No. 20-484

In the

Supreme Court of the United States

PATRICIA WOODS,

Petitioner,

v.

ROBERT STORMS, et al.,

Respondents.

On Petition For Writ Of Certiorari To the United States Court of Appeals For the Ninth Circuit

PETITIONER'S PETITION FOR RECONSIDERATION A WRIT OF CERTIORARI UNDER RULE 44.2

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TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Page

Cases

Other

JURISDICATION

On November 16, 2020, this Court entered an Order Denying the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit decision in *Woods v. State of California, No.* 18-16816.

INTRODUCTION

After her original Petition was filed, the Petitioner learned that: (1) there is new and "intervening" authority from the Ninth Circuit since the Petition in this case was filed and decided only a few days before this Court denied it which shows that the denial of the *pro se* petitioner's leave to amend was clearly an abuse of discretion ; and (2) there are "substantial grounds not previously presented" in the Petition which justify this Court in reconsidering and granting the Petition for a Writ of Certiorari.

The Petitioner ask that the Court reverse and remand this case to the Ninth Circuit with instructions to grant the Pro Se Appellant leave to amend her First Amended Complaint to demonstrate that the two-year statute of limitations applicable to the federal conspiracy claims raised pursuant to 42 U.S.C. §§ 1985 and 1986 had been tolled such that they were timely filed in federal court and should be decided on the merits.

1. Intervening Authority

Intervening authority from a United States District Court within the Ninth Circuit, *Ouma v. Liberty Mut. Inc.*, No. 3:19-cv-01084-HZ (D. Or., Nov. 10, 2020), decided after the Appellant's Petition for a Writ of Certiorari was filed and only a few days before this Court denied it, shows (along with the points of authority and arguments set forth below), that the decision in this case *creates a* ***split of authority within the Ninth Circuit, itself,*** which must be resolved by this Court, because the weight of authority from (and in) the Ninth Circuit supports the view that the *Pro Se* Appellant's motion to amend the complaint should have been granted in this case.

In *Ouma*, the district court discussed the appropriate standard for determining whether leave to amend should be granted in a case where the allegations on the face of the complaint "appear" to create a time-bar due to the statute of limitations, making the pro se petitioner's federal claims "appear" futile. Although the court in *Ouma* concluded that the claims of the pro se petitioner in that case were, in fact, time-barred, it recited and analyzed the facts of the case using the proper standard of view, supported by the weight of authority in the Ninth Circuit – contrary to the conclusory and erroneous way the lower court treated this pro se petitioner and her viable conspiracy claims. For example, in *Ouma*, the district court wrote: "a complaint cannot be dismissed unless it appears

beyond a doubt that plaintiff can prove no set of facts that would establish the timeliness of the claim*[,]" citing Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995) (declining to dismiss a complaint where the equitable tolling doctrine was applicable). The *Ouma* court also recognized that courts must "liberally construe pro se pleadings" and cited *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). Most importantly, the *Ouma* court reiterated the point made in the arguments set forth below that "a court cannot dismiss a *pro se* complaint without first explaining to the plaintiff the deficiencies of the complaint and providing an opportunity to amend," *citing Ferdik v. Bonzelet,* 963 F.2d 1258, 1261 (9th Cir. 1992). *See also Akhtar v. Mesa*, 698 F.3d 1202, 1211 (9th Cir. 2012) (Alarcon, J.) (reversed and remanded a district court decision adopting the report and recommendation of magistrate judge who, in *Mesa*, refused to consider arguments raised by the *pro se* plaintiff in objections to the Rule 12(b)(6) motion to dismiss and denied first request for leave to amend civil rights complaint *without articulating basis for the denial* (which deprived plaintiff of an opportunity to correct identified deficiencies by amendment) and dismissing the case with prejudice). (Haines v. Kerner, 404 U.S. 519, 520 (1972).

Indeed, the contrast between the underlying district court decisions, affirmed by the Ninth Circuit, and Ninth Circuit precedent where oral arguments were heard, is stark. As the Ninth Circuit Panel in *Mesa* explained:

> [W]e have an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt. In fact, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively. A district court should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment.

See Mesa, 698 F.3d at 1212 (citations and quotations omitted) (applying *Twombly* and reversing district court's dismissal of the pro se claimant's first amended complaint with prejudice for failure to state a claim under Rule 12(b)(6)).

The lower court's decision to deny leave to amend the First Amended Complaint was a clear abuse of discretion because the *Pro Se* Appellant's proposed amendment included allegations related to "new evidence" that justified equitable tolling of the two-year statute of limitations applicable to her federal conspiracy claims arising under 42 U.S.C. §§ 1985 and 1986, and resolution of these claims on the merits. (App.1.)

