

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

**Emerald City Collective v. Washington State Liquor and Cannabis
Board, et al.**

Emerald City Collective · No. C24-2163JLR · Decided January 15, 2026

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE 9 10 EMERALD CITY COLLECTIVE, CASE NO. C24-2163JLR 11 Plaintiff,
ORDER v. 12 WASHINGTON STATE LIQUOR 13 AND CANNABIS BOARD, et al., 14
Defendants. 15 I. INTRODUCTION 16 Before the court is a motion to dismiss filed by Ollie
Garrett, Rick Garza, Jeanne 17 McShane, David Postman, Nicola Reid, Rebecca Smith
("Individual Defendants"), and 18 the Washington State Liquor and Cannabis Board ("WSLCB")
(collectively, 19 "Defendants").

(MTD (Dkt. # 13); Reply (Dkt. # 16).) Plaintiff Emerald City Collective 20 ("ECC") opposes the
motion. (Resp. (Dkt. # 15).) The court has considered the parties' 21 22 1 submissions, the
relevant portions of the record, and the governing law. Being fully 2 advised, the court GRANTS
Defendants' motion. 3 II. BACKGROUND 4 This case arises from ECC's failure to obtain a retail
cannabis license in 2016 5 purportedly due to systemic racial discrimination in the Washington
state cannabis 6 licensing system.

(See generally Compl. (Dkt. # 1-2).) The WSLCB is a Washington 7 state agency charged with
issuing retail licenses to vendors and the current or former 8 employer of the Individual
Defendants. (Id. ¶¶ 2-8, 14.) ECC is a Black-owned 9 nonprofit medical cannabis dispensary
located in Washington state. (Id. ¶ 1.) 10 The WSLCB administered a "priority system" for issuing
licenses that was 11 designed to favor applicants with certain qualifications and experience in the
industry.

12 (Id. ¶ 16.) ECC applied for a license when the WSLCB opened an application window 13
between October 12, 2015, and March 31, 2016. (Id. ¶ 19.) In March 2016, the WSLCB 14
informed ECC that it had issued all retail licenses for that period to other applicants and 15 that
ECC's application was not approved.¹ (Id. ¶ 27; see also Withdrawal Notification.) 16 ECC
alleges that the WSLCB administered the priority system in a discriminatory 17 manner,
particularly as applied to Black and Brown people.

(Compl. ¶ 20.) According to 18 ECC, the WSLCB subjected Black and Brown applicants "to
disparate treatment 19 20 1 The court agrees with Defendants that the following documents are

incorporated into the complaint by reference: (1) the April 13, 2016, designation of ECC’s license application as 21 “Priority 2” under the now discontinued Priority scheme (Dkt. # 13-2) (Priority Assignment) and (2) 5/4/17 Not.

(Dkt. # 13-2) (Withdrawal Notification). See *Kniesel v. ESPN*, 393 F.3d 1068, 22 1076 (9th Cir. 2005). 1 compared to their white counterparts” and required them to “fulfil certain 2 requirements... that far exceeded State requirements[.]” (Id. ¶¶ 21, 28.) 3 In 2020, the Washington state legislature enacted the Social Equity Program, an 4 initiative that facilitated the issuance of “additional marijuana retail licenses for social 5 equity purposes.” (Id. ¶ 32.)

ECC obtained a license to operate in King County through 6 the Social Equity Program in 2023. (Id. ¶ 35.) Operators of retail dispensaries, however, 7 remained subject to city ordinances that regulated how dispensaries could operate. ECC 8 alleges that, because of City of Seattle ordinances limiting available locations for opening 9 retail stores, “there are no retail locations in Seattle where [it] can legally open its 10 business.” (Id. ¶¶ 34-35.)

ECC also alleges that “many of the businesses currently 11 prohibiting ECC from opening a location in King County were improperly granted retail 12 licenses during the Priority scheme that was in place from 2015-2016.” (Id.) 13 ECC further represents that its principal began investigating the WSLCB in May 14 2022, “after growing ever frustrated with the licensing process.” (Id. ¶ 37.)

