

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GREGORY SLATE,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:13-CV-00798-ABJ
	)	
PUBLIC DEFENDER SERVICE	)	
FOR THE DISTRICT OF COLUMBIA,	)	
	)	
and	)	
	)	
RACHEL ANN PRIMO,	)	
Defendants.	)	

**DEFENDANT PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS COMPLAINT¹**

¹ A revised version of this Memorandum of Law in Support of Defendant The Public Defender Services' Motion to Dismiss has been filed to correct a redaction within the Memorandum of Law filed August 12, 2013.

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I. INTRODUCTION

Defendant Public Defender Service for the District of Columbia (“PDS”) seeks dismissal of all claims against PDS in this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because Plaintiff Gregory Slate (“Slate”) has failed to state a claim upon which relief can be granted.²

First, the complaint fails to state a claim for race or gender discrimination because these claims are time-barred. In order to recover on any of his discrimination claims, Slate must show that “that an act contributing to the claim occur[ed] within the filing period.” *Munoz v. Bd. of Trustees of Univ. of Dist. of Columbia*, 590 F. Supp. 2d 21, 25 (D.D.C. 2008) (quoting *Amtrak v. Morgan*, 536 U.S. 101, 117 (2002)), *aff’d* 427 F. App’x 1 (2011). Because Slate filed an EEOC charge on April 15, 2010—not April 15, 2009, as he alleges in his complaint—the filing period began on June 19, 2009, after he had been placed on leave. *See* Koerner Decl. Exs. 1-2; Compl. ¶118. Slate has not pled any facts from which a reasonable person could infer that PDS discriminated against him on the basis of race or gender after June 19, 2009.

Second, the complaint fails to state a claim for retaliation because of a lack of causation. Slate has “failed to plead facts that would allow the Court reasonably to infer that defendant retaliated against [him] *because of [his] prior protected activity.*” *Leipzig v. Astrue*, CIV. 12-909 RJL, 2013 WL 2417688, at *3 (D.D.C. June 3, 2013) (emphasis in original). He alleges that he engaged in protected activity and that he has been subject to adverse employment actions, but his factual allegations are insufficient to establish a plausible causal link between the two.

Additionally, to the extent that Slate’s claims for retaliation under Title VII are based on alleged

^{2 2} Defendant Rachel Primo is represented by separate counsel. The arguments supporting the dismissal of Slate’s claims against PDS would apply equally to claims against Primo.

acts of retaliation that occurred prior to July 9, 2009, they are barred due to Slate's failure to exhaust administrative remedies.

Third, Slate's complaint fails to state a claim for breach of contract and breach of the duty of good faith and fair dealing because these claims are barred by the statute of limitations. Any contract between Slate and PDS was terminated on March 3, 2010, when PDS terminated Slate's employment. The statute of limitations for Slate's contractual claims expired three years later on March 3, 2013. *See* D.C. Code §12-301(7). Slate did not file this lawsuit until May 30, 2013, and his contractual claims are therefore barred by the statute of limitations.

Slate thus has failed to state a claim for relief under *any* of the several theories he pleads in his complaint. His complaint accordingly must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. **BACKGROUND**

PDS is an independent legal organization that provides legal representation to persons who are financially unable to obtain adequate representation. *See* D.C. Code §2-1601 *et seq.* Slate began working for PDS as a staff investigator on August 18, 2008. Compl. ¶¶6-11. On or about May 30, 2009, Slate crashed a vehicle while driving in Arlington, Virginia. Compl. ¶¶82-89. The passenger in the vehicle was one of Slate's fellow staff investigators, Defendant Rachel Primo ("Primo"). Compl. ¶¶3, 82-89. Slate left the scene of the accident without making a report to law enforcement authorities as required by Virginia Code §46.2-894. *See* Compl. ¶¶87-89; Koerner Decl. Exs. 3 (Slate's plea agreement), 4 (transcript from Slate's plea hearing).³

³ The Court may consider "matters of a general public nature, such as court records, without converting the motion to dismiss into one for summary judgment." *Baker v. Henderson*, 150 F. Supp. 2d 13, 15 (D.D.C.2001) (citing *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C.Cir.1993); *Phillips v. Bureau of Prisons*, 591 F.2d 966, 969 (D.C.Cir.1979)).