Had the lower court granted the motion for leave to amend "freely" and "as justice" demanded, according to the extremely liberal standards that should have applied to this Pro Se Petitioner's case, then this case would not (and should not have been) dismissed pursuant to Rule 12(b)(6) as time-barred and "futile."

2. "Substantial Grounds Not Previously Presented"

There are "substantial grounds not previously presented" in the Petition regarding evidence from the court transcript (attached hereto), (App. 1), in the lower court, where Petitioner made an oral motion seeking leave to amend her complaint that the magistrate judge said she would "take under consideration" before she dismissed with prejudice Appellant's case and conspiracy claims arising under 42 U.S.C. §§ 1985 and 1986 as time-barred and "futile." (App 1.)

The written opinion from the magistrate judge, erroneously adopted by the district court and affirmed by the Ninth Circuit, reflects a clear abuse of discretion when denying leave to amend, as reflected by the magistrate judge's following written statements:

> **"Even if the evidence were relevant to the existence of a conspiracy, which the undersigned doubts, it would be evidence of a claim that was already known to plaintiff at the time it was discovered". (DK No. 63, MJF p.11:24-28, Eastern District Court).**

The magistrate judge went to some lengths in her Findings and Recommendations to defeat this part of Plaintiff's claims by suggesting the § 1985 and § 1986 claims could not be "revived" beyond June 2015 for the § 1985 claim and June 2014 for the § 1986 claim. [MJ 6/5-9]. (App.1, p. 13-14.)

The conflict of interest known to the Appellant as early as 2012 is separate and distinct from the conflict of interest that she became aware of in 2016. The

magistrate's conflating of the two distinct issues renders her analysis clearly erroneous. (App. 1, p. 13-14)

As the written report and recommendations make clear, the magistrate judge did not follow the policy and standards governing federal rules 15 and Rule 12(b)(6), nor did it comply with the weight of authority and precedent from other published, authoritative and controlling decisions from the Ninth Circuit Court of Appeals.

BACKGROUND

Petitioner Patricia Woods is a former ten-year permanent civil servant with the State of California and a former member of the state's employees labor union, Service Employees International Union, (SEIU-Local 1000). She filed this case with this court arguing, among other things, that her federal due process rights were violated, and she was subjected to unlawful acts during her mandated fair administrative hearings at the Public Employment Relations Board, (PERB).

The Petitioner contents that these administrative hearings are mandated under her union contract agreement between her former labor union, Service Employees International Union, (SEIU-Local 1000), and her employer, State of California, Department of Corrections and Rehabilitation, (CDCR).

ARGUMENT

Among the Questions presented for review in the Petition for writ of certiorari by the Petitioner, is the question of whether she was properly

denied the right to amend her complaint by the U.S. District Court under the Federal Rule 12(b)(6).

I. THE PETITION FOR CERTIORARI SHOULD BE GRANTED BECAUSE THIS CASE WAS DECIDED ON GROUNDS AND FOR REASONS CONTRARY TO WELL-ESTABLISHED NINTH CIRCUIT PRECEDENT AND CREATES AN INTRA-CIRCUIT SPLIT THAT MUST BE RESOLVED BY THIS COURT AND CONTRAVENES THE PREVAILING STANDARDS APPLICABLE TO RULE 12(B)(6) BASED ON UNITED STATES SUPREME COURT PRECEDENT.

The Ninth Circuit's decision affirming the district court's entry of final judgment dismissing this case with prejudice and without permitting this PRO SE Appellant LEAVE TO AMEND her complaint, to allege the additional facts and new evidence to support equitable tolling of and/or equitable estoppel from application of the statute of limitations barring her Section 1985 and 1986 claims, contradicts its own well-established precedent, the liberal policies of the federal rules of civil procedure in Rule 15(a)(2), and this Court's own case law.

This appeal involves the issue of whether any amendment by Appellant would have been futile to cure the perceived defect of the statute of limitations as a jurisdictional bar to the lower court's subject matter jurisdiction over her federal claims. The Ninth Circuit has previously held that, although review of statute of limitations questions are *de novo, Torres v. City of Santa Ana,* 108 F.3d 224, 226 (9th Cir. 1997), when a motion for leave to amend based on futility related to a limitations bar is at issue, the governing standard is, instead, *whether the lower*

court abused its discretion, rather than *de novo* review. *See Platt v. Electrical*, 522 F.3d 1049 (9th Cir. 2008) (denying amendment on grounds of futility due to application of statute of limitations where the discovery rule and equitable theory of fraudulent concealment did not toll statute) (*see e.g., Naas v. Stolman*, 130 F.3d 892 (9th Cir. 1997) (deciding accrual date issue and finding new claims would also be time-barred)). Significantly, Platt was decided after an extensive analysis of whether the plaintiff's claims for equitable tolling applied to avoid the limitations bar, but the decision of the lower court in this case did not.

