

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Harris v. City of Madera

No. 1:22-cv-00660 JLT GSA (PC) (E.D. Cal. July 29, 2025) · No. 1:22-cv-00660 JLT GSA (PC) · Decided July
29, 2025

OPINION

(PC) Harris v. City of Madera

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 DANIEL JAFAIN HARRIS, No. 1:22-cv-00660 JLT GSA (PC)

12 Plaintiff, ORDER DIRECTING PLAINTIFF TO SHOW

CAUSE WHY THIS MATTER SHOULD NOT

13 v. BE SUMMARILY DISMISSED AS

UNTIMELY FILED AND FOR FAILURE TO

14 CITY OF MADERA, et al., EXHAUST ADMINISTRATIVE REMEDIES

15 Defendants. (ECF No. 20)

16 PLAINTIFF’S SHOWING OF CAUSE OR, IN

THE ALTERNATIVE, HIS VOLUNTARY

17 DISMISSAL OF THIS MATTER DUE IN

FOURTEEN DAYS

18 19 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil 20
rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States 21
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 22 Before this Court
is Plaintiff’s first amended complaint. ECF No. 20. For the reasons 23 stated below, Plaintiff will
be ordered to show cause why this matter should not be summarily 24 dismissed as untimely and
for failure to exhaust administrative remedies. Plaintiff’s showing of 25 cause or, in the
alternative, his voluntary dismissal of this matter due in fourteen days. 26 27 28

1 I. RELEVANT FACTS

2 On May 20, 2025, Plaintiff’s complaint was screened. ECF No. 17. The complaint 3 named the
City of Madera; the Madera Sheriff Department, and the Madera County Department 4 of
Corrections as Defendants, and it raised general violations of right stemming from Defendants’ 5
alleged violations of government policies related to the California Law Enforcement 6
Telecommunications System (“CLETS”), and acts of negligence related to his federal rights. See 7

ECF No. 1 at 1-3. It alleged that the violations of right occurred from September 29, 2016, 8 through October 23, 2017, and that the alleged violations were ongoing. See id. at 6. 9 In the screening order, the Court found that the pleading failed to state a claim upon which 10 relief could be granted because it contained no specific facts and because it failed to identify the 11 governmental policy and/or procedure that Defendants were alleged to have violated. See ECF 12 No. 17 at 5. In addition, the Court found that Plaintiff's allegations against entities like the 13 sheriff's department were not actionable under Section 1983 for the actions of an employee, and 14 that absent a showing of a clear policy or custom, a municipality could not be held liable under 15 Section 1983, either. Id. at 5-6.

16 Based on these findings, the Court found that the complaint failed to state any claim upon 17 which relief could be granted, and Plaintiff was given the opportunity to file an amended 18 complaint. ECF No. 17 at 8-9. He was given thirty days to do so. At that time, Plaintiff was 19 given instruction with respect to what his amended complaint should contain if he chose to file 20 one. Id. at 8. He was also sent a copy of the Court's Civil Rights Complaint By a Prisoner form 21 to use when filing the amended complaint. See id. at 9.

22 II. PLAINTIFF'S FIRST AMENDED COMPLAINT

23 Plaintiff has filed a first amended complaint. ECF No. 20. In it, Plaintiff names the City 24 Madera again as a Defendant. See id. at 1. However, he also names two completely different 25 Defendants who were not mentioned in the original complaint: Luz Romero, the Administration 26 27 28 1 Supervisor for the Madera Department of Correction, and Christine Najiri¹ of the Madera County 2 District Attorney's Office. Id. at 2-3. 3 In Plaintiff's two claims in the FAC, he essentially alleges that Defendants Romero and 4 Najiri violated his due process rights and engaged in negligence, illegal misconduct, and the 5 deprivation of his liberty, civil and constitutional rights when, on September 29, 2016, they 6 conspired to and arranged unauthorized visitation between himself and one Klara Bess, for the 7 purpose of entrapment and the gathering incriminating information against him related to a 8 criminal conviction. ECF No. 20 at 3-4. 9 Plaintiff's FAC also clearly states that there was an inmate appeal process available to him 10 at the Madera County Jail, but that he did not file an appeal or a grievance related to his two 11 claims because "remedies for complaint are unavailable at institution, facility or prison." ECF 12 No. 20 at 2 (errors in original).

