

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

Khan v. City of Lodi, et al.

Khan · No. 2:25-cv-01007-DJC-SCR · Decided June 11, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MUDDSAR KHAN, No. 2:25-cv-01007-DJC-SCR 12 Plaintiff, 13 v.
FINDINGS AND RECOMMENDATIONS 14 CITY OF LODI, et al., 15 Defendants. 16 17 18
Plaintiff Muddsar Khan is proceeding pro se in this matter, which was referred to the 19
undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On April 3, 20 2025, Plaintiff filed a complaint and a motion for leave to proceed in forma
pauperis (“IFP”). 21 ECF Nos. 1 & 3. Plaintiff complains of allegedly false law enforcement
investigations against 22 him beginning in 2015 and consequent harms. At least some of
Plaintiff’s complaints were the 23 subject of earlier lawsuits Plaintiff filed in this District.

The Court granted Plaintiff leave to 24 proceed IFP and issued an Order to Show Cause (“OSC”)
why the Court should not recommend 25 that the action be dismissed as barred by the applicable
statute of limitations and/or precluded by 26 the doctrine of res judicata. ECF No. 3. Plaintiff filed
a response (ECF No. 4), which the Court 27 has considered.

The Court now recommends that this action be dismissed. 28 //// 1 I. Plaintiff’s Response to the
OSC 2 Plaintiff’s response is a brief few sentences accompanied by two pages of attachments. 3
ECF No. 4. Plaintiff does not address the res judicata issue raised by the Court, but instead only 4
addresses the statute of limitations (“SOL”).

On the SOL issue, Plaintiff argues that it should be 5 tolled because he was incarcerated in
Arizona from February 24, 2022 to December 5, 2024, and 6 was not allowed to return to the
State of California until March 5, 2025. ECF No. 4.

The 7 supporting attachments are offered to show that Plaintiff was incarcerated. Although the 8
attachments are somewhat lacking in detail and not authenticated, the Court will credit for 9
purposes of the analysis below the assertion that Plaintiff was in fact incarcerated in Arizona from
10 February 2022 to December 2024. 11 II. Plaintiff’s Prior Actions 12 Plaintiff filed two prior
actions against the City of Lodi (“Lodi”) and/or Lodi police 13 officers that raise the same or
similar allegations to the allegations in the instant action.

14 A. Khan v. Hitchcock, et al., 2:17-cv-02169-MCE-AC. Plaintiff named as 15 defendants Lodi
and Officers Hitchcock and Woods. Plaintiff amended the complaint several 16 times, with the

operative pleading being the Fourth Amended Complaint (FAC). ECF No. 57. 17 The FAC alleged that Plaintiff was wrongfully accused of being involved in a robbery in 2015, 18 and that defendant Hitchcock conducted a photo lineup that “intentionally, negligently, and 19 erroneously” identified Plaintiff.

ECF No. 57 at ¶ 16. Plaintiff also alleged the defendants put 20 erroneous information about his alleged criminal activity on the Lodi’s Facebook page. Id. at ¶ 21 34. Plaintiff states he spent \$60,000 defending himself from the criminal charges and the 22 criminal case against him was dismissed in March 2018. Id. at ¶ 36.

On the defendants’ motion 23 to dismiss, the Court dismissed nine of ten counts, leaving only a § 1983 claim for false arrest to 24 proceed. ECF No. 68. The parties then agreed to a stipulated dismissal with prejudice. ECF No. 25 70. 26 //// 27 //// 28 //// 1 B. Khan v. City of Lodi, et al., 2:22-cv-00263-TLN-AC. Plaintiff named as 2 defendants Lodi, Officers Hitchcock and Woods, and Yasir Khan (“Yasir”).1 Yasir was alleged 3 to be a person who posted on the Lodi Police Department’s Facebook page.

ECF No. 1 at ¶ 5. 4 Plaintiff alleged that a photo of himself was uploaded to that Facebook page, along with a 5 description of the alleged crime. He claimed that as a result, he was physically attacked on 6 January 10, 2021. Plaintiff alleged that Yasir called him a child molester and physically attacked 7 him while he was shopping at a Costco in Stockton.

ECF No. 1 at ¶ 14. Plaintiff asserted five 8 claims: 1) Section 1983; 2) Section 1985; 3) Bane Act; 4) invasion of privacy; and 5) infliction of 9 emotional distress. The Court dismissed the action for failure to effect service pursuant to 10 Federal Rule of Civil Procedure 4(m), after Plaintiff failed to respond to an order to show cause. 11 III.

The Complaint 12 Plaintiff’s current complaint names the same four defendants as the 2022 action. Plaintiff 13 again alleges that his photo and a description of an alleged crime were posted the Lodi Police 14 Department’s Facebook page. ECF No. 1 at ¶¶ 12-13. Plaintiff alleges that the information about 15 him has been on the Facebook page since January 2016.