Federal Rule 15(a) & *Foman* Factors

Federal Rule 15(a)(2) provides that the Court "should freely give leave [to amend a complaint] when justice so requires." The U.S. Court of Appeals for the Ninth Circuit has stated that "'[R]ule 15's policy of favoring amendments should be applied with 'extreme liberality.'" *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (quoting *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). Indeed, the Ninth Circuit has held that a district court should resolve a motion to amend "with all inferences in favor of granting the motion." *Griggs v. Pave Am. Grp.*, 170 F.3d 877, 880 (9th Cir. 1999) (*citing Leighton*, 833 F.2d at 186), "to facilitate [a] decision on the merits, rather than on the pleadings or technicalities." *Webb*, 655 F.2d at 979. In fact, the Ninth Circuit has held that "leave to amend can and should generally be given, even in the absence of such a request by the party."

Hoang v. Bank of Am., 910 F.3d 1096 (9th Cir. 2018) (*citing Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) ("[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.")).

In fact, in *Foman v. Davis,* 371 U.S. 178, 182, 83 S. Ct. 227, 9 L.Ed.2d 222 (1962), this Court held that there is a *presumption* that leave to amend should be granted absent plaintiff, repeated failure to cure a pleading's deficiencies and/or futility of the amendment. This rule has been applied with consistency in the Ninth Circuit – except in this case. *See Eminence Capital, LLC v. Aspeon, Inc.,* 316 F.3d 1048, 1052 (9th Cir. 2003); *see also Shaw v.* evidence of prejudice to the opposing party or a strong showing by the opposing party that there has been bad faith or undue delay by the *Burke*, No. 17-cv-2386, 2018 WL 2459720, at *3 (C.D. Cal. May 1, 2018) ("There is a presumption that leave to amend should be granted).

1. Futility

Nevertheless, the lower court concluded, without explanation or reasoning, that Appellant's amendment would be "futile" because it was barred by the applicable statutes of limitation. "A proposed amendment to a complaint is 'futile only if no set of facts could be proved under the amendment that would constitute a valid and sufficient claim.'" *Sweaney v. Ada County, Idaho,* 119 F.3d 1385, 1393 (9th Cir. 1997). "A plaintiff should be afforded an opportunity to test [the] claim on the

merits rather than on a motion to amend unless it appears beyond doubt that the proposed amended complaint would be dismissed for failure to state a claim under [Rule] 12(b)(6)." *Id.*

Additionally, the Appellees' bore the burden as the opposing party to show futility – a burden that should not have been satisfied solely on the original complaint filed by the pro se Appellant but should have at least been tested by granting the motion for leave to amend.

This analysis begs the question of whether the district court abused its discretion by not permitting Appellant to file an amended complaint to cure any deficiencies that related to the statute of limitations bar before concluding that the case had to be dismissed with prejudice. To decide the statute set up an unsurmountable time bar on the face of the original complaint without permitting the amendment was draconian for a pro se Appellant, contrary to the law and liberal pleading standards of the Ninth Circuit, Federal Rules of Procedure, and the precedent of this Court.

Where, as here, the grounds for dismissal are based on a notion of futility because the court believes the applicable statute of limitations bars the claims asserted in the original complaint, the proper analysis when determining whether to grant the motion seeking leave to amend is whether the proposed amendment

alleged facts that tolled the statute of limitations and permitted the court to reach the merits of the federal claims asserted.

Neither the district court nor the Ninth Circuit performed this analysis, even though the record shows that there was evidence in the record sufficient to allege and prove that the statutes of limitation applicable to her federal claims arising under 42 U.S.C. §§ 1981, 1985 and 1986 had been equitably tolled by the mandatory process of appealing the final decision of PERB in the California state courts.

Plaintiff was bound by her union contract with the State of California, Department of Corrections and Services Employees International Union, Local 1000, (SEIU), to participate in the PERB's administrative hearing process, with no other options and/or exceptions. [ECF 42, Vol. III, Items 1 and 2.] She was bound to do so under the authority of 14 *Penn Plaza LLC vs, Pyett,* 556 U.S. 247 (2009) (holding waiver of litigation rights in favor of binding arbitration strictly enforceable under union contract). [Docket No: 42, Vol. III, Items 1 and 2.].