On June 11, 2009, [REDACTED] provided Slate with a letter informing him that he was being placed on administrative leave. Compl. ¶¶98-99; Koerner Decl. Ex. 1.⁴ The letter required Slate to present himself to the Fairfax City, Fairfax County, and Virginia State Police Authorities in the presence of a supervising investigator in order to demonstrate that there was no outstanding warrant for his arrest. *Id.* The letter further stated that Slate was required to relinquish his PDS ID, refrain from using PDS databases and e-mail accounts, and refrain from working on any PDS cases without prior authorization. *Id.* Should a warrant be issued against Slate, the letter indicated that PDS would “assess the situation.” *Id.* Slate did not return to PDS after receiving the letter. *See* Compl. ¶¶101-102, 108.

An arrest warrant was executed against Slate on June 25, 2009 for a felony hit-and-run offense in violation of Va. Code Ann. §46.2-894. *See* Koerner Decl. Ex. 5 (warrant). Slate was charged in Arlington Circuit Court with driving under the influence and felony hit-and-run. *See* Koerner Decl. Exs. 3-5.

On July 9, 2009—nearly one month after he was initially placed on leave, and two weeks after his arrest—Slate submitted an internal complaint against Primo for alleged discrimination on the basis of race, color, sex, and religion. Compl. ¶91. The complaint was submitted to [REDACTED] [REDACTED] *See* Koerner Decl. Ex. 2 (Slate’s April 15, 2010 EEO charge).

On January 26, 2010, Slate pled guilty to misdemeanor hit-and-run and misdemeanor driving under the influence. *Id.* At the plea hearing, Slate testified under penalty of perjury that he was in fact guilty of the misdemeanor hit-and-run offense. Koerner Decl. Ex. 4 at 6:22-7:3

⁴ Because the letter is referenced in paragraphs 97 and 98 of Slate’s complaint, this Court may consider it on a motion to dismiss. *See Peters v. District of Columbia*, 873 F. Supp. 2d 158, 179 n.20 (D.D.C. 2012) (“[D]ocuments that are referenced in, or are an integral part of, the complaint are deemed not ‘outside the pleadings.’”).

(“The Court: With respect to the hit and run, are you pleading guilty because you are guilty of this charge? The Defendant: Yes.”).

On March 3, 2010, PDS terminated Slate’s employment. *See* Koerner Decl. Ex. 2. Approximately one month later, on April 15, 2010,⁵ Slate filed a charge, Charge #570-2010-01067, with the EEOC alleging race discrimination, sex discrimination, and retaliation in violation of Title VII. *See* Koerner Decl. Ex. 2. On November 17, 2010, Slate filed a second EEOC charge, Charge #570-2011-00223, alleging that PDS had retaliated against him by refusing to rehire him on July 19, 2010 and in August 2010, and by denying his application for Criminal Justice Act (CJA) Investigator certification. *See* Koerner Decl. Ex. 6. On February 27, 2013, the EEOC sent Slate a notice of his right to sue on his first charge, Charge #570-2010-01067. Compl. Ex. A.

Slate commenced this action on May 30, 2013. He alleges that he was subject to “overtly sexist, racist, and religious harassment” and “open discrimination” by Primo and other PDS staff investigators. Compl. ¶¶14-81. He alleges that PDS retaliated against him by placing him on leave, requiring him to relinquish his PDS ID, barring him from using PDS databases and e-mail accounts, prohibiting from working on any PDS cases without prior authorization, terminating him, and refusing to rehire him or approve his certification as a CJA investigator. Compl. ¶¶92-110, 119-25.

III. STANDARD OF REVIEW

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of an action where the complaint fails to “state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6) (2012). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face’.” *Ashcroft v. Iqbal*,

⁵ In his complaint, Slate misrepresents the date of this filing as April 15, 2009. *See* Compl. ¶118.

556 U.S. 662, 678 (2009) (citation omitted). The facial plausibility requirement “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. Although a complaint “does not need detailed factual allegations,” the factual allegations provided “must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

While the factual allegations of the complaint are accepted as true in the context of considering a motion to dismiss, “labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. “Moreover, the court ‘need not accept inferences drawn by plaintiff[] if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations.’” *Whittington v. United States*, 867 F. Supp. 2d 102, 104 (D.D.C. 2012) (citing *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)); see also *Iqbal*, 556 U.S. at 678 (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”). “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal*, 556 U.S. at 679.

