APPENDICES TABLE OF CONTENTS

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

NAORA BEN-DOV,

Plaintiff,

v.

SHOSHANA ZELDA SRAGOW, AKA
Stacy Suzanne Sragow; et al.,

Defendants

SA CV 17-00122-DFM

Proceedings: (In Chambers) Order (1) Granting Defendants' Motions for Summary Judgment (Dkt. 45, 55) and (2) Denying Defendants' Motion for Sanctions (Dkt. 62)

Before: Honorable Douglas F. McCormick

Defendants' Motions for Summary Judgment

Defendants move for summary judgment. Because the three-year statute of limitations applicable to Plaintiff's claims expired before the original state-court complaint was filed in 2016, Defendants' motions are granted.

> The parties do not dispute that a three-year statute of limitations applies to Plaintiff's claims.

See S. Sragow MSJ at 8; Opp'n at 10; see also Dkt. 18 at 4-5. The original state-court complaint was filed on December 1, 2016. See Dkt. 1-1 at 1. Thus, any of Plaintiff's claims that accrued before December 1, 2013, are barred by the statute of limitations.

Generally speaking, a cause of action accrues when "the cause of action is complete with all of its elements." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 806-07 (2005). An important exception to this general rule of accrual is the "discovery rule," under which the statute of limitations begins to run when a plaintiff discovers, or has reason to discover, the cause of action. Id. at 807. A plaintiff has "reason to discover" a cause of action when the plaintiff has reason to suspect a factual basis for the elements or has reason to at least suspect the type of wrongdoing

that causes the injury. Id.

Plaintiff bears the burden of proving belated discovery of a cause of action. See Czajkowski v. Haskell & White, LLP, 208 Cal. App. 4th 166, 174 (2012); see also April Enterprises, Inc. v.

KTTV, 147 Cal. App. 3d 805, 833 (1983) ("It is plaintiff's burden to establish 'facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.'").

A plaintiff claiming delayed discovery must show: "(1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." Czajkowski, 208 Cal. App. 4th at 175; see also Fox, 35 Cal.4th at 808.

Here, the undisputed evidence shows that Plaintiff knew about her causes of action by November 19, 2013, the date of her e-mail to S. Sragow in which she warned her that "civil . . . charges . . . will be filed against you," including charges based on "fraud and deception." Dkt. 59-2 at 1.
Plaintiff argues that she "only began to suspect of Defendant's wrongdoing the date she filed the police report [December 4, 2013; see SAC Exh. E] when the response to her email [December 3, 2013; see Opp'n Exh. 12] was both suspicious and disconcerting enough to bring in the law." Opp'n at 10. But Plaintiff's November 19 e-mail contradicts this argument. In it, she alleges that S. Sragow stole her father's personal property, misled Plaintiff and her family, and "lied continuously." Dkt. 59-2 at 1-2. She threatened criminal charges as well as a civil lawsuit "to recoup the property and personal items value." Id. at 3. Moreover, Plaintiff's interrogatory responses confirm the fact that she learned nothing between November 19, 2013, and December 3, 2013. See Dkt. 59-3 at 3 ("Describe all evidence you discovered between November 19, 2013, and
December 3, 2013 concerning Defendant Sragow.") and 59-4 at 3 ("None.").
Together, the November 19 e-mail and Plaintiff's interrogatory responses establish that Plaintiff's claims accrued no later than November 19, 2013. Her December 1, 2013 state-court complaint was thus untimely under the three-year statute of limitations applicable to her claims.

Moreover, even if the Court accepted Plaintiff's argument that her claims did not accrue until December 4, 2013, that argument would not save her claims against Defendants A. Sragow and T. Breton. Plaintiff's own allegations in her original complaint demonstrate that she was not "genuinely ignorant" of the identity of Defendants A. Sragow and T. Breton at the time the original complaint was filed. See Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist., 935 F. Supp. 2d 968, 980 (E.D. Cal. Mar. 25, 2013). As a result, their identification as Defendants in the Second Amended Complaint does not relate back under CCP § 474 to the filing of the original complaint on December 1, 2016.

Defendants' Motion for Sanctions

Defendants also move for sanctions under Rule 11, arguing that Plaintiff's addition of T. Breton and A. Sragow to the Second Amended Complaint was "frivolous" and "pure harassment." Defendants' motion for sanctions is denied.

The Ninth Circuit has stated that cases warranting sanctions are "rare and exceptional." Operating Eng'rs Pension Trust v. A-C Co., 859 F.2d 1336, 1344 (9th Cir. 1988). Although, as1988). Although, as noted above, the Court agrees that Plaintiff was not "genuinely ignorant" of the identity of Defendants T. Breton and A. Sragow at the time of the original complaint such that their identification as Defendants in the Second

Amended Complaint relates back to the original complaint under CCP § 474, the Court does not find that Plaintiff's amendment to add these Defendants makes this the "rare and exceptional case" in which Rule 11 sanctions are warranted.

Conclusion

For the foregoing reasons, Defendants' motions for summary judgment in their favor are GRANTED. Defendants' motion for Rule 11 sanctions is DENIED. Counsel for Defendants shall prepare, serve, and submit a proposed judgment consistent with the Court's rulings.

November 3, 2017

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NAORA BEN-DOV,

Plaintiff-Appellant,

v.

SHOSHANA ZELDA SRAGOW, AKA
Stacy Suzanne Sragow; et al.,

Defendants-Appellees.

No. 17-56807

D.C. No. 8:17-cv-00122-DFM MEMORANDUM

Appeal from the United States District Court for the Central District of California
Douglas F. McCormick, Magistrate Judge, Presiding**
Submitted August 15, 2018***

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Naora Ben-Dov appeals pro se from the district court's summary judgment in her diversity action alleging state law claims in connection with her late father's estate. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). We affirm.

The district court properly granted summary judgment because Ben-Dov's action is time-barred under the applicable statute of limitations. *See* Cal. Civ. Proc. Code § 338 (three-year statute of limitations); *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 917 (Cal. 2005) (claim accrues under the delayed discovery rule when the plaintiff has reason to suspect an injury and some wrongful cause).

The district court did not abuse its discretion in declining to deny or strike defendants' motion for summary judgment on the basis of their alleged failure to meet and confer. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (setting forth standard of review); *see also Harman v. Apfel*, 211 F.3d 1172, 1175 (9th Cir. 2000) ("[T]he decision of a trial court is reversed under the abuse of discretion standard only when the appellate court is

convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances.").

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(January 8, 2019)

NAORA BEN-DOV,
Plaintiff-Appellant,

v.

SHOSHANA ZELDA SRAGOW, AKA
Stacy Suzanne Sragow; et al.,
Defendants-Appellees.

No. 17-56807

D.C. No. 8:17-cv-00122-DFM
Central District of California, Santa Ana

ORDER

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Ben-Dov's petition for panel rehearing (Docket Entry No. 22) is denied. No further filings will be entertained in this closed case