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3 UNITED STATES DISTRICT COURT FOR THE
4 WESTERN DISTRICT OF PENNSYLVANIA

5 STEVEN D. SHICK,)

6 *Plaintiff,*)

7 v.)

8 AIELLO'S CAFÉ *et al.*)

9 *Defendants.*)
10)
11)

CASE NO. 16-311 Erie-BJR

ORDER GRANTING MOTION
TO DISMISS

12 **I. INTRODUCTION**

13 Plaintiff, Steven D. Shick, proceeding *pro se*, filed this action against Defendants Aiello's
14 Café, Earnest Aiello, and Rosa Aiello. Mr. Shick is a former employee of Aiello's Café. He
15 brings an employment discrimination claim, as well as claims for "personal injury," "personal
16 property," "civil rights," and "forfeiture/penalty." Dkt. No. 1 at 4. Defendants move to dismiss
17 the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 14. Having
18 reviewed the motion, the opposition thereto, the record of the case, and the relevant legal
19 authority, the Court will grant the motion. The reasoning for the Court's decision follows.
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21 **II. BACKGROUND**

22 Plaintiff provides few factual averments in his form complaint; however, he attached
23 several exhibits to the pleading. From reviewing those exhibits, the Court is able to glean the
24 following factual allegations. Mr. Shick, who is sixty-two years old, alleges that he was
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1 employed by Aiello’s Café as a dishwasher until he was terminated. In a letter he wrote to the
2 U.S. Equal Employment Opportunity Commission (“EEOC”), he alleged the following:

3 I was fired because the restaurant was not happy with my performance because I
4 was complaining of unlawful and unsafe health practices and alcohol being served
5 to minors, including violations of labor laws as child under the age of 16 were
6 working in an establishment that serves alcohol and allowing children under the
7 age of 18 to service alcohol.

8 Dkt. No. 1, Ex. 2. On September 22, 2016, the EEOC dismissed Mr. Shick’s complaint after
9 determining that the Age Discrimination in Employment Act of 1967 (“ADEA”) did not apply to
10 Aiello’s Café because it employs “less than the required number of employees” to bring it under
11 the purview of the Act. *Id.* at Ex. 3.

12 Mr. Shick also filed a Child Labor Act complaint with the Pennsylvania Department of
13 Labor & Industry Bureau of Labor Law Compliance, in which he alleged that the café employs
14 four minors (sixteen-year-olds). *Id.* at Ex. 5. Mr. Shick included a citation notice in which it
15 appears Aiello’s Café was cited and fined \$250 for employing a minor under the age of eighteen
16 to serve alcoholic beverages. *Id.* at Ex. 6. Finally, in response to Defendants’ motion to dismiss,
17 Mr. Shick filed a copy of a document titled “Child Labor Act Inspection Report” dated
18 November 13, 2015 in which Aiello’s Café was cited for employing three minors. Dkt. No. 23,
19 Ex. 1. The report indicates that the café has twelve employees. *Id.*

20 III. STANDARD OF REVIEW

21 In considering a motion to dismiss under Rule 12(b)(6), the plaintiff’s allegations are to
22 be construed favorably to the pleader and a complaint should not be dismissed for failure to state
23 a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his
24 claim which would entitle him to relief. *Simmons v. Community Service Providers, Inc.*, 847 F.
25 Supp. 351, 352 (E.D. Pa. 1994). Although a pleading need not correctly categorize legal theories

1 giving rise to the claims, the complaint must nevertheless provide a defendant with fair notice of
2 what the plaintiff's claim is and the grounds upon which it rests. *Id.* at 353 (citing *Williams v.*
3 *New Castle County*, 970 F.2d 1260, 1265–1266 (3rd Cir. 1992)). In addition, *pro se* complaints
4 are to be more liberally construed and held to less stringent standards than pleadings drafted by
5 lawyers. *Id.* (citing *Boag v. MacDougall*, 454 U.S. 364, 365–66 (1982)).

6 IV. DISCUSSION

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8 Construing the allegations in the complaint liberally, the Court concludes that Plaintiff
9 attempts to state a claim for age discrimination under the Age Discrimination in Employment
10 Act of 1967 (“ADEA”). This is consistent with the documents Plaintiff attached to his pleadings;
11 it is also consistent with Plaintiff’s opposition to the motion to dismiss in which he states that he
12 brings this lawsuit because “defendants have acted unlawfully under the Federal statute of the
13 ADEA Act of 1967 (Age discrimination).” Dkt. No. 23 at 4.