IV. ARGUMENT

A. Slate Fails To State A Claim of Gender or Race Discrimination

Counts I and II of the complaint allege that PDS discriminated against Slate on the basis of his gender and race, respectively, in violation of Title VII. Counts IV and V allege gender and race discrimination, respectively, in violation of the DCHRA. These claims should be dismissed because Slate fails to state a plausible claim of gender or race discrimination under either Title VII or the DCHRA. To the extent that his claims relate to alleged discrimination that occurred prior to June 19, 2009, they are time barred. Even where Slate’s claims not time-barred, they are

still subject to dismissal because Slate has failed to allege facts from which a reasonable person could infer that he was discriminated against on the basis of his race or gender.

1. Claims of discrimination prior to June 19, 2009 are time-barred

In the District of Columbia, the filing period for an EEOC charge is 300 days. *See Griffin v. Acacia Life Ins. Co.*, 925 A.2d 564, 568–69, n.13 (D.C. 2007) (explaining that, due to the “worksharing” arrangement between the EEOC and the DCHRA, deadline to file is 300 days from the date of the alleged discrimination). “To be actionable, a discrete act—an event that ‘takes place at a particular point in time’—must occur within the filing period, while a hostile work environment must extend into the filing period.” *Dickens v. Dep’t of Consumer & Regulatory Affairs*, 298 F. App’x 2, 3 (D.C. Cir. 2008) (citing *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007)). Unless a charge is timely filed with the EEOC, the DCHRA’s one-year statute of limitations continues to run. *Hobby v. Dist. of Columbia*, CIV.A. 07-1061 (RMC), 2007 WL 4233627, at *1 (D.D.C. Nov. 29, 2007) (because EEOC charge was not timely filed, DCHRA charges were subject to one-year statute of limitations).

Slate filed his first EEOC charge on April 15, 2010. *See* Koerner Decl. Ex. 2. Therefore, the charge filing period in this case began on June 19, 2009, and thus in order to plead a timely hostile work environment claim, Slate must allege facts from which a reasonable person could infer that an “act contributing to the claim” occurred on or after June 19, 2009. *Dickens*, 298 F. App’x at 3; *Hobby*, 2007 WL 4233627, at *1. Similarly, in order to state a timely claim for a discrete act of discrimination, Slate must allege facts from which a reasonable person could infer that this act occurred on or after June 19, 2009. *Id.*

2. The alleged incidents of race and gender discrimination occurred before the charge-filing period began

At the outset, Slate could not possibly allege that he was subject to on-the-job discrimination after June 19, 2009 because he had been placed on leave *before* that date. Specifically, on June 11, 2009, [REDACTED] sent Slate a letter placing him on administrative leave. Koerner Decl. Ex. 1, Compl. ¶99. Slate alleges that when he later “arrived at PDS’s office to resume work,” he was sent home. Compl. ¶101. Slate was subsequently placed on unpaid leave, and eventually terminated. Compl. ¶¶102, 108. Thus, although Slate appears to allege that he was subject to a hostile work environment in his on-the-job interactions with Primo and other PDS Investigators, any such hostile work environment ended by the time Slate was suspended on June 19, 2009. *See Currier v. Radio Free Europe/Radio Liberty, Inc.*, 159 F.3d 1363, 1368 (D.C. Cir. 1998) (“The last day on which [plaintiff] could have been subjected to hostile environment sexual harassment was his last day at work; thereafter he was not in a work environment, let alone a hostile one.”).

Furthermore, Slate has failed to allege facts from which a reasonable person could infer that he was subject to race or gender discrimination after June 19, 2009. He alleges that he was subject to a “long series of overtly sexist, racist, and religious harassment” and “open discrimination” while working at PDS. Compl. ¶¶17-49, 63-81. Without exception, however, the alleged incidents that he identifies occurred before June 19, 2009. *See, e.g.*, Compl. ¶20 (September 10, 2008 e-mail), ¶38 (November 18, 2008 e-mail), ¶42 (December 2, 2008 e-mail), ¶79 (February 19, 2009 e-mail), ¶80 (February 28, 2009 e-mail). Because none of these incidents occurred within the filing period, they cannot establish a claim for race or gender discrimination.

