

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Brar v. State of California

Brar · No. 1:25-cv-00136-JLT-CDB · Decided March 31, 2025

SUMMARY

The United States District Court for the Eastern District of California discharges its order to show cause and recommends dismissal with prejudice of Tanbeer Singh Brar’s § 1983 Fourth Amendment claims as time-barred. The court concludes that the claims accrued no later than July 2021 or December 2022 and were filed after California’s applicable two-year limitations period expired. The court finds no basis for equitable tolling or application of the continuing-violations doctrine.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 31, 2025
DOCKET	1:25-cv-00136-JLT-CDB
DISPOSITION	other
PROCEDURAL POSTURE	A pro se plaintiff proceeding in forma pauperis brought a 42 U.S.C. § 1983 action alleging Fourth Amendment violations involving the alleged surveillance or search of electronic devices. After issuing an order to show cause regarding possible expiration of the statute of limitations, the magistrate judge discharged the order to show cause but recommended dismissal with prejudice as time-barred.
STANDARD OF REVIEW	At the screening or Rule 12(b)(6) stage, a claim may be dismissed as time-barred when expiration of the limitations period is apparent on the face of the complaint and the allegations, liberally construed, would not permit the plaintiff to establish tolling.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- statute of limitations
- section 1983
- motions to dismiss
- civil procedure
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the complaint's Fourth Amendment claims under 42 U.S.C. § 1983 were barred by California's two-year statute of limitations.
2. Whether the complaint alleged facts supporting a later accrual date or equitable tolling.
3. Whether the alleged continuing violations doctrine could preserve claims based on specific alleged violations occurring in July 2021 and December 2022.
4. Whether the order to show cause should be discharged after Plaintiff filed a timely response.

HOLDINGS

1. The complaint's § 1983 claims were untimely because California's two-year personal-injury statute of limitations applied, and the alleged violations accrued in July 2021 or December 2022, more than two years before the complaint was filed on February 3, 2025.
2. A time-barred claim may be dismissed at the screening stage when the expiration of the applicable limitations period is apparent from the face of the complaint and the complaint does not permit the plaintiff to prove tolling.
3. The complaint did not establish a basis for equitable tolling under California law.
4. Even assuming the continuing-violations doctrine applied to Fourth Amendment claims under § 1983, it would not save Plaintiff's claims because the alleged July 2021 and December 2022 violations were independently actionable when they occurred.

KEY QUOTATIONS

“A complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim.” (at 2)

“For Fourth Amendment violations, federal law holds that a cause of action for illegal search and seizure accrues when the wrongful act occurs ... even if the person does not know at the time that the search was warrantless.” (at 3)

“Equitable tolling under California law ‘operates independently of the literal wording of the Code of Civil Procedure’ to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.” (at 4)

FACTUAL BACKGROUND

Plaintiff alleged that Kern County and California law-enforcement agencies or officials violated the online privacy and policies of his phones and computers beginning around July 2021. He also alleged that Defendant took unspecified action constituting a crime in December 2022. Plaintiff filed this action on February 3, 2025, and did not allege facts establishing a later accrual date or tolling.

PROCEDURAL HISTORY

Plaintiff filed the complaint on February 3, 2025. The magistrate judge denied or construed several requested forms of relief and ordered Plaintiff to show cause why the action should not be dismissed as untimely. Plaintiff timely responded but did not address accrual, tolling, or the statute-of-limitations issue. The magistrate judge discharged the order to show cause and issued findings and recommendations that the action be dismissed with prejudice, subject to a 14-day objection period and review by the assigned district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

The findings and recommendations were submitted to the assigned district judge under 28 U.S.C. § 636(b)(1), with a 14-day period for objections. The magistrate judge recommended dismissal with prejudice as time-barred; the order to show cause was discharged without sanctions.

