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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARLON JOHNSON PRYOR,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>HEART N SOUL TAX SERVICES OF VALLEJO, INC., DBA Jackson Hewitt Tax Service; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-55730

D.C. No. 3:07-cv-00424-MMA-
JMA

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, LEAVY, and TALLMAN, Circuit Judges.

Marlon Johnson Pryor appeals pro se from the district court's judgment
dismissing his Title VII action. We have jurisdiction under 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

review de novo. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1061 (9th Cir. 2004). We affirm.

The district court properly dismissed Pryor's hostile work environment claim because he did not allege facts suggesting that his co-workers' conduct was based on his race or gender, or that it was sufficiently severe or pervasive to alter the conditions of his employment. *See Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1108-09 (9th Cir. 2008).

The district court properly dismissed Pryor's retaliation claim because he did not sufficiently allege facts suggesting that he complained about conduct prohibited by Title VII before being terminated or otherwise subjected to an adverse action. *See Learned v. City of Bellevue*, 860 F.2d 928, 932-33 (9th Cir. 1988) (Title VII retaliation claim fails where plaintiff did not complain about conduct prohibited by Title VII); *see also Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997) (judges are not obliged to dig through the record to find support for a party's claims).

The district court did not abuse its discretion by dismissing the first amended complaint without leave to amend after concluding that further amendment would be futile. *See Chaset v. Fleer/Skybox Int'l*, 300 F.3d 1083, 1087-88 (9th Cir. 2002) (dismissal without leave to amend is not an abuse of discretion where further

amendment would be futile); *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051-52 (9th Cir. 2008) (amendment futile where plaintiffs filed an amended complaint containing the same defects as their original complaint).

To the extent Pryor sought default judgments against any defendants, the district court did not abuse its discretion by refusing to grant this relief after concluding Pryor's claims lacked merit. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092-93 (9th Cir. 1980) (per curiam). Moreover, contrary to Pryor's contention, the record does not indicate that Heart N Soul Tax Services of Vallejo, Inc. and Pacific Capital Bancorp were properly served. *See Fed. R. Civ. P. 4(h)(1); Barlow v. Ground*, 39 F.3d 231, 234 (9th Cir. 1994) (service by mail in California is valid only if a signed acknowledgment is returned).

Pryor's remaining contentions are unpersuasive.

We lift the stay as to appellee Heart N Soul Tax Services of Vallejo, Inc.

AFFIRMED.