By refusing to assess whether Appellant had alleged sufficient facts to toll the applicable statutes to avoid the affirmative defense raised by Appellees – *a simple procedural bar that was not, in itself, jurisdictional* – the district court essentially refused to exercise subject matter jurisdiction over viable federal claims by dismissing them, not on grounds that Appellant did not have facts and evidence sufficient to allege in her original or amended complaint stating a plausible claim for relief under Sections 1981, 1985 or 1986, but because these claims were time-

barred (without properly allowing leave to amend to allege facts establishing equitable tolling and/or equitable estoppel first) and therefore futile.

II. THE NINTH CIRCUIT COURT OF APPEALS AND DISTRICT COURTS APPLIED THE WRONG STANDARDS WHEN ASKED TO EXERCISE EQUITABLE POWERS OF TOLLING, ESTOPPEL AND FRAUDULENT CONCEALMENT TO TOLL THE APPLICABLE STATUTES OF LIMITATIONS AFFIRMATIVELY ASSERTED AS A BAR TO THIS FEDERAL SUIT AND MISCALCULATED THE ACCRUAL PERIODS FOR THESE STATUTES UNDER THE FEDERAL COMMON LAW DISCOVERY RULE

A. *Equitable Doctrines of Tolling, Estoppel, and Fraudulent Concealment*

Our Courts have long had the power, both at law and equity, to bar the assertion of the affirmative defense of the statute of limitations where it is the defendant's wrongdoing . . . which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding Farkas v. Farkas, 168 F.3d 638, 673 (2d. 1999).

The magistrate judge suggested that Plaintiff could not invoke equitable tolling because "the pendency of a grievance or some other method of collateral review does not toll the statute of limitations period for a § 1981 claim" [ECF No. 63 at 9]. Also, dismissing her § 1985 and 1986 claims for futile and/or lack of evidence"

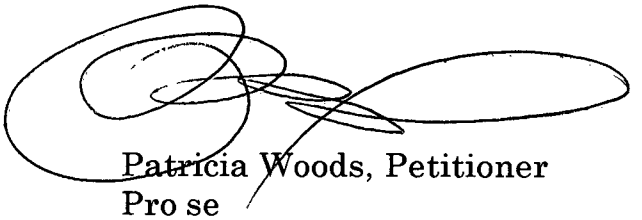
Whether a state court proceeding involving a state or federal claim is or should be deemed tolled, while the pendency of a state court appeals process required by state law (as here) is not, is a question only the Ninth Circuit can answer in this case because they affirmed district decisions finding without citation

that such an appeals process did not toll the statute of limitations. The Petitioner asks this Court to grant her petition for a writ of certiorari to clarify this point of law.

CONCLUSION

The Court should grant the Petition for Rehearing and grant certiorari in this case.

Respectfully submitted,



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APPENDIX 1

UNITED STATES COURT DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

Court Transcript, United States District Court, Eastern District of California, Sacramento, California, (October 25, 2017), Motion Hearing re: Defendants' Motion to Dismiss; Plaintiff's Motion to Disqualify PERB's Legal Counsel Felix De La Torre from the Court Proceedings Dk.59, pp. 1-2.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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PATRICIA WOODS, Plaintiff, vs. ROBERT STORMS, et al., Defendants.	Case No. 2:17-cv-00793-GEB-AC Sacramento, California Wednesday, October 25, 2017 10:20 A.M. Hearing re: defendants' motion to dismiss; plaintiff's motion to disqualify.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	PATRICIA WOODS, Pro Se P.O. Box 93896 Las Vegas, NV 89193
For Defendant CDCR:	WILLIAM H. DOWNER Attorney General's Office 1300 "I" Street Sacramento, CA 95814 (916) 210-6120
For Defendant:	FELIX DE LA TORRE Public Employee Relations Board 1031 - 18th Street Sacramento, CA 95829 (916) 327-8381
Court Recorder:	(UNMONITORED) U.S. District Court 501 I Street, Suite 4-200 Sacramento, CA 95814 (916) 930-4193
Transcription Service:	Petrilla Reporting & Transcription 5002 - 61st Street Sacramento, CA 95820 (916) 455-3887

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

SACRAMENTO, CALIFORNIA, WEDNESDAY, OCTOBER 25, 2017, 10:20 A.M.

THE CLERK: Calling 17-cv-00793-GEB-AC, Patricia L. Woods v. Robert Storms, et al. This matter's on calendar for defendants' motion to dismiss re: Docket No. 21, 22, 23 and plaintiff's motion to disqualify and for sanctions re: No. 34.

MS. WOODS: Good morning, Your Honor.

THE COURT: Can you state your name for the record please?

MS. WOODS: I'm Patricia Woods. I apologize for being late. I was down there in that fire drill.

THE COURT: Have a seat, Ms. Woods. Good morning.

MS. WOODS: Good morning.

MR. DOWNER: Good morning, Your Honor. William Downer for the CDCR defendants.