CASES CITED

- Belanus v. Clark, 796 F.3d 1021, 1026-27 (9th Cir. 2015)
- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010)
- Cervantes v. City of San Diego, 5 F.3d 1273, 1275 (9th Cir. 1993)
- Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1206 (9th Cir. 1995)
- Butler v. National Community Renaissance of California, 766 F.3d 1191, 1198 (9th Cir. 2014)
- Canatella v. Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007)
- Gregg v. Hawaii, Department of Public Safety, 870 F.3d 883, 887 (9th Cir. 2017)
- Ward v. Westinghouse Canada, Inc., 32 F.3d 1405, 1407 (9th Cir. 1994)
- Bibeau v. Pacific Northwest Research Foundation, Inc., 188 F.3d 1105, 1108 (9th Cir. 1999)
- Bonelli v. Grand Canyon University, 28 F.4th 948, 952 (9th Cir. 2022)
- Jones v. Blanas, 393 F.3d 918, 928 (9th Cir. 2004)
- Lantzy v. Centex Homes, 31 Cal. 4th 363, 370-71 (2003)
- Azer v. Connell, 306 F.3d 930, 936 (9th Cir. 2002)
- Pontillo v. Stanislaus County, No. 1:16-cv-01834-DAD-SKO, 2017 WL 3394126, at *6 (E.D. Cal. Aug. 8, 2017)
- Costa v. Santa Ana Police Department, No. 8:21-cv-01774-MWF-JDE, 2022 WL 2193301, at *5 (C.D. Cal. June 17, 2022)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 TANBEER SINGH BRAR, Case No. 1:25-cv-00136-JLT-CDB 12 Plaintiff,
ORDER DISCHARGING MARCH 10, 2025, ORDER TO SHOW CAUSE 13 v. (Docs. 9, 16) 14

STATE OF CALIFORNIA, FINDINGS AND RECOMMENDATIONS 15 Defendant. TO DISMISS ACTION WITH PREJUDICE AS TIME-BARRED 16 (Docs. 1, 9, 16) 17 14-DAY OBJECTION PERIOD 18 19 20 Plaintiff Tanbeer Singh Brar (“Plaintiff”), proceeding pro se and in forma pauperis, 21 initiated this action with the filing of a complaint on February 3, 2025.

(Doc. 1, 5). Plaintiff asserts 22 a violation of the Fourth Amendment pursuant to 42 U.S.C. § 1983 against Defendant State of 23 California (“Defendant”), alleging that since July 2021, County of Kern and State of California 24 “law enforcement agencies and officials are violating [his] online privacy and policy of [his] 25 phones and computers.” (Doc. 1 at 5).

26 Discharging Order to Show Cause (Doc. 9) 27 On March 10, 2025, the undersigned issued findings and recommendations to deny 28 1 Plaintiff’s motion for emergency temporary protective order¹ and entered an order that (1) denied 2 Plaintiff’s motion to expedite and construed motions to amend and requests for subpoena, to seal, 3 and seize, and (2) ordered Plaintiff to show cause (“OSC”) in writing why the action should not 4 be dismissed as time-barred.

(Doc. 9). The undersigned noted in the OSC that “this action may 5 be time-barred under the two-year statute of limitations pursuant to California Code of Civil 6 Procedure § 335.1, and no tolling provisions appear applicable.” (Id. at 6); (see also id. at 3-4) (7 “The undersigned notes Plaintiff is not likely to succeed on the merits of his claims as his claims 8 appear to be time-barred under the two-year statute of limitations for § 1983 claims. ... Plaintiff 9 has not alleged whether his claims are tolled nor does the undersigned find any tolling statutes 10 applicable here.”).

Plaintiff was ordered to file a response to the OSC within 14 days from the 11 date of service of the order. (Id. at 8). On March 17, 2025, the Court extended the time for Plaintiff 12 to respond to the Court’s order to show cause by 30 days from the date of service of the order. 13 (Doc. 12). 14 Pending before the Court is Plaintiff’s timely response to the order to show cause and 15 objections to findings and recommendations, filed on March 25, 2025.

(Doc. 16). In his filing, 16 Plaintiff requests the Court “reconsider all matters ... made” to his requests for emergency 17 temporary protective order and to reconsider the magistrate judge’s denials of his previous 18 requests, including for amendment, subpoena, seizure, and to seal, and for financial hardship and 19 removal. (Id. at 2, 24-25); see (Doc. 9) (order denying motion to expedite and construed motions 20 to amend and requests for subpoena, to seal, and seize); (Doc.

15) (order denying requests for 21 emergency order for financial hardship and construed motion for removal). Plaintiff does not 22 address whether the applicable statute of limitations provision bars this action, does not identify 23 any applicable tolling provisions, and otherwise fails to address the time-bar issue entirely. See 24 (Doc. 16). 25 In light of Plaintiff’s timely response to the order to show cause, the Court’s March 10, 26 2025, order to show cause (Doc.