ECC 15 submitted many public records requests for documents that, it asserts, established the 16 discriminatory practices it describes in its complaint. (Id.) 17 On November 18, 2024, ECC filed this suit in King County Superior Court 18 bringing claims against the WSLCB for violation of the Fourteenth Amendment’s Equal 19 Protection Clause, violation of the Privileges and Immunities Clause of the Washington 20 State Constitution, negligence, and tortious interference and claims against the Individual 21 Defendants for discrimination under 42 U.S.C. § 1981(a) and deprivation of a 22 constitutional right under 42 U.S.C. § 1983.

(See *id.* at 9-12.) ECC seeks damages and 1 an award for attorneys’ fees and costs. (Id. at 12.) On December 30, 2024, Defendants 2 removed the case to this court. (See 12/30/24 Not. (Dkt. # 1).) On September 24, 2025, 3 Defendants filed the instant motion to dismiss. (MTD.)

The matter is now fully briefed 4 and ripe for consideration. 5 III. ANALYSIS 6 The court first sets forth the relevant standard of review and then turns to 7 Defendants’ motion to dismiss. 8 A. Standard of Review 9 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint 10 “fail[s] to state a claim upon which relief can be granted[.]” Fed.

R. Civ. P. 12(b)(6); see 11 also Fed R. Civ. P. 8(a)(2) (requiring that the plaintiff to provide “a short and plain 12 statement of the claim showing that the pleader is entitled to relief”). Under this 13 standard, the court construes the allegations in the complaint in the light most favorable 14 to

the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 15 940, 946 (9th Cir.

2005), and asks whether the claim contains “sufficient factual matter, 16 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 17 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 18 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that 19 allows the court to draw the reasonable inference that the defendant is liable for the 20 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

The court “is to take all 21 well-pleaded factual allegations as true and to draw all reasonable inferences therefrom in 22 1 favor of the plaintiff.” *Wylar Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 2 663 (9th Cir. 1998) (citation omitted). 3 B. Defendants’ Motion to Dismiss 4 Defendants argue that (1) ECC’s claims are time-barred; (2) the Fourteenth 5 Amendment does not provide a positive cause of action; and (3) ECC fails to sufficiently 6 plead any of its claims under Rule 12(b)(6).

(See generally MTD.) In response, ECC 7 (1) concedes that dismissal of its claims for violations of the Fourteenth Amendment and 8 the Washington State Constitution is warranted (see *Resp.* at 1 n.1); (2) argues that the 9 discovery rule applies to its remaining claims; and (3) asserts that it has sufficiently 10 pleaded its remaining claims (see *Resp.* at 1-2).

The court agrees with Defendants that 11 ECC’s claims are barred by the applicable statutes of limitations. 12 1. ECC’s federal claims are time-barred. 13 Defendants argue that ECC’s § 1981 and § 1983 claims are governed by four-year 14 and three-year statutes of limitations respectively and are time-barred because ECC 15 commenced this suit on November 18, 2024, more than six years after the WSLCB 16 denied its application for a cannabis license.

(See MTD at 8-9.) ECC agrees that its 17 § 1981 and § 1983 claims are governed by four-year and three-year statutes of 18 limitations. (See *Resp.* at 3.) It argues, however, that its federal claims are not time- 19 barred due to the application of the discovery rule.

The court agrees with Defendants. 20 In general, a civil rights claim accrues under federal law “when the plaintiff knows 21 or has reason to know of the injury which is the basis of the action.” *Bonelli v. Grand 22 Canyon Univ.*, 28 F.4th 948, 952 (9th Cir. 2022) (citing *Lukovsky v. City & Cty. of San 1 Francisco*, 535 F.3d 1044, 1048 (9th Cir. 2008)) (internal quotation marks omitted).

2 When the discovery rule applies, however, “the statute only begins to run once a plaintiff 3 gains knowledge of the ‘critical facts’ of his injury, which are ‘that he has been hurt and 4 who has inflicted the injury.’” *Bibeau v. Pac. Nw. Rsch. Found. Inc.*, 188 F.3d 1105, 5 1108 (9th Cir. 1999) (quoting *United States v. Kubrick*, 444 U.S. 111, 122 (1979)). A 6 plaintiff who is not diligent in

discovering the critical facts of the case may not avail 7 himself of the discovery rule to litigate claims beyond the expiration of the statute of 8 limitations.

