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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAFAEL CRUZETA, an individual,	}	Civil No. 12-cv-1430-L (BLM)
Plaintiff,		<b>ORDER:</b> <b>(1) GRANTING DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED [doc. # 3], and (2) DECLINING TO EXERCISE SUPPLEMENTAL JURISDICTION</b>
v.		
SONY ELECTRONICS, INC., a Delaware Corporation, and DOES 1 through 15, inclusive,		
Defendants.		
_____		

On June 13, 2012, Plaintiff Rafael Cruzeta commenced this action against Defendant Sony Electronics, Inc., and DOES one through fifteen, seeking relief for violations of state law and the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.* (Compl. ¶¶ 23–28.) Defendant moves to dismiss Plaintiff’s ERISA claims pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that Plaintiff fails to state a claim upon which relief can be granted, and Defendant further requests that the Court decline to exercise supplemental jurisdiction over Plaintiff’s remaining state-law claims. (doc. #3.) Plaintiff opposes.

The Court finds this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d.1). (doc. #10.) For the following reasons, the Court will grant Defendant’s motion to dismiss for failure to state a claim upon which relief may be granted.

1           **I.     BACKGROUND**

2           Plaintiff is Defendant’s former employee who worked as a Senior Product Representative  
3 in San Diego, California. (Compl. ¶¶ 7, 9.) In June 2009, Defendant offered Plaintiff an early  
4 retirement benefits package. (*Id.* ¶ 12.) Despite being “actively encouraged” to accept this early  
5 retirement package, Plaintiff declined the offer because he “enjoyed his work.” (*Id.*) Plaintiff  
6 alleges that Defendant thereafter began “compiling evidence” and making efforts to “force him  
7 out” of the company. (*Id.* ¶¶ 13, 16.)

8           In October 2010, Defendant received a complaint that Plaintiff was being “overly friendly”  
9 towards female co-workers. (*Id.* ¶ 18) Defendant had previously given Plaintiff a written warning  
10 on October 23, 2001, and also a verbal warning on December 6, 2004, for “Sexual Harassment of  
11 several female” employees. (*Id.* ¶ 25, Ex. A.) Defendant proceeded to investigate the new  
12 complaint by interviewing Plaintiff and other employees. (*Id.* ¶ 16, Ex. A.) On November 9,  
13 2010, Defendant terminated Plaintiff for violations of its sexual harassment policy. (*Id.* ¶¶ 17,  
14 19.)

15           On January 17, 2011, Plaintiff sent a letter to Defendant’s President contesting the basis  
16 for his termination and requesting that he be reinstated or be “given the early retirement package  
17 offered [to] me in June of 2009.” (Compl. ¶ 23, Ex. B.) Defendant responded by reasserting that  
18 Plaintiff was fired for behavioral issues and violations of its written “Freedom from Sexual &  
19 Other Forms of Harassment” policy. (*Id.* ¶ 24.) Plaintiff contends that although he was always  
20 friendly and open with his co-workers, a characteristic inherent to his native culture, he never  
21 committed any actions that justified terminating him for sexual harassment (*Id.* ¶¶ 14, 25.)  
22 Rather, Plaintiff alleges that Defendant “simply trumped up a termination at the earliest practical  
23 opportunity” to avoid making payments on early retirement benefits owed to Plaintiff. (*Id.* ¶ 26.)

24           Out of these allegations, Plaintiff asserts the following eight causes of action: (1) wrongful  
25 termination, (2) intentional interference with an order being requested to clarify rights to future  
26 benefits under a benefit plan covered by ERISA, (3) breach of a retirement plan, (4) breach of  
27 fiduciary duty, (5) breach of contract, (6) breach of the implied covenant of good faith and fair  
28 dealing, (7) promissory estoppel, and (8) negligence. (Compl. ¶¶29–82.) Defendant moves to

1 dismiss any potential ERISA claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure  
2 on the basis that they do not state a claim upon which relief can be granted. (Def.’s Mot. Dismiss  
3 at 7–12.) If these claims are dismissed, Defendant also requests that this Court decline to exercise  
4 supplemental jurisdiction over any remaining state-law causes of action. (*Id.* 15–16.)