THE COURT: Good morning, Mr. Downer.

MR. DE LA TORRE: Good morning, Your Honor. J. Felix De La Torre for the PERB defendants.

THE COURT: Good morning, Mr. De La Torre.

MR. DE LA TORRE: Good morning.

THE COURT: Have a seat please.

All right. Ms. Woods, since this is the first time that the parties have come before me I want to take the time, as I did in the previous case, to just talk a little bit about the process in federal court.

I know that it's very challenging for a person to represent herself here without an attorney, but you are obligated to follow the federal rules and the local rules of this Court.

Were you here, ma'am, when I explained to the pro se party in the previous case the difference between magistrate judges and district judges?

MS. WOODS: Yes. I heard --

THE COURT: All right.

MS. WOODS: -- a portion of that. Yes, I did.

THE COURT: All right. A portion.

So in this case, Judge Burrell is the district judge assigned to the case and unless all parties consent to me being the presiding judge he will be the ultimate decider in this case; meaning if it gets to trial, he will conduct the trial. He has been appointed by a president of the United States, confirmed by the Senate. He serves for life under Article III of the Constitution.

As a magistrate judge, I am not a judge under Article III. I was selected by the district judges of this court to serve as a magistrate judge for an eight-year term. But I follow all the same rules, I apply all the same laws as Judge Burrell. I also conduct civil jury trials with the consent of the parties.

But for present purposes, since Judge Burrell is

officially the presiding judge, because you are representing yourself he has referred the case to me for handling everything short of trial.

So matters like scheduling and discovery, if you folks move into the discovery phase, and any motions that don't finally decide an issue in the case I rule on directly; and if there are motions such as motions to dismiss that might resolve a claim for good, I don't rule directly. I analyze the motion and issue written findings and recommendations which go to Judge Burrell.

The parties all have an opportunity to object to anything in my analysis or recommendation that they disagree with, but then Judge Burrell makes the final decision.

Is that all clear to you, ma'am?

MS. WOODS: That's clear.

THE COURT: All right. Let's turn to the motions before me, and I don't think I need argument, although I'll give you a chance to comment, Ms. Woods, on your motion to qualify [sic].

It seems -- Mr. De La Torre's declaration, which I find credible, seems to me to clarify his status and demonstrate that there is not a conflict such as you believed existed. Is there any part of that declaration that you don't think I should accept, and if so, can you tell me why?

MS. WOODS: Well I guess I'm still confused why PERB

would be allowed to represent themselves when corrections in most state agencies are required to go through the Attorney General's Office.

I did take note that they seem to believe that the citations that I had addressed were not on point as to supporting that for the Attorney General's Office, but I'm certain that there are some legal citations that would support that.

Most agencies are required to be represented by the Attorney General's Office, and it also puts it in a -- sort of a standstill position if I need to depose him for something. He's representing the parties, so it places him in a position not to be subject to depositions and some other people in there to depositions if it comes to that.

THE COURT: Okay. Well given the fact that Mr. De La Torre never had any involvement in your underlying employment dispute when he worked for the SEIU, I can't imagine any circumstances in which you would -- it would be appropriate for you to depose him, so I don't see a danger that he would have to be a witness.

As to who represents a particular agency, that's up to the agency. Sometimes agencies are represented by someone in the AG's Office, by their own counsel, sometimes even by private counsel and that's neither my business nor yours unless there is a conflict of some kind.

But it's clear to me that Mr. De La Torre wasn't involved in your dispute with the SEIU.

Mr. De La Torre, do you have anything else to add?

MR. DE LA TORRE: No, Your Honor.

THE COURT: All right. Ms. Woods, is there anything else you want to say before I just --

MS. WOODS: No.

THE COURT: All right.

MS. WOODS: I think the decision has been made here.

THE COURT: Okay. Thank you.

All right. Let's talk about the motions to dismiss, and I -- the issue on which I'll give everybody an opportunity to talk to me is the statute of limitations arguments.

I think -- although first I'll address Eleventh Amendment sovereign immunity claims because, Ms. Woods, I want you to understand and have an opportunity to ask me any questions about this issue because it seems to me that the defendants are right, and as a legal matter it looks to me pretty open and shut.

You can't sue for damages, a state or its departments, including CDCR directly and you can't sue individuals who are state officials in their official capacity for damages. You can sue them for prospective injunctive relief, right, that's permissible.

But the other claims do seem to me barred. And I've

looked at your objection on that issue, as well as the defendants' responses and I wondered whether their replies to your oppositions raised any questions on your behalf or any other points you wanted to make.

MS. WOODS: Yeah. A little bit.