9) is discharged without imposition of sanctions. For the reasons 27 28 1 The assigned district judge adopted the findings and recommendations and denied 1 set forth below, the undersigned will recommend this action be dismissed with prejudice because 2 Plaintiff's claims are time-barred under the applicable statute of limitations. 3 Findings and Recommendations to Dismiss Action With Prejudice As Time-Barred 4 A time-barred claim may be dismissed at the screening stage when expiration of the 5 applicable statute of limitations is apparent on the face of the complaint.

E.g., *Belanus v. Clark*, 679 F.3d 1021, 1026-27 (9th Cir. 2015); see *Von Saher v. Norton Simon Museum of Art at 7 Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (claim may be dismissed under Rule 12(b)(6) on the 8 ground that it is barred by the applicable statute of limitations only when "the running of the statute 9 is apparent on the face of the complaint"); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th 10 Cir.

1993) (claim may be dismissed under 12(b)(6) for failure to state a claim on the ground that 11 it is barred by the statute of limitations "if the assertions of the complaint, read with the required 12 liberality, would not permit the plaintiff to prove that the statute was tolled"). "A complaint cannot 13 be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would 14 establish the timeliness of the claim." *Von Saher*, 592 F.3d at 969 (quoting *Supermail Cargo, Inc. 15 v. United States*, 68 F.3d 1204, 1206 (9th Cir.

1995)). 16 Section 1983 does not contain a statute of limitations. Without a federal limitations period, 17 the federal courts "apply the forum state's statute of limitations for personal injury actions, along 18 with the forum state's law regarding tolling, including equitable tolling, except to the extent any 19 of these laws is inconsistent with federal law." *Butler v. Nat'l Cmty.*

Renaissance of Cal., 766 F.3d 1191, 1198 (9th Cir. 2014) (quoting *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th 21 Cir. 2007)). California's statute of limitations for personal injury claims is two years. Cal. Civ. P. 22 Code § 335.1; see *Canatella*, 486 F.3d at 1132 (applying two-year statute of limitations to the 23 plaintiff's breach of privacy- and confidentiality-based claims).

Accordingly, Plaintiff's Section 24 1983 claims are subject to a two-year statute of limitations under California Code of Civil 25 Procedure § 335.1. *A.G. v. Cnty. of Siskiyou*, No. 2:24-cv-01375-DJC-CKD, 2024 WL 4682417, 26 at *1 (E.D. Cal. Nov. 5, 2024). 27 The applicable statute of limitations begins to run upon accrual of the plaintiff's claim. 28 1 dictated by the "discovery rule" which provides that a claim has accrued "when the plaintiff knows 2 or has reason to know of the injury that is the basis of the action and the cause of that injury." 3 *Gregg v. Hawaii, Dept. of Public Safety*, 870 F.3d 883, 887 (9th Cir.

2017); *Ward v. Westinghouse 4 Canada, Inc.*, 32 F.3d 1405, 1407 (9th Cir. 1994) ("An action ordinarily accrues on the date of 5 injury."). This does not mean that a plaintiff must be aware of

the full extent of the injuries for 6 accrual to occur and a plaintiff must still be “diligent in discovering the critical facts.” *Bibeau v. 7 Pac. Nw. Rsch. Found. Inc.*, 188 F.3d 1105, 1108 (9th Cir.

1999). “For Fourth Amendment 8 violations, federal law holds that a cause of action for illegal search and seizure accrues when the 9 wrongful act occurs... even if the person does not know at the time that the search was 10 warrantless.” *Bonelli v. Grand Canyon Univ.*, 28 F.4th 948, 952 (9th Cir. 2022). 11 Here, the abuse underlying Plaintiff’s claims allegedly began on July 2021 and Plaintiff 12 alleges Defendant took other, unspecified action in December 2022 constituting a crime.

(Doc. 1 13 at 5). For Plaintiff’s claims related to the unreasonable search of his electronic devices, the statute 14 of limitations began to accrue “[o]n or around July 2021” when “local law enforcement [and] 15 County of Kern officers start[ed] violating[.]” (Id.).

The present action was filed on February 3, 16 2025. (See id.). Regardless of whether Plaintiff’s claims accrued in July 2021 or December 2022, 17 the statute of limitations would have run before the complaint was filed in February 2025 and, 18 thus, the complaint would be untimely.