Id. at 1108. 9 ECC alleges that WSLCB denied its initial license application in or around March 10 2016. (Compl. ¶ 27.) ECC, however, acknowledges that it did not begin to investigate 11 the reason for the WSLCB's adverse decision until approximately six years later when 12 ECC grew increasingly "frustrated with the licensing process." (See id. ¶¶ 35, 37 13 (alleging that, in May 2022, ECC discovered the alleged discrimination when ECC's 14 principal "began investigating the practices of the WSLCB").)

ECC also represents that 15 it only filed suit after it realized that City ordinances made the license it received in 2023 16 functionally "worthless[.]" (Id. ¶ 37.) Based on these alleged facts, ECC's federal claims 17 are untimely. 18 ECC contends that the court should consider its suit timely because it filed its 19 complaint after it discovered the purported "discriminatory acts" that allegedly gave rise 20 to the denial of its application.

(Resp. at 4 (asserting that ECC "was not privy to the 21 internal discussions and decisions concerning its application").) The court disagrees. 22 ECC has not shown that it was "diligent" in discovering the critical facts after learning 1 that its application was denied. It cannot, therefore, avail itself of the discovery rule. 2 See, e.g., Lukovsky, 535 F.3d at 1049 (citation omitted) (compiling cases and holding that 3 a civil rights claim accrues when a plaintiff "discovers that he has been injured, not when 4 he determines that the injury was unlawful"); see also Delaware State Coll. v. Ricks, 449 5 U.S. 250, 255-56 (1980) (affirming that the filing limitation period for a plaintiff's 6 § 1981 claim commenced from the time the defendant communicated the unfavorable 7 decision to the plaintiff); see also id. at 256 ("The limitations periods... "guarantee[] the 8 protection of the civil rights laws to those who promptly assert their rights[.]").

Thus, the 9 court dismisses ECC's federal claims as time barred. 10 2. ECC's state law claims are time barred. 11 The court concludes that ECC's state law claims are time barred for the same 12 reason that its federal law claims are time barred.

The parties do not dispute that the 13 statute of limitations for negligence and tortious interference in Washington is three 14 years. (See MTD at 10; Resp.); see RCW 4.92.110. The parties also do not dispute that 15 "the complained-of injury occurred at the very latest by May 4, 2017" and that, as a 16 result, the statute of limitations for ECC's state law claims ran on July 3, 2020.2 (MTD at 17 10; Resp.; accord Compl. ¶ 27 (alleging that ECC received an unfavorable response from 18 the WSLCB in March 2016).)

Rather, ECC argues that its state-law claims are timely 19 because Washington also follows the discovery rule. (Resp. at 4.) The court disagrees. 20 As with ECC's federal claims, the court concludes that ECC was not sufficiently diligent 21 2 The statute of limitations on tort claims

against the state of Washington and its 22 employees is tolled for 60 days under Washington's claim-filing statute.

See RCW 4.92.110. 1 in discovering facts critical to the case that would have illuminated ECC's potential 2 claims earlier and that ECC may not at this late hour avail itself of the discovery rule. 3 Thus, the court dismisses ECC's state law claims as time-barred.3 4 3.

The court denies leave to amend. 5 Under Federal Rule of Civil Procedure 15(a), district courts are ordinarily to 6 "freely give" leave to amend a claim subject to dismissal. Fed. R. Civ. P. 15(a) (2). 7 Leave to amend is not required, however, where amendment would be futile, such as 8 when the pleading could not possibly be cured by further factual allegations.

Foman v. 9 Davis, 371 U.S. 178, 182 (1962); Ebner v. Fresh, Inc., 838 F.3d 958, 968 (9th Cir. 2016). 10 Because ECC's claims are time-barred, the court concludes that further 11 amendment would be futile. Therefore, the court denies leave to amend. 12 IV. CONCLUSION 13 For the foregoing reasons, the court GRANTS Defendants' motion to dismiss 14 (Dkt. # 13).

ECC's complaint, and this action, are DISMISSED with prejudice. 15 16 Dated this 1 5th day of January, 2026. A 17 JAMES L. ROBART 18 United States District Judge 19 20 21 3 Because the court concludes that ECC's claims are barred by the applicable statutes of 22 limitations, it does not address the parties' remaining arguments.