On the question of the Eighth Amendment -- Eighteenth Amendment on the issue of the Fourteenth Amendment, I think that was argued throughout all my motions all the way to the U.S. Supreme Court, also at PERB, the Third District.

So I think if the proper amendment was allowed, the Fourteenth Amendment does provide for the immunity issue to be looked at, reexamined under the --

THE COURT: And when you say if amendment were allowed, what amendments are you --

MS. WOODS: Amending the complaint. I mean I --

THE COURT: To allege what?

MS. WOODS: Fourteenth Amendment violations. I spoke to that throughout the complaint and I spoke to it throughout all the briefings that I did in all the courts, but somehow I don't think it was pled directly as a cause of action by itself within the complaint itself. So I think if that is added to the complaint, it certainly allows for that --

THE COURT: I'm sorry to interrupt you. I'm just trying to get clarity. So are you proposing adding Section 1983 claims for damages for violation of your Fourteenth

Amendment rights against specific state officials?

MS. WOODS: Yeah, and also name them in their individual capacity.

THE COURT: All right.

MS. WOODS: Also the thing that I had concern of, and I would have to research it a little bit more, and that was the issue of the contract itself.

It names the state. It names the state as a party, and so to that extent I believe the state can be sued in its title and in its position because the contract itself names the state, it names the Department of Corrections, and then it names the union, and then it names whoever -- the employees.

So I think it's a different kind of set of arguments under the 1981 and also under the question of the other laws that I mentioned there.

THE COURT: All right. I think you folks have briefed that issue comprehensibly. Is there anything anybody wants to add to what's in their papers?

MR. DE LA TORRE: No, Your Honor. Nothing besides the fact that should a 1983 action be added, it too would be subject to the Eleventh Amendment.

THE COURT: Right. And there also might be statute of limitations issues --

MR. DE LA TORRE: Correct.

THE COURT: -- with any claims that were added by

amendment.

Ms. Woods, in general, the rule -- in general, I very liberally allow pro se plaintiffs to amend complaints, so as I'm sure both defense counsel are aware, it is very common when a motion to dismiss in a pro se case is granted at the outset, that I do permit the plaintiff to file an amended complaint.

But there are times when I don't do that, and that's usually when it looks like amendment would be futile as a legal matter.

For example, if any additional claims that you wanted to add were time barred; and since the statute of limitations has been raised by these motions against all of your claims, I have to think about whether any new claims you tried to add would also be untimely.

So let's talk about timeliness. On the contract claim, the Section 1981 claim, I think everyone is in agreement that it's a four-year limitations period and that that's set by federal law, and the federal law governing that statute of limitations does not provide for the same kind of tolling that California law may provide for similar claims. For example, when you're going through a grievance process.

And I'm not meaning to express any opinion about whether were this a state -- you know, whether a state law claim would be entitled to tolling, but I'm just focusing on the federal law claim.

The defendants have cited cases holding that the federal limitations period is not tolled for the pendency of a grievance and I don't know, Ms. Woods, whether you've had a chance to look at that case or what your response is to that argument.

MS. WOODS: Yeah. I looked at the case, but I think the fact that the requirements on me for the administrative part of the remedy to -- to exhaust remedies were on me, that's a jurisdictional issue and I had to, I believe, exhaust those remedies.

If I was prematurely coming before this Court I believe this case would've been -- it would've been thrown out because somehow when you look at this case you have both the Department of Corrections decision, the PERB decision and the contract, all three tied together until I got to the U.S. Supreme Court and they made a decision to dismiss.

That's the way the case and the arguments in the case is positioned, in my mind. And with that, it was at that time that I started to position myself to look at bringing the action to court.

Also, the wrongdoing issues that interrupted here and there between the process I thought should have some bearing here in this case.

THE COURT: All right. And as I understand defendants' counter argument, it's basically that exhaustion of

these administrative remedies was not a prerequisite for a 1981 claim even though it might've been a prerequisite for certain other state law claims, is that correct?

MR. DE LA TORRE: Yes, Your Honor.

MR. DOWNER: Yes, Your Honor.

THE COURT: Ms. Woods, I have to say that people in your position are facing an obstacle course because there are numerous routes you could take to try to get relief and some kinds of legal claims that you might want to bring under state law require you to bring a certain type of grievance, other claims require you to file a different kind of claim before an administrative agency.

Still other claims you might want to bring in court, such as a Section 1981 claim don't have those requirements and don't permit tolling. So I have a lot of compassion for the catch 22 that you find yourself in, but I'm also troubled by the authorities that defendants have cited to me about the lack of availability of equitable tolling on these facts.

I'm going to go back through everything you've filed to look carefully at the grounds you've asserted for equitable tolling because I think it's important to take that very seriously.

MS. WOODS: Uh-hmm.