Accordingly, to proceed on these claims, Plaintiff must 19 either establish that his claims accrued at a later date and/or that the limitations period for those 20 claims should be equitably tolled. 21 “Equitable tolling under California law ‘operates independently of the literal wording of 22 the Code of Civil Procedure’ to suspend or extend a statute of limitations as necessary to ensure 23 fundamental practicality and fairness.” *Jones v. Blanas*, 393 F.3d 918, 928 (9th Cir.

2004) 24 (quoting *Lantzy v. Centex Homes*, 31 Cal.4th 363, 370 (2003)). “Application of California’s 25 equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar 26 of his claim against the effect upon the important public interest or policy expressed by the... 27 limitations statute.” (Id.) (quoting *Lantzy*, 31 Cal.4th at 371).

For purposes of determining 28 1 defendant had notice of the instant claims in an earlier action, prejudice to the defendant, and the 2 plaintiff’s good faith in filing the second claim. *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002). 3 In conducting this balancing here, the undersigned is mindful of the public policy interest 4 in ensuring prompt resolution of legal claims and ensuring fairness to Defendant such that they 5 may defend the case while witness memories and evidence have not materially deteriorated.

The 6 undersigned balances these equities against any injustice Plaintiff will suffer were his claims 7 rejected on grounds of untimeliness. Here, the undersigned does not discern from the allegations 8 in Plaintiff’s complaint that he was incapable of timely litigating his claims or that enforcing 9 California’s statutory tolling regimes would result in a fundamental unfairness.

As set forth above, 10 Plaintiff was on notice of the bases of his current claims as early as July 2021 when he alleged that 11 “local law enforcement [and] County of Kern officers start[ed] violating[.]” (Doc. 1 at 5). 12 Moreover, Plaintiff has not alleged whether his claims are tolled and has otherwise failed to address 13 the time-bar issue in response to the OSC, and the undersigned does not find any tolling statutes 14 applicable here.

Thus, Plaintiff’s claims are time-barred under the statute of limitations. 15 The undersigned has considered whether and the extent to which the statute of limitations 16 may not have expired under the doctrine of “continuing violations” given Plaintiff’s conclusory 17 allegation that his online privacy rights have been violated by Defendants “since the year of 2021.” 18 (Doc.

1 at 5). First, it is not clear whether the continuing violations doctrine applies to Fourth 19 Amendment claims brought under 42 U.S.C. § 1983. See *Pontillo v. Stanislaus Cnty.*, No. 1:16- 20 cv-01834-DAD-SKO, 2017 WL 3394126, at *6 (E.D. Cal. Aug. 8, 2017) (citing cases).

However, 21 even if the doctrine applies, it would not save this action from the statute of limitations. As 22 addressed above, both of the pleaded violations (July 2021 and December 2022) were actionable 23 on their own without a continuing pattern of alleged violation and there was no need to wait for 24 more to occur to make those claims cognizable. See *id.* Accord *Costa v. Santa Ana Police Dep’t*, 25 No. 8:21-cv-01774-MWF-JDE, 2022 WL 2193301, at *5 (C.D.

Cal. June 17, 2022) (noting 26 continuing violations doctrine did not apply where plaintiff alleged specific Fourth Amendment 27 violations that occurred on specific dates). 28 1 Conclusion, Order, and Recommendations 2 Accordingly, IT IS HEREBY ORDERED that: 3 1.

The Court’s March 10, 2025, order to show cause (Doc. 9) is DISCHARGED. 4 And it is HEREBY RECOMMENDED that: 5 1. This action (Doc. 1) be DISMISSED WITH PREJUDICE as time-barred. 6 These Findings and Recommendations will be 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 14 days after 8 || being served with a copy of these Findings and Recommendations, a party may file written 9 || objections with the Court.

Local Rule 304(b). The document should be captioned, “Objections to 10 || Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave 11 || of Court and good cause shown. The Court will not consider exhibits attached to the Objections, 12 || but a party may refer to exhibits in the record by CM/ECF document and page number. Any pages 13 || filed in excess of the 15-page limitation may be disregarded by the District Judge when reviewing 14 || these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C).

A party’s failure to file any 15 || objections within the specified time may result in the waiver of certain rights on appeal. *Wilkerson* 16 || v. *Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). IS SO

ORDERED. 18 Dated: _ March 31, 2025 | Word 19 UNITED STATES MAGISTRATE JUDGE 20
21 22 23 24 25 26 27 28

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