Slate's race discrimination claims suffer from a further defect. To recover for race discrimination, a plaintiff must show "that the conduct at issue was not merely tinged with offensive . . . connotations, but actually constituted *discrimina[tion]* . . . because of [race]." *Oncle v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (internal quotations omitted; emphasis in original); *see also Attakora v. Dist. of Columbia*, CIV.A. 12-1413 CKK, 2013 WL 1899783, at *3 (D.D.C. May 8, 2013) (Title VII and DCHRA discrimination claims require showing that plaintiff suffered adverse action "because of the plaintiff's race, color, religion, sex, [or] national origin."). Although Slate alleges that he was subject to racially offensive comments, he has failed to identify his own race, much less allege that these comments were directed at him *because of* his race. Absent such an allegation, Slate's claims for race discrimination fail.

3. Slate fails to allege that PDS discriminated against him after June 19, 2009 on the basis of his race or gender

Slate does not expressly allege that the actions PDS took after June 19, 2009, including his termination, were acts of race or gender discrimination. Even if his complaint were construed to include such a claim, this claim would still fail "because [he] has not alleged facts that could give rise to an inference of discrimination on the basis of race or gender." *Brown v. Dist. of Columbia*, CIV. 12-799 RJL, 2013 WL 358188, at *6 (D.D.C. Jan. 29, 2013). Specifically, Slate has failed to allege a causal nexus between the actions PDS took after his hit-and-run accident and Slate's race or gender. *See Attakora*, 2013 WL 1899783, at *3-4; *see also Stella v. Mineta*, 284 F.3d 135, 145 (D.C. Cir. 2002) ("This court . . . requires a plaintiff to state a prima facie claim of discrimination by establishing that: '(1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) the unfavorable action gives rise to an inference of discrimination.'" (emphasis added) (quoting *Brown v. Brody*, 199 F.3d 446, 452

(D.C. 1999) (internal quotation marks omitted)). Indeed, Slate has failed to identify his own race, much less allege his race was a motivating factor in his suspension and termination. Slate's gender discrimination claim is equally devoid of factual support.⁶ Because Slate "alleges no facts from which a reasonable person could infer that [his race or gender] (or some combination thereof) caused [him] to suffer an adverse employment action," any claim for race or gender discrimination arising out of his suspension and termination would be subject to dismissal. *Jackson v. Acedo*, CIV. A. 08-1941 RBW, 2009 WL 2619446 (D.D.C. Aug. 26, 2009).

B. Slate Fails to State a Claim for Retaliation

Counts III and VI of Slate's complaint allege that PDS retaliated against him in violation of Title VII and the DCHRA, respectively. These claims are subject to dismissal because Slate has "failed to plead facts that would allow the Court reasonably to infer that defendant retaliated against [him] *because of [his] prior protected activity.*" *Leipzig*, 2013 WL 2417688, at *3 (emphasis in original). Additionally, because Slate's EEOC charges only addressed acts of retaliation that allegedly occurred *after* July 9, 2009, his retaliation claims under Title VII are subject to dismissal to the extent that they relate to acts of retaliation that allegedly occurred *before* that date. See *Thomas v. Miami Dade Pub. Health Trust*, 369 F. App'x 19, 22-23 (11th Cir. 2010) ("[A]cts of retaliation that occurred *prior* to the date of the EEOC charge that were not

⁶ A plaintiff may establish an inference that her treatment was based on her gender "by demonstrating that she was treated differently from similarly situated employees who are not part of the protected class." *George v. Leavitt*, 407 F.3d 405, 412 (D.C. Cir.2005). Of the two allegedly similarly-situated employees that Slate identifies in his complaint, however, one was a male. See Compl. ¶¶112-116. Thus, Slate has failed to allege that PDS treated male employees as a class differently than female employees.

included in the charge [are] not exhausted and [cannot] be considered by the district court.” (emphasis added)).⁷