## 5 **II. LEGAL STANDARD**

6 The court must dismiss a cause of action for failure to state a claim upon which relief can  
7 be granted. FED. R. CIV. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) tests the legal  
8 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court must  
9 accept all allegations of material fact as true and construe them in light most favorable to the  
10 nonmoving party. *Cedars–Sanai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972,  
11 975 (9th Cir. 2007). Material allegations, even if doubtful in fact, are assumed to be true. *Bell Atl.*  
12 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But, the court need not “necessarily assume the  
13 truth of legal conclusions merely because they are cast in the form of factual allegations.” *Warren*  
14 *v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (internal quotation marks  
15 omitted). In fact, the court does not need to accept any legal conclusions as true. *Iqbal*, 556 U.S.  
16 at 678.

17 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed  
18 factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’  
19 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
20 of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Instead, the  
21 allegations in the complaint “must be enough to raise a right to relief above the speculative  
22 level.” *Id.* “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
23 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. 663  
24 (citing *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads  
25 factual content that allows the court to draw the reasonable inference that the defendant is liable  
26 for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability  
27 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”  
28 *Id.* A complaint may be dismissed as a matter of law either for lack of a cognizable legal theory

1 or for insufficient facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749  
2 F.2d 530, 534 (9th Cir. 1984).

3 Generally, courts may not consider material outside the complaint when ruling on a motion  
4 to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th  
5 Cir.1990). But documents specifically identified in the complaint whose authenticity is not  
6 questioned by parties may also be considered. *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n. 1 (9th  
7 Cir.1995) (superceded by statutes on other grounds).

### 8 **III. DISCUSSION**

9 Defendant contends that Plaintiff does not state any plausible claim for relief based on  
10 Defendant’s alleged violations of ERISA. This Court agrees. Congress enacted ERISA to  
11 “protect . . . the interests of participants in employee benefit plans” by setting out substantive  
12 regulatory requirements for employee benefit plans and to “provid[e] for appropriate remedies,  
13 sanctions, and ready access to Federal courts.” 29 U.S.C. § 1001(b). Therefore, the purpose of  
14 ERISA is to provide a “uniform regulatory regime over employee benefit plans.” *Aetna Health*  
15 *Inc. v. Davila*, 542 U.S. 200, 208 (2004).

16 To accomplish this purpose, ERISA includes “expansive pre-emption provisions” that are  
17 designed to “ensure that employee benefit plan regulation ‘would be exclusively a federal  
18 concern.’” *Id.* (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)).  
19 Consequently, “any state-law cause of action that duplicates, supplements, or supplants the  
20 ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA  
21 remedy exclusive and is therefore pre-empted.” *Id.* Meaning, ERISA’s preemption provisions  
22 when in conflict “defeat state-law causes of action on the merits.” *Fossen v. Blue Cross and Blue*  
23 *Shield of Mont., Inc.*, 660 F.3d 1102, 1107 (9th Cir. 2011).

24 To replace the causes of action that it preempts, ERISA provides a comprehensive civil  
25 enforcement mechanism that is the “exclusive remedy for rights guaranteed under ERISA.”  
26 *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 144 (1990). This mechanism, as set forth in 29  
27 U.S.C. § 1132(a), provides in pertinent part that:

28 ///

1 “A civil action may be brought--

2 (1) by a participant or beneficiary--

3 (B) to recover benefits due to him under the terms of his plan, to enforce his  
4 rights under the terms of the plan, or to clarify his rights to future benefits  
under the terms of the plan;

5 (2) by the Secretary, or by a participant, beneficiary, or fiduciary for appropriate  
6 relief under section 1109 of this title;

7 (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice  
8 which violates any provision of this subchapter or the terms of the plan, or (B) to  
obtain other appropriate equitable relief (i) to redress such violations or (ii) to  
enforce any provisions of this subchapter or terms fo the plan[.]”

9 As seen, claims to recover plan benefits or to enforce other provisions contained within ERISA  
10 must be brought through this cause of action where federal courts “have exclusive jurisdiction[.]”  
11 29 U.S.C. § 1132(e).

12 Under this framework, a complaint containing only state-law claims that are preempted by  
13 ERISA must be dismissed. *Tingey v. Pixley-Richards W., Inc.*, 953 F.2d 1124, 1131 (9th Cir.  
14 1992). In *Tingey*, plaintiff alleged that defendant terminated him after his child was born with a  
15 congenital disorder in order to deprive him of benefits under the company’s comprehensive  
16 medical plan. *Id.* at 1127–28. After removing the action to federal court, defendant moved to  
17 dismiss the entire complaint based on ERISA preemption grounds. *Id.* at 1128. Plaintiff amended  
18 his complaint, but again chose to proceed on state-law grounds and requested that the case be  
19 remanded to state court. *Id.* The district court responded by dismissing several of plaintiff’s  
20 claims and remanding the remainder to state court. *Id.* at 1129. On appeal, the Ninth Circuit held  
21 that the district court should have dismissed all of plaintiff’s claims because they were preempted  
22 by ERISA. *Id.* In doing so, the court reasoned that claims containing “transparent variations on  
23 the theme” that defendant caused plaintiff to be fired in order to deny benefits should be  
24 dismissed because the “sole remedy” for such a theory exists under ERISA. *Id.* at 1131.