13 III. APPLICABLE LAW

14 A. Statute of Limitations to File a Complaint 15 In federal court, federal law determines when a claim accrues, and "under federal law, a 16 claim accrues 'when the plaintiff knows or has reason to know of the injury which is the basis of 17 the action.'" *Lukovsky v. City and County of San Francisco*, 535 F.3d 1044, 1048 (9th Cir. 18 2008) (quoting *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999); *Fink v. Shedler*, 192 19 F.3d 911, 914 (9th Cir. 1999)). In the absence of a specific statute of limitations, federal courts 20 should apply the forum state's statute of

limitations for personal injury actions. Lukovsky, 535 F.3d at 1048; Jones v. Blanas, 393 F.3d 918, 927 (2004); Fink, 192 F.3d at 914. California's two- year statute of limitations for personal injury actions applies to 42 U.S.C. § 1983 claims. See Jones, 393 F.3d at 927. California's statute of limitations for personal injury actions requires that the claim be filed within two years. Cal. Code Civ. Proc., § 335.1. In actions where the federal court borrows the state statute of limitations, the court should also borrow all applicable provisions for tolling the limitations period found in state law. See 1 It is unclear what the correct spelling of this Defendant is. Plaintiff's handwriting is not legible. See ECF No. 20 at 3. 1 Hardin v. Straub, 490 U.S. 536, 539, 109 S.Ct. 1998, 2000 (1989). Pursuant to California Code of Civil Procedure, § 352.1, a two-year limit on tolling is imposed on prisoners. Section 352.1 3 provides, in pertinent part, as follows: 4 (a) If a person entitled to bring an action, . . . is, at the time the cause of action 5 accrued, imprisoned on a criminal charge, or in execution under the sentence of a 6 criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years. 7 8 Cal. Code Civ. Proc., § 352.1. 9 The equitable tolling doctrine also tolls the statute of limitations while exhaustion occurs. 10 Donoghue v. County of Orange, 848 F.2d 926, 930-31 (9th Cir. 1988); Addison v. State of 11 California, 21 Cal.3d 313, 318 (1978). Additionally, whether an inmate is entitled to equitable 12 tolling is decided by state law except to the extent that it is inconsistent with federal law. Jones, 13 393 F.3d at 927. The Ninth Circuit has recognized that prisoners relying on the California statute 14 of limitations are entitled to equitable tolling of the statute of limitations while completing the 15 mandatory exhaustion process. See Brown v. Valoff, 422 F.3d 926, 943 (9th Cir. 2005). "Where 16 exhaustion of an administrative remedy is mandatory prior to filing suit, equitable tolling is 17 automatic: 'It has long been settled in this and other jurisdictions that whenever the exhaustion of 18 administrative remedies is a prerequisite to the initiation of a civil action, the running of the 19 limitations period is tolled during the time consumed by the administrative proceeding.'" 20 McDonald v. Antelope Valley Cmty. Coll. Dist., 45 Cal. 4th 88, 101 (2008) (quoting Elkins v. 21 Derby, 12 Cal. 3d 410, 414 (1974); cf. Code Civ. Proc. § 356 [tolling applies whenever 22 commencement of an action is statutorily prohibited].) 23 B. Exhaustion Requirement 24 The claims of inmates who challenge their conditions of confinement are subject to the 25 Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). "The PLRA mandates that 26 inmates exhaust all available administrative remedies before filing 'any suit challenging prison 27 conditions,' including, but not limited to, suits under [Section] 1983." Albino v. Baca, 747 F.3d 28 11162, 1171 (9th Cir. 2014) (brackets added) (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006)); 2 Rhodes v. Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010) ("[A] prisoner must exhaust his 3 administrative remedies . . . before that complaint is tendered to the district court."). There are 4 few exceptions to this rule. See Ross v. Blake, 578 U.S. 632, 643-44 (2016) (exceptions to 5 exhaustion requirement). 6 "Under § 1997e(a), the exhaustion requirement hinges on the 'availab[ility]' of 7 administrative remedies: An inmate . . . must exhaust available remedies, but

need not exhaust 8 unavailable ones.” Ross, 578 U.S. at 642 (brackets in original). In discussing availability in 9 Ross, the Supreme Court identified three circumstances in which administrative remedies were 10 unavailable: (1) where an administrative remedy “operates as a simple dead end” in which 11 officers are “unable or consistently unwilling to provide any relief to aggrieved inmates;” (2) 12 where an administrative scheme is “incapable of use” because “no ordinary prisoner can discern 13 or navigate it;” and (3) where “prison administrators thwart inmates from taking advantage of a 14 grievance process through machination, misrepresentation, or intimidation.” Ross, 578 U.S. at 15 644. “[A]side from [the unavailability] exception, the PLRA’s text suggests no limits on an 16 inmate’s obligation to exhaust – irrespective of any ‘special circumstances.’ ” Id. at 639. 17 “[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, 18 foreclosing judicial discretion.” Id. at 632.