Id. at ¶ 16. Plaintiff alleges that as a 16 result of his information being on the Facebook page, Defendant Yasir assaulted him at a Costco 17 in Stockton in January 2021. Id. at ¶¶ 14-16. Plaintiff states he filed a “government claim” 18 against Lodi in July 2021, and it was rejected in August 2021. Id. at ¶ 17. Plaintiff asserts the 19 same five causes of action that he asserted in the 2022 case.

20 IV. Res Judicata and Statute of Limitations 21 A. Res Judicata 22 The doctrine of res judicata provides that a final judgment on the merits bars further 23 claims by parties or those in privity with them based on the same cause of action. See Tahoe- 24 Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency, 322 F.3d 1064, 1077 (9th Cir. 2003). 25 Also known as claim preclusion, res

judicata applies when there is (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties.

Owens v. Kaiser Found., 27 F.3d 1111 (9th Cir. 1992). The Court will refer to Defendant's first name for sake of clarity, as both Plaintiff and this Defendant have the last name Khan. 1 *Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). "Res judicata bars all grounds for recovery 2 which could have been asserted, whether they were or not, in a prior suit between the same parties 3 on the same cause of action." *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir.

1992). 4 In determining whether res judicata applies at an early stage of a case, a court evaluates the 5 claims in the two cases "arise out of the same transactional nucleus of facts." *Id.* A court may 6 sua sponte dismiss an action based on res judicata, even though the doctrine is normally raised as 7 an affirmative defense. See *Arizona v. California*, 530 U.S. 392, 412 (2000).

8 In the 2017 action, Plaintiff sued Lodi, Hitchcock, and Woods (all of whom are 9 Defendants in the instant action), complaining that he was falsely accused of criminal activity and 10 that information concerning the accusation was put on Lodi's Facebook page. That action 11 resulted in a stipulated dismissal with prejudice. A stipulated dismissal with prejudice is an 12 adjudication on the merits.

See *Headwaters v. U.S. Forest Service*, 399 F.3d 1047, 1052 (9th Cir. 13 2005) ("We have held that a stipulated dismissal of an action with prejudice in a federal district 14 court generally constitutes a final judgment on the merits and precludes a party from reasserting 15 the same claims in a subsequent action in the same court."). 16 The 2022 action involved additional allegations of an assault in 2021, and included a new 17 defendant, Yasir.

In contrast to the 2017 action, the 2022 action was not adjudicated on the 18 merits because it was dismissed for failure to effect service under Rule 4(m). That dismissal was 19 "without prejudice." 20 Plaintiff offered no response to the res judicata issue, which the Court identified in the 21 OSC.

The claims against Lodi, Hitchcock, and Woods are barred by the doctrine of res judicata 22 based on the 2017 action. However, the claims against Yasir are not. Yasir was not a party to the 23 2017 action, and the claims against Yasir concern an alleged assault in January of 2021.

The 24 Court recommends that the claims against the Lodi, Hitchcock, and Woods be dismissed on the 25 basis of res judicata. 26 B. Statute of Limitations 27 "All § 1983 suits must be brought within a State's statute of limitations for personal-injury 28 actions." *Nance v. Ward*, 597 U.S. 159, 174 (2022).

In California, the statute of limitations for a 1 § 1983 action is two years. See *Holt v. County of Orange*, 91 F.4th 1013, 1018 (9th Cir. 2024). 2 Plaintiff's claim under § 1985 is also subject to a two-year statute of limitations. See *Woods v. 3 Storms*, 793 F.App'x 542, 543-44 (9th Cir. 2020).

Plaintiff also asserts state law claims. “Under 4 California law, there is a two-year statute of limitations for intentional infliction of emotional 5 distress claims.” *Soliman v. CVS RX Serv., Inc.*, 570 F.App’x 710, 711 (9th Cir.

2014), citing 6 Cal.Civ.Proc.Code § 335.1. Plaintiff’s Bane Act claim is subject to a two- or three-year statute of 7 limitation depending on the nature of the allegations. See *Swadener v. California*, 2025 WL 8 1095377 (S.D. Cal. March 3, 2025). If the claim arises from neglect or personal injury, it is two 9 years, and if the claim arises from statute it is three years.

Id. at *3. 10 Plaintiff alleges his information has been on Lodi’s Facebook page since 2016. Plaintiff 11 alleges that Yasir assaulted him in January 2021. Plaintiff did not file this action until more than 12 four years later, on April 3, 2025. From the face of the complaint, Plaintiff’s federal and state law 13 claims are time-barred. 14 Plaintiff contends that he was incarcerated from February 2022 to December 2024, and 15 argues the SOL should be tolled during that time. “For a prisoner incarcerated for a term of less 16 than life, section 352.1 of the California Civil Procedure Code tolls the statute of limitations for 17 two years.” *Fink v. Shedler*, 192 F.3d 911, 914 (9th Cir.