25 Here, Plaintiff’s complaint similarly revolves around the allegation that Defendant  
26 terminated him to avoid paying early retirement benefits. Based on this theory, Plaintiff asserts  
27 eight causes of action that are a mix of seemingly ERISA and putative state-law claims. Although  
28 Plaintiff asserts that his complaint is being brought under 29 U.S.C. § 1140, ERISA’s retaliation

1 provision, Plaintiff’s individualized claims do not include which ERISA provision has been  
2 violated. Instead, several of these claims, such as for breach of contract, are similar to state-law  
3 causes of action that have been consistently held to be subject to preemption by ERISA. *E.g.*,  
4 *Tingey*, 953 F.2d at 1130–33. Therefore, the Court will construe these claims as falling under  
5 ERISA to the extent possible to determine whether Plaintiff has stated any claims that are  
6 cognizable under ERISA and upon which relief may be granted. *See id.*; *see also Crull v. GEM*  
7 *Ins. Co.*, 58 F.3d 1386, 1391 (9th Cir. 1995) (holding that the district court should have  
8 considered plaintiff’s request to analyze its claims under ERISA’s civil enforcement provision if  
9 their state-law causes of action were found to be preempted.)

10 In doing so, Plaintiff’s first cause of action is labeled “wrongful termination” but does not  
11 specify whether it is based on an ERISA provision or state-law. Although ambiguous, this claim  
12 will be construed as being brought under ERISA to redress a violation of its retaliation provision.  
13 This provision will be considered because Plaintiff previously references 29 U.S.C. § 1140 and  
14 states that he was terminated in order to be deprived of a plan benefit. *See McClendon*, 498 U.S.  
15 at 143 (stating that a wrongful termination claim based upon an alleged intent to deprive plan  
16 benefits is “prototypical of the kind that Congress intended to cover under” this section).

17 However, even when construed as a cognizable ERISA claim, Plaintiff’s first cause of  
18 action will be dismissed because it lacks plausibility. Section 510 of ERISA, 29 U.S.C. § 1140,  
19 prevents an employer from terminating an employee in order to evade paying present or future  
20 benefits owed to the employee. *E.g. Felton v. Unisource Corp.*, 940 F.2d 503, 10 (9th Cir. 1991).  
21 To proceed under this section, a plaintiff must show that: “(1) an employee participates in a  
22 statutorily protected activity, . . . (2) an adverse employment action is taken against him or her,  
23 and (3) a causal connection existed between the two.” *Id.* (quoting *Kimbrow v. Atl. Richfield Co.*,  
24 889 F.2d 869, 881 (9th Cir.1989)) (internal quotation marks omitted).

25 Here, Plaintiff does not adequately plead the first or third elements required for a  
26 retaliatory discharge claim. As for the first element, Plaintiff seeks to show that his “statutorily  
27 protected activity” was an entitlement to early retirement benefits. Yet, Plaintiff admits that he  
28 failed to receive the benefits he is seeking in this action because he voluntarily rejected

1 Defendant's offer in June of 2009. (Comp. ¶ 12.) Defendant was permitted to condition the  
2 promise to "pay increased benefits in exchange for" Plaintiff's decision to retire early from the  
3 company. *Lockheed Corp. v. Spink*, 517 U.S. 882, 894 (1996). Further, Plaintiff does not allege  
4 that this offer was continuing in nature and could be accepted over an indefinite duration, or that  
5 the offer could be rejected and later accepted in the years after the offer was extended. Plaintiff  
6 also does not allege that Defendant interfered with his right to receive these benefits, rather he  
7 states that Defendant "actively encouraged" him to accept the enhanced benefits he is now  
8 seeking. (Comp. ¶ 12.)

