because the action was commenced after the expiration of the
26 three-year statute. Accordingly, the ADA and Rehabilitation claims are **DISMISSED** as time-
27 barred.

28 With all claims arising under federal law dismissed as time-barred, the only claims


1 remaining are state law claims. Guajome Entity Defendants contend that state law claims
2 against them are barred because Plaintiff did not commence this action within the time provided
3 by law for tort claims against public entities. They argue that Guajome Park Academy Charter
4 School, as a charter school, is a part of the California public school system. *See Wilson v. State*
5 *Bd. of Educ.*, 75 Cal. App. 4th 1125 (1999); Cal. Educ. Code § 47641. Plaintiff does not dispute
6 this. Accordingly, to the extent Guajome Park Academy Charter School is a public entity under
7 California law, Plaintiff's state law claims against Guajome Entity Defendants are **DISMISSED**
8 as time-barred for the reasons stated in the August 11, 2009 Order Granting in Part and Denying
9 in Part Vista Defendants' Motion to Dismiss.

10 To the extent any state law claims remain, the court declines to exercise supplemental
11 jurisdiction over them. 28 U.S.C. § 1367(c). They are **DISMISSED WITHOUT PREJUDICE**
12 for lack of subject matter jurisdiction.

13 For the foregoing reasons, this action is hereby **DISMISSED** in its entirety.

14 **IT IS SO ORDERED.**

15
16 DATED: December 7, 2009

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18 
M. James Lorenz
United States District Court Judge

19 COPY TO:

20 HON. NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

21 ALL PARTIES/COUNSEL
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