19 IV. DISCUSSION

20 A. Plaintiff’s Complaint is Untimely 21 Irrespective of the fact that Plaintiff’s FAC impermissibly raises claims that were not 22 raised in the original complaint – which is also grounds for dismissal (see generally *George v. 23 Smith*, 507 F.3d 605, 607 (7th Cir. 2007)) (stating no unrelated claims may be filed in amended 24 complaint), this matter must be summarily dismissed for two independent threshold reasons. 25 First, the FAC is untimely. In both claims, Plaintiff states that the incidents in question occurred 26 on September 29, 2016. See ECF No. 20 at 3-4. Thus, absent any tolling to exhaust 27 administrative remedies – which Plaintiff’s FAC clearly states he never did – Plaintiff’s original 28 1 complaint should have been filed no later than four years from that date, which is September 29, 2 2020. 3 Plaintiff’s original complaint was signed, and thus, constructively filed on April 29, 4 2022.2 See ECF No. 1 at 7 (signature date of complaint). This was a full one year and seven 5 months past September 29, 2020, the last day that Plaintiff was able to file a complaint in this 6 Court. For this reason, this case should be summarily dismissed. 7 B. Plaintiff Has Failed to Exhaust Administrative Remedies Without Excuse 8 Plaintiff’s FAC must also be dismissed because in it, he has failed to provide a viable and 9 plausible excuse under Ross for not having exhausted his administrative remedies in the Madera 10 County Jail prior to filing his original complaint in this Court. See generally ECF No. 20. 11 Plaintiff’s contradictory statements that there is an administrative remedy process at the jail, but 12 that he did not use the process because “remedies for complaint are unavailable at institution, 13 facility or prison,” (see id. at 2), without more, does not, consistent with Ross, sufficiently excuse 14 the fact that he has not exhausted his administrative remedies. For this reason as well, Plaintiff’s 15 complaint must be summarily dismissed.

16 V. CONCLUSION

17 In sum, because: (1) Plaintiff’s complaint was filed well beyond the four-year statute of 18 limitations period, and (2) it is clear on the face of the FAC that Plaintiff did not exhaust his 19 administrative remedies, and that he has provided no viable excuse under Ross for not having 20 done so, the Court must recommend that this matter be summarily dismissed. Prior to doing so, 21

however, Plaintiff will be ordered to show cause why it should not be. As an alternative to filing
22 the showing of cause, Plaintiff may voluntarily dismiss this matter pursuant to Federal Rule of
23 Civil Procedure 41(a)(1)(A)(i). Plaintiff will be given fourteen days to take either course of 24
action. 25 2 The signing date of a pleading is the earliest possible filing date pursuant to the
mailbox rule. 26 See *Roberts v. Marshall*, 627 F.3d 768, 769 n.1 (9th Cir. 2010) (stating
constructive filing date for 27 prisoner giving pleading to prison authorities is date pleading is
signed); *Jenkins v. Johnson*, 330 F.3d 1146, 1149 n.2 (9th Cir. 2003), overruled on other grounds
by *Pace v. DiGuglielmo*, 544 28 U.S. 408 (2005). 1 Accordingly, IT IS HEREBY ORDERED that
within fourteen days from the date of this 2 order, Plaintiff shall SHOW CAUSE why this matter
should not be SUMMARILY DISMISSED 3 as untimely in violation of the Statute of Limitations
and for failure to exhaust administrative 4 remedies. 5 Plaintiff is cautioned that failure to timely
respond to this order within the time 6 allotted may result in a recommendation that this matter be
dismissed. 7 Plaintiff is further cautioned that absent exigent circumstances, no requests for 8
extensions of time to respond to this order will be granted. 9 10 IT IS SO ORDERED. 11 12
Dated: July 29, 2025 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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