9 Moreover, Plaintiff does not plausibly allege a causal connection between him declining  
10 Defendant's offer of early retirement benefits in June 2009 and Defendant's termination of his  
11 employment in November 2010, seventeen months later. Plaintiff only provides the conclusory  
12 allegation that the "inescapable conclusion" is that "Sony simply trumped up a termination at the  
13 earliest practical opportunity in violation of ERISA restrictions." (Compl. ¶ 26.) Consequently,  
14 the complaint on its face cannot satisfy the third element for a retaliatory discharge claim under  
15 ERISA either, and Plaintiff's first claim will be dismissed accordingly.

16 Plaintiff's second cause of action seeks an order "clarifying his rights to future benefits  
17 under the terms of the Plan and directing that Defendants be enjoined from taking any action  
18 designed to prevent Plaintiff from obtaining benefits pursuant to the Plan[.]" (Compl. ¶ 39.) This  
19 claim appears to be a mix of § 1132(a)(1)(b), which provides for an action to "clarify rights" to  
20 benefits under a plan, and § 1132(a)(3), which provides an action for equitable relief. Plaintiff  
21 continues by stating that a "true, full and complete copy of the offer and explanation for the early  
22 retirement package is attached as Exhibit D and incorporated therein by reference." (*Id.* ¶ 37.)  
23 However, this document was not included in the Complaint and therefore cannot be referenced.<sup>1</sup>

24 Further, if this claim is construed as arising under § 1132(a)(1)(b), Plaintiff would need to

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26 <sup>1</sup>A document not attached to a complaint may be incorporated by reference when a  
27 plaintiff refers extensively to the document or when the document forms the basis of the  
28 plaintiff's claim. *See Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002). However, Plaintiff  
here does not extensively refer to the document, and it has not been provided by either party.  
Therefore, this document cannot be incorporated by reference. *See Knievel v. ESPN*, 393 F.3d  
1068, 1076 (9th Cir. 2005).

1 allege that he exhausted the internal review procedures of the plan or that an exception to the  
2 exhaustion requirement applies in order to proceed in federal court. *See Diaz v. United Agr.*  
3 *Employee Welfare Ben. Plan & Trust*, 50 F.3d 1478, 1483 (9th Cir. 1995). Alternatively, to the  
4 extent that this cause of action is a claim for an injunctive relief under § 1132(a)(3), the claim is  
5 barred because relief under § 1132(a)(3)’s “catch-all provision” is not proper when relief is  
6 available under § 1132(a)(1). *See Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Circuit 2004)  
7 (quoting *Varity Corp v. Howe*, 516 U.S. 489, 515 (1996)) As a result, Plaintiff’s second claim  
8 will be dismissed.

9 Plaintiff’s third cause of action, breach of retirement plan, must suffer the same fate. This  
10 claim appears to be arise under section 1132(a)(1)(b) as well, but Plaintiff has not provided any  
11 factual allegations that plausibly support that Defendant violated any terms of the plan or that  
12 Plaintiff still has rights to the early retirement benefits that he declined to accept in June 2009.  
13 Further, this claim is subject to the exhaustion requirement as well, and it therefore will be  
14 dismissed. *See Diaz*, 50 F.3d at 1483; *see also Angevine v. Anheuser-Busch Cos. Pension Plan*  
15 646 F.3d 1034 (8th Cir. 2011) (affirming dismissal of a claim under § 1132(a)(1)(b) to recover  
16 enhanced retirement benefits when plaintiff failed to his exhaust administrative remedies).

17 Plaintiffs fourth cause of action, breach of fiduciary duty, will be dismissed as well.  
18 Section 1132(a)(2) permits a plan participant or beneficiary to bring a civil action for appropriate  
19 relief when “[a]ny person who is a fiduciary with respect to a plan . . . breaches any of the  
20 responsibilities, obligations, or duties imposed upon fiduciaries” by ERISA. 29 U.S.C. §§  
21 1109(a), 1132(a)(2). One such duty imposed on fiduciaries is the requirement to “not make  
22 misrepresentations to plan participants.” *In re Computer Scis. Corp. Erisa Litig.*, 635 F. Supp. 2d  
23 1128, 1139 (C.D. Cal. 2009). To assert a claim for the breach of fiduciary duty for making  
24 misrepresentations, a plaintiff must allege: “(1) the defendant's status as an ERISA fiduciary  
25 acting as a fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of  
26 that misrepresentation; and (4) detrimental reliance by the plaintiff on the misrepresentation.” *Id.*  
27 (quoting *Daniels v. Thomas & Betts Corp.*, 263 F.3d 66, 73 (3d Cir. 2001)).