THE COURT: As an aside though, since I've referred to -- you filed -- both parties, but you in particular have

filed requests for judicial notice of a great volume of material and I'm going to take judicial notice of most of it, but I want to just let you know that you have filed a lot of documents in this case and some of them you already know I've ordered stricken because they duplicated each other largely.

It doesn't help your case -- and I say this, you know, really to anyone -- it doesn't help a party's case to inundate the Court with documents and it's much more effective to just give the Court what is needed to decide the issues.

So on a motion, there's a reason that the local rule provides that the moving party files their motion including all the argument, you know, and attach any exhibits; then the opposing party files a single opposition; and then the moving party files a reply.

So anytime there's a motion I should really only have three documents in front of me; the motion, the opposition, the reply.

Sometimes it's necessary to separately file what would hopefully be a single request for judicial notice that can also be included in the motion, but when a docket becomes cluttered with lots and lots of filings it makes it more difficult, not less difficult for me to figure out what's important and make sure that I'm paying attention to what you care about.

So going forward, I would just urge you to try to be

as concise as possible and refrain from filing documents that aren't contemplated by the local rules.

All right. Back to the matter at hand. Is there anything else that the moving parties want to say about the timeliness of the Section 1981 claim?

MR. DOWNER: No, Your Honor.

MR. DE LA TORRE: No, Your Honor.

THE COURT: All right. And then on the conspiracy claim, we've got a two-year statute of limitations on the Section 1985 claim and one year on Section 1986.

And Ms. Woods, in your equitable tolling argument on these claims you refer to newly discovered evidence. Can you walk me through in the most basic terms what newly discovered evidence you're referring to that you think tolls the statute of limitations and when that evidence was discovered?

MS. WOODS: Well I think it's in the document itself, but just trying to recall everything, in my original preliminary complaint to Mr. De La Torre I laid out the fact that when Judge Bologna's husband and her, they -- I discovered on their site that they were married and the information came to my attention that he was involved with and hearing cases in his private practice that were the same similar cases that was involved with the union there, with the Department of Corrections, which was the same unions that the supervisor over Norris and Storms had testified he was involved in, and matters

related to that nature.

So that's what I felt was somewhat of a conflict to my case, in addition to the fact that she never disclosed that, she never disqualified herself from the case related to that.

THE COURT: And is this the information that you discovered in 2012?

MS. WOODS: In 2016.

THE COURT: 2016, okay.

MS. WOODS: 2012 was the information related to the fact that the attorney who was representing the defendants and the Department of Corrections, the lead attorney, was the same attorney that was employed a month after she terminated her employment and went under the judge there.

THE COURT: Right. So that's why you have taken the position that you discovered the existence of the conspiracy, which is when we say in legalese, that the claim accrued, right, in 2012, correct?

MS. WOODS: Well 2012. Then after that I also discovered that there was still some ongoing kinds of things there related to that.

So I don't think it stopped and started -- of course these people were still working in the position while I was appealing and no one came forth as lawyers and disclosed any of this, which I felt they should've disclosed or went to the record and said something about this.

The damage was still occurring because no one ever came forward and mentioned that this existed or came on the record and said hey, you know, we have a conflict here and try to correct it; or at least disclosed it to me where I could've went to the record or did something during the period of time when these things were occurring.

THE COURT: Okay. I know that it's defendants' position, among other things, that there was no conflict that required disclosure. But if there were a conflict, what then would be your response to her equitable tolling argument?

MR. DOWNER: Well a couple things, Your Honor. First, even assuming that this conflict did occur, it has no relationship to a Section 1985 or a 1986 claim. They're just separate issues completely.

PERB does have a recusal policy that it follows strictly and when one of our attorneys or judges or board members has a conflict on a case that's pending before them they recuse themselves and they don't involve themselves in the case I think like any judicial function.

And so the problem with this is it's not newly discovered evidence of a conspiracy to deprive her of civil rights. It's basically a new theory as to why PERB may have violated some conflict of interest rule.

THE COURT: Right. Thank you very much.

All right. Anything else from any moving party that

they want me to know before I take the motions under submission?

MR. DOWNER: I guess with respect to our claim preclusion arguments I would just ask that, Your Honor, we didn't cite the particular regulations in our brief, but what's important and what the plaintiff brought up in her opposition is that the proceedings have a -- that requisite judicial character.

And one other I guess point of law that I'd like to raise that shows that the PERB proceedings had that requisite judicial character is the code of regulations that they follow, and the citation to the regulations that govern PERB's hearing process is 8 Cal. Code Regs. Title 8, and then it would be Sections 32165 et seq.

THE COURT: Okay. Thank you very much.