1999). Plaintiff could potentially 18 receive up to two years of tolling for being incarcerated, if § 352.1 applies. Plaintiff alleges he 19 was assaulted by Yasir on January 10, 2021. Even if the SOL were tolled for two years while 20 Plaintiff was incarcerated, this action needed to be filed by January 10, 2025. Plaintiff did not file 21 this action until nearly three months later, on April 3, 2025.

22 Plaintiff has not argued for additional equitable tolling. However, any hypothetical 23 argument in favor of equitable tolling would be undercut by the fact that he did timely file suit 24 against Yasir, in the February 2022 action.

In that action, Plaintiff was represented by counsel. 25 Under those circumstances, the undersigned cannot conceive of a plausible argument Plaintiff 26 might make for equitable tolling. 27 Plaintiff’s federal claims under § 1983 and § 1985 are thus time-barred. Plaintiff’s three 28 state law claims against Yasir are likely time-barred as well.

However, certain Bane Act claims 1 are subject to a three-year SOL. If tolling under § 352.1 applied, a statutory-based Bane Act 2 claim could conceivably be timely. But the Court need not resolve that issue. Because Plaintiff’s 3 federal claims are certainly time barred, there is no anchoring federal claim in this lawsuit.² And 4 the undersigned would recommend declining supplemental jurisdiction over the state law claims.

5 “The decision whether to continue to exercise supplemental jurisdiction over state law claims 6 after all federal claims have been dismissed lies within the district court’s discretion.” *Foster v. 7 Wilson*, 504 F.3d 1046, 1051 (9th Cir. 2007), citing 28 U.S.C. § 1367(c)(3).

The undersigned 8 recommends that the federal claims be dismissed on the basis of res judicata and statute of 9 limitations and that the Court decline supplemental jurisdiction over the state law claims against 10 Yasir. 11 V. Leave to Amend 12 The Court has considered whether Plaintiff should be allowed leave to amend. A pro se 13 litigant should generally be given leave to amend unless it is absolutely clear that the deficiencies 14 cannot be cured by amendment.

See *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). Given 15 the nature of the defects in the Complaint and Plaintiff's response to the OSC, leave to amend 16 would be futile. See *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) ("Where the legal basis for a cause of action is tenuous, futility supports the refusal to 18 grant leave to amend.").

19 Accordingly, IT IS HEREBY RECOMMENDED that: 20 1. The claims against Defendants City of Lodi, Hitchcock, and Woods be dismissed on 21 the basis of res judicata and statute of limitations; and 22 2 In addition to being time-barred, Plaintiff fails to state a federal claim against Yasir because 23 Yasir is not alleged to be a state actor. A plaintiff alleging a claim under § 1983 must plead that (1) a defendant acting under color of state law (2) deprived plaintiff of rights secured by the 24 Constitution or federal statutes.

Benavidez v. County of San Diego, 993 F.3d 1134, 1144 (9th Cir. 2021). Defendant Yasir is alleged to be an individual who liked a post on Lodi Police 25 Department's website, and who attacked Plaintiff while Plaintiff was shopping at Costco in 26 January 2021. ECF No. 1 at ¶14.

Although Plaintiff does make some conclusory allegations of conspiracy, conclusory allegations are insufficient. See *Simmons v. Sacramento County Sup. Ct.*, 27 318 F.3d 1156, 1161 (9th Cir. 2003) ("conclusory allegations that the lawyer was conspiring with state officers" were insufficient to establish lawyer in private practice was acting under color of 28 state law).

The complaint does not allege sufficient facts to show Yasir was a state actor.] 2. The federal claims against Defendant Yasir Khan be dismissed on the basis of the 2 statute of limitations and for failure to state a claim; 3 3.

The Court decline supplemental jurisdiction over the state law claims and dismiss the 4 complaint without leave to amend; and 5 4. The Clerk be directed to enter Judgment and close this case. 6 These findings and recommendations are submitted to the United States District Judge 7 || assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within fourteen (14) 8 | days after being served with these findings and recommendations, either party may file written 9 || objections with the court. Such document should be captioned "Objections to Magistrate Judge's 10 | Findings and Recommendations." Local Rule 304(d).

The parties are advised that failure to file 11 | objections within the specified time may waive the right to appeal the District Court's order. 12 | *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 13

SO ORDERED. 14 || DATED: June 10, 2025. 15 16 SEAN C. RIORDAN UNITED STATES
MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28

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