28 Here, Plaintiff alleges that Defendant breached its fiduciary duty by misrepresenting to



1 Plaintiff that “the terms of the plan were valid and enforceable obligations of the Company and  
2 that the Plaintiff was entitled to the benefits described therein.” (Compl. ¶ 48.) However, for this  
3 statement to be a misrepresentation, Plaintiff would need to satisfactorily allege that such a  
4 representation by Defendant was false. Because Plaintiff’s underlying theory for why he is  
5 entitled to the early retirement benefits package lacks plausibility, Plaintiff cannot sufficiently  
6 allege that Defendant did not adhere to a term of the benefit plan or violated an obligation to  
7 provide Plaintiff with benefits he was entitled to. Alternatively, if this claim is construed as being  
8 asserted under § 1132(a)(3), this claim would be barred as well because, as mentioned, this catch-  
9 all provision is only available if Plaintiff could not obtain relief under the section’s other  
10 provisions. *See Johnson*, 356 F.3d at 1077.

11 Plaintiff’s fifth and sixth causes of action, breach of contract and breach of the implied  
12 covenant of good faith and fair dealing, must be also dismissed. These putative state-law claims  
13 may only survive preemption to the extent that they rely “on a theory independent of the benefit  
14 plan.” *Tingey*, 953 F.2d at 131. However, these claims do not rely on an independent theory  
15 because Plaintiff’s sole assertion is that he was terminated to be deprived of early retirement  
16 benefits. Because these claims therefore “spring from the handling and disposition” of Plaintiff’s  
17 benefit plan, these claims are entirely preempted by ERISA and dismissal is warranted. *See id.*  
18 (holding that similar state-law claims were subject to preemption by ERISA and should be  
19 dismissed).

20 Plaintiff’s seventh cause of action, labeled promissory estoppel, must similarly be  
21 dismissed. Although ERISA preempts state promissory and equitable estoppel claims, a party  
22 “may assert a federal equitable estoppel claim in an ERISA action.” *Qualls By & Through Qualls*  
23 *v. Blue Cross of California, Inc.*, 22 F.3d 839, 845 (9th Cir. 1992) (citing *Greany v. Western*  
24 *Farm Bureau*, 973 F.2d 812, 821–22 (9th Cir. 1992)). However, a claim for equitable estoppel  
25 under ERISA is “limited to situations where the wronged party can prove (a) the provisions of the  
26 plan at issue are ambiguous, and (b) oral representations interpreting the plan were made to the  
27 employee.” *Id.* At 856–46 (citing *Greany*, 973 F.2d at 821–22). Assuming that Plaintiff intended  
28 to assert a federal estoppel claim, Plaintiff has not alleged either of these two situations, and

1 therefore this claim will be dismissed.

2 All of Plaintiff's federal ERISA claims will be dismissed. Consequently, this Court may  
3 refrain from exercising supplemental jurisdiction over Plaintiff's remaining state-law cause of  
4 action under 28 U.S.C. § 1367(c)(3). Accordingly, the Court declines to exercise supplemental  
5 jurisdiction over Plaintiff's negligence claim. This claim will be dismissed as well.


6 Finally, the Court grants Plaintiff leave to amend his complaint. Rule 15(a) of the Federal  
7 Rules of Civil Procedure provides that after a responsive pleading has been served, a party may  
8 amend its complaint only with the opposing party's written consent or the court's leave. FED. R.  
9 CIV. P. 15(a). "The court should freely give leave when justice so requires," and apply this policy  
10 with "extreme liberality." *Id.*; *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.  
11 1987). As this would be Plaintiff's first amendment, and because Plaintiff could supplement his  
12 complaint with more information about the early retirement benefits offer he received or other  
13 additional allegations about how Defendant interfered with Plaintiff's rights under the benefit  
14 plan, this Court will grant him leave to amend.

15 **III. CONCLUSION**

16 For the reasons set forth above, the Court **DISMISSES WITHOUT PREJUDICE**  
17 Plaintiff's complaint. If Plaintiff intends to file a First Amended Complaint in conformity with  
18 this Order and Rule 11 of the Federal Rules of Civil Procedure, then he must do so on or before  
19 May 9, 2013.

20 **IT IS SO ORDERED.**

21 DATED: April 25, 2013

22   
23 M. James Lorenz  
United States District Court Judge

24 COPY TO:

25 HON. BARBARA L. MAJOR  
26 UNITED STATES MAGISTRATE JUDGE

27 ALL PARTIES/COUNSEL

28