1. Slate fails to state a claim for retaliation under either Title VII or the DCHRA

In order to state a claim for retaliation, Slate must demonstrate “(1) that he engaged in statutorily protected activity; (2) that he suffered a materially adverse action by his employer; and (3) that a causal link connects the two.” *Jones v. Bernanke*, 557 F.3d 670, 677 (D.C. Cir. 2009); *see also Leftwich v. Gallaudet Univ.*, 878 F. Supp. 2d 81, 97 (D.D.C. 2012) (“The elements of a retaliatory claim are the same under DCHRA as under the federal employment discrimination laws.”). The third element is missing in this case. Slate alleges that he engaged in protected activity, and alleges that he was subject to a number of specific adverse actions, including termination, as a result of his “complaints about EEO violations.” Notably, Slate does not specify what “complaints” caused this retaliation, fails to identify the decisionmaker behind most of these actions, fails to allege that the decisionmaker was aware of his protected activity, and fails to explain why this decisionmaker may have been motivated by retaliatory animus. Instead, Slate simply asserts that all of these adverse actions were “[i]n retaliation for” his complaints about EEO violations. Compl. ¶¶92-98, 102-05, 108-09, 121, 123, 125. This is not sufficient to withstand a motion to dismiss. *See Gladden v. Solis*, Civ.A. 10-1905 ESH, 2013 WL 755282, at *3 (D.D.C. Feb. 28, 2013) (fact that plaintiff engaged in protected activity and was later rejected insufficient to allow the court to reasonably infer that retaliation occurred); *see also Majeed v. ADF Cos.*, No. 1 1-CV-5459 (SJF)(ETB), 2013 WL 654416, at *11 (E.D.N.Y. Feb. 20, 2013) (“A complaint that . . . fails to provide any factual detail describing . . . which

⁷ Unlike Title VII, the DCHRA only requires a plaintiff to exhaust administrative remedies if that plaintiff is an employee of the D.C. government. *See Ndongji v. InterPark Inc.*, 768 F. Supp. 2d 263, 285 (D.D.C. 2011).

employee of the defendant had knowledge of the plaintiff's protected activity or actually engaged in the claimed retaliation, is insufficient to withstand a motion to dismiss.”); *Clarke v. Petersburg City Public School*, 3:11-cv-164, 2012 WL 5286957, at *4 (E.D.Va. Oct. 24, 2012) (dismissing retaliation claim where plaintiff failed to allege that decisionmaker had knowledge of protected activity); *Enadeghe v. Ryla Teleservices, Inc.*, 108-cv-3551-TW, 2010 WL 481210, at *9 (N.D. Ga. Feb. 3, 2010) (same).

Slate’s allegations are similar to those found lacking in *Peters v. Dist. of Columbia*, 873 F. Supp. 2d 158 (D.D.C. 2012). In *Peters*, one of the plaintiffs alleged that a supervisor denied his transfer request and singled him out from similarly-situated employees for a threatened write-up in retaliation for complaining about a *different* supervisor’s discriminatory misconduct. *Id.* at 201. This Court dismissed the plaintiff’s claims for retaliation. *Id.* at 201-04. The Court found that the denial of the transfer request “more plausibly appears to have been a reasonable management decision under the circumstances, rather than a retaliatory act.” *Id.* at 202-03. The causal link between the plaintiff’s complaints and the supervisor’s threatened write-up, meanwhile, was “too tenuous” because the plaintiff never alleged that he complained about the supervisor who was responsible for the write-up. *Id.* at 204; *see also Perry v. Clinton*, 831 F. Supp. 2d 1, 24 (D.D.C.2011) (holding no causal link established between protected activity and retaliation when plaintiff “provided no evidence or argument explaining why [supervisor] would decide to retaliate against *her* because she filed a complaint against someone else.”) (emphasis in original). In the present case, the acts of “retaliation” that Slate challenges more plausibly appear to have been a reasonable response to Slate’s criminal misconduct than any protected activity. And Slate makes no effort to explain why PDS management would retaliate against him

for making an internal complaint about the conduct of his fellow staff investigators. Slate's claims for retaliation should be dismissed.

2. Slate failed to exhaust administrative remedies under Title VII for acts of retaliation that occurred prior to July 9, 2009

Slate alleges that PDS took a long series of retaliatory actions against him as a result of his various "complaints" about EEO violations. In his initial EEOC charge, however, Slate's allegations were much more circumscribed. The only complaint that Slate identified was a July 9, 2009 complaint to [REDACTED] See Koerner Decl. Ex. 2. Slate alleged that "within a week" of making this complaint, he "was placed on unpaid leave and [PDS] began a retaliatory investigation. On March 3, 2010, [PDS] terminated [his] employment. . . ." *Id.* Slate's second EEOC charge was likewise limited to acts of retaliation that allegedly occurred after July 9, 2009. See Koerner Decl. Ex. 6.