14 “The ADEA prohibits employers from discriminating against individuals in hiring,
15 discharge, compensation, term, conditions, or privileges of employment on the basis of their
16 age.” *Patel v. Shinseki*, 984 F. Supp. 2d 461, 468 (W.D. Pa. 2013) (quoting *Duffy v. Paper Magic*
17 *Grp., Inc.*, 265 F.3d 163, 167 (3d Cir. 2001)). However, the ADEA’s prohibitions only apply to
18 employers with over 20 employees. *Id.* (citing 29 U.S.C. § 630(b)); *Mann v. Estate of Meyers*, 61
19 F. Supp. 3d 508, 528 (D. NJ 2014) (“Congress did not wish to impose the burden of litigation
20 upon small entities”). The exhibits Plaintiff attached in support of his complaint and opposition
21 to the motion to dismiss conclusively demonstrate that Aiello’s Café has fewer than twenty
22 employers. *See* Dkt. No. 1, Ex. 3; Dkt. No. 23, Ex. 1. Indeed, the documents demonstrate that the
23 café employs twelve individuals. Dkt. No. 23, Ex. 1. Therefore, Aiello’s Café does not fall under
24 the purview of the ADEA and Plaintiff cannot maintain his ADEA claim against it as a matter of
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1 law. *See Evans v. Watt*, 2004 WL 90064, *1 (C.D. Cal. January 7, 2004) (granting motion to
2 dismiss because employee could not maintain an ADEA claim against employer who had fewer
3 than fifteen employees); *Avington v. Metropolitan Tulsa Urban League*, 603 Fed. Appx. 662,
4 663 (10th Cir. 2015) (affirming summary judgment on ADEA claim brought by *pro se* plaintiff
5 for failing to establish that his employer had twenty or more employees).

6 Moreover, to the extent that Plaintiff attempts to bring an ADEA claim against Mr. and
7 Mrs. Aiello individually, the courts in this Circuit have consistently held that individual
8 defendants cannot be held liable for damages under the ADEA. *Mann*, 61 F. Supp. 3d at 527-28
9 (citing cases). Therefore, Plaintiff cannot maintain an ADEA claim against Mr. and Mrs. Aiello
10 and it must be dismissed as a matter of law.

12 While Plaintiff states that he brings this lawsuit pursuant to the ADEA, construing the
13 complaint liberally, the Court finds that he may also be attempting to state a claim pursuant to
14 Title VII of the Civil Rights Act of 1964. As referenced above, Plaintiff attached to his complaint
15 a letter to the EEOC in which he alleged that he was terminated, at least in part, in retaliation for
16 complaining about possible violations of Pennsylvania child labor laws. Dkt. No. 1, Ex. 2. Title
17 VII makes it unlawful to discriminate against an employee because he or she opposed an
18 unlawful employment practice. However, just as Aiello’s Café does not fall under the purview of
19 the ADEA, Title VII is also inapplicable in this case. Title VII limits actions against employers
20 to those who employ fifteen or more employees. 42 U.S.C. § 2000e(b) (defining “employer” as
21 “a person . . . who has fifteen or more employees”). Therefore, Plaintiff is unable to maintain a
22 Title VII claim against Aiello’s Café as a matter of law. *See Greenless v. Edienmuller*
23 *Enterprises, Inc.*, 32 F.3d 197, 199 (5th Cir. 1994) (defendant employer did not fall within the
24 statutory definition of employer under Title VII because Title VII excludes employers with fewer
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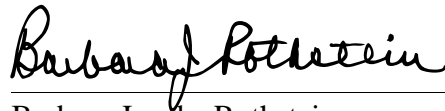
1 than fifteen employees from coverage); *Tasciyan v. Medical Numerics*, 820 F. Supp. 2d 664, 671
2 (D. Maryland 2011) (“An employer who employs fewer than fifteen employees does not satisfy
3 Title VII’s statutory definition of employer and, therefore, is not subject to discrimination actions
4 founded on Title VII”).

5 Lastly, Plaintiff states that Defendants “acted unlawfully under ... Pa. Dept. of Labor and
6 industry-Child labor laws as well as Pa. state liquor enforcement laws.” Dkt. No. 23 at 4. To the
7 extent that Plaintiff attempts to state a claim under these provisions of Pennsylvania state law,
8 this Court does not have jurisdiction to hear such claims. In order for this Court to exercise
9 supplemental jurisdiction over Plaintiff’s state law claims, this Court must first have original
10 jurisdiction over at least one claim in the case. However, because Plaintiff’s federal law claims
11 fail as a matter of law, this Court does not have original jurisdiction and, therefore, cannot
12 exercise supplemental jurisdiction over the state law claims. *See Heller v. CACL Federal Credit*
13 *Union*, 775 F. Supp. 839, 843 (E.D. Pa. 1991) (noting that a federal court “should ordinarily
14 decline to exercise supplemental jurisdiction over state law claims when the federal claim are
15 dismissed”).

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18 **V. CONCLUSION**

19 For the foregoing reasons, Defendants’ motion to dismiss this lawsuit pursuant to Federal
20 Rule of Civil Procedure 12(b)(6) [Dkt. No. 13] is hereby GRANTED.

21 Dated this 18th day of July, 2017.

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24 _____
25 Barbara Jacobs Rothstein
U.S. District Court Judge

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