MR. DE LA TORRE: And those, Your Honor, are cited in our opening brief on page two where we start our factual background. So to the extent the Court needs to refer to the regulations that govern our proceedings, they're stated throughout there -- that provision.

THE COURT: Thank you.

All right. Defendants have provided several different grounds for dismissal. We haven't talked about the preclusion issues or Rooker-Feldman. If I decide the motion purely on statute of limitations grounds do you care if I don't

reach those issues or do you have a horse in that particular race?

MR. DOWNER: We have no objection.

THE COURT: All right.

MR. DE LA TORRE: No objection, Your Honor.

THE COURT: All right. I'm going to take the matter under submission. And as I explained before, I'll be issuing findings and recommendations that go to Judge Burrell, which means that if anyone's dissatisfied with my recommended disposition you'll have the opportunity to put objections in writing to Judge Burrell. He will not hold a hearing, but will decide the matter on the basis of the record in the case.

If the case does move forward, Ms. Woods -- and I'll consider granting leave to amend. I'll look at what you've proposed adding. And you talked about your desire to amend to add Section 1983 claims. Do you feel that all of the facts that support your claim for equitable tolling are before the Court?

MS. WOODS: I think so, but I would like to be able to, if -- reflect on this hearing today and maybe given an opportunity if you feel it's presentable, to add any additional amendment or something.

But I do have a question on what you raised earlier about statute of limitation on two years and one year on the '85 and the '86.

THE COURT: Before you ask that question, just --

MS. WOODS: Okay. Sure.

THE COURT: -- so I don't forget. In response to what you just said about thinking more about whether you want to supplement your equitable tolling showing, this goes to my point earlier about only filing things that are --

MS. WOODS: Okay. That's fine.

THE COURT: -- either provided for in the rules or directly requested by the Court.

MS. WOODS: Okay.

THE COURT: It wouldn't be proper to submit anything further on these motions at this point, but once I go back and think through this and come to a final decision about how I'm going to go, if I make a recommendation to Judge Burrell that you disagree with and you think that it will matter, right -- for example, you want Judge Burrell to know that you have additional facts you would want to add by amendment, you can include that kind of information in your objections to the findings and recommendations --

MS. WOODS: Okay.

THE COURT: -- if you think that that's appropriate. Right. So go ahead with your question about the statute.

MS. WOODS: Okay. You had raised the one year and the two year on --

THE COURT: Yes.

MS. WOODS: '85 and '86, so are you saying that those two years are time barred too since this was not filed until June of just this year?

THE COURT: Well again, I haven't reached a final decision on any of these issues.

MS. WOODS: Okay.

THE COURT: But I find that the defendants' statute of limitations arguments on those claims are also strong, just as I think they are related to the 1981 claim. I'm going to go back and really break down your equitable tolling theory in more detail than I have done yet after hearing the arguments to make sure I'm not overlooking something because I always keep an open mind that my first impression might be wrong, and I'm going to go back and take a look.

But it's clear to me that this lawsuit was filed years after, at least on the face of it, the statute of limitations would've expired on all your claims from when they accrued.

So the question really as to any of them is whether there is a legitimate basis for tolling, and that would be under federal law as to the 1981 claims and under state law as to the 1985 and 1986 claims because we adopt the state's statute of limitations for those purposes.

MS. WOODS: Okay. And then what about under the Fourteenth Amendment? That would be tolling too -- that would

be subject to tolling as well?

THE COURT: The -- it's not clear to me that you've presently got Section 1983 claims under the Fourteenth Amendment pleaded as causes of action.

MS. WOODS: Uh-hmm.

THE COURT: So if I'm considering whether leave to amend would be proper, those claims would not have a statute of limitations any longer than the claims you've already got, right?

MS. WOODS: Uh-hmm.

THE COURT: So whether those would be time barred or not, I haven't looked at in depth yet.

MS. WOODS: Uh-hmm.

THE COURT: I fear that they are time barred. Again, that's a first impression and before I make any recommendations one way or the other I'm going to look more carefully at what you've submitted and make sure that it's thoroughly analyzed. All right?

MS. WOODS: Okay.

THE COURT: All right. Thank you, folks. I'm going to take all three motions under submission. I will issue written findings and recommendations as soon as I can.

MR. DOWNER: Thank you.

THE COURT: Thank you for your argument.

MS. WOODS: Uh-hmm.

THE COURT: Court's adjourned.

(Whereupon the hearing in the above-entitled matter was adjourned at 10:46 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Jennifer Barris November 28, 2017

Jennifer Barris, Transcriber

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CERTIFICATE OF PRO SE PARTY

Pursuant to Rule 44.2, Pro Se Party, Patricia Woods's certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Certifies that this Petition is presented in good faith and not for delay.