A plaintiff bringing "retaliation claims under Title VII [is] required . . . to exhaust her administrative remedies with respect to each 'discrete act.'" *Motley-Ivey v. Dist. of Columbia*, 09-CV-571 RLW, 2013 WL 543877, at *5 (D.D.C. Feb. 14, 2013). Although there is a limited exception to this exhaustion requirement for acts of retaliation that occur *after* an EEO charge is filed, "acts of retaliation that occurred *prior* to the date of the EEOC charge that were not included in the charge [are] not exhausted and [cannot] be considered by the district court." *Thomas*, 369 F. App'x at 22-23 (emphasis added); see also *Strouss v. Mich. Dep't of Corr.*, 250 F.3d 336, 342 (6th Cir. 2001) ("[R]etaliation claims based on conduct that occurred *before* the filing of the EEOC charge must be included in that charge.") (emphasis in original). In *Ochoa v. Donahoe*, for example, the plaintiff filed a charge claiming that she was subject to various acts of retaliation such as verbal abuse, but did not include the defendant's failure to promote her among these retaliatory actions. CIV. 11-1296CCC, 2013 WL 1124696, at *2 (D.P.R. Mar. 15, 2013).

The district court held that because “plaintiff failed to include her failure-to-promote claim in the administrative complaint, she cannot now raise it in court for the first time.” *Id.*

In this case, Slate did not include *any* acts of retaliation that occurred prior to July 9, 2009 in his EEOC charges. Yet his complaint includes numerous allegations of retaliation relating to actions that occurred before that date. For instance, Slate alleges that [REDACTED] wrote him a letter instructing him to travel to three separate police stations with his PDS supervisor to establish whether a warrant had been issued for his arrest. Compl. ¶¶98-99. However, the letter he is referring to was dated June 11, 2009—nearly a month *prior* to July 9, 2009. *See* Koerner Decl. Ex. 1. Similarly, Slate alleges that PDS banned him from coming onto the PDS premises, using his PDS ID, accessing his e-mail or any PDS database, or working on any PDS case. Compl. ¶¶93-97. However, all of these restrictions were clearly set forth in the June 11, 2009 letter. *See* Koerner Decl. Ex. 1. They could not possibly have been imposed in retaliation for Slate’s EEO activity. Similarly, although Slate alleges that [REDACTED] “called a law enforcement official in Virginia and insisted that he charge” Slate with leaving the scene of an accident, Compl. ¶101, judicial records show that Slate was arrested on hit-and-run charges on June 25, 2009, two weeks before he filed his grievance. Koerner Decl. Exs. 2, 5. To the extent that Slate now seeks to bring a claim under Title VII based on these alleged acts of retaliation, his claims are subject to dismissal for failure to exhaust administrative remedies.

C. Slate’s Fails to State a Claim For Breach of Contract Or Breach of the Covenant of Good Faith and Fair Dealing

Count IX of Slate’s complaint alleges that PDS breached an alleged “oral contract” and its own “professed policy” concerning investigator terminations. Compl. ¶¶7-10, 195-199. Count X of Slate’s complaint alleges that PDS breached a duty of good faith and fair dealing

implicit in this alleged oral contract and termination policy. Both claims are barred by the statute of limitations.

The statute of limitations on a breach of contract claim is three years. *See* D.C. Code § 12-301(7). The statute of limitations on a claim for a breach of the covenant of good faith and fair dealing is also three years. *See Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 320-21 (D.C. 2008). The alleged contract between Slate and PDS was terminated—along with Slate’s employment and any implied covenants—on March 3, 2010. *See* Koerner Decl. Ex. 2. Thus, any claim for breach of contract or breach of the covenant of good faith and fair dealing arising out of that termination accrued no later than that date. *See Pardue v. Ctr. City Consortium Sch. of Archdiocese of Washington, Inc.*, 875 A.2d 669, 679 (D.C. 2005) (rejecting continuing violation theory and holding that breach of contract claim accrued when plaintiff reasonably could have discovered claim); *Murray*, 953 A.2d at 320-21 (breach of covenant occurred when foreclosure notice was issued, even though plaintiffs only learned at later date that lender would not modify notice). Slate was obligated to bring his breach of contract claim and his breach of the covenant of good faith and fair dealing claim no later than March 3, 2013. Having failed to do so, his claims are now barred by the statute of limitations.

V. CONCLUSION

For the reasons stated herein, Slate’s complaint should be dismissed in its entirety pursuant to Rule 12(b)(6).

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Respectfully submitted,

/s/

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