

PG. 18 of 36

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 11 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ADAM PAUL BLOMDAHL,

Plaintiff - Appellant,

v.

JAFFE, Dr. (CHS) - County Health  
Services Doctor at Psychiatric Unit 3  
(MCSO); et al.,

Defendants - Appellees.

No. 20-17321

D.C. No. 2:19-cv-00227-MTL

U.S. District Court for Arizona,  
Phoenix

**MANDATE**

The judgment of this Court, entered January 27, 2022, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

**FOR THE COURT:**

MOLLY C. DWYER  
CLERK OF COURT

By: Howard Hom  
Deputy Clerk  
Ninth Circuit Rule 27-7

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAN 27 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ADAM PAUL BLOMDAHL,

No. 20-17321

Plaintiff-Appellant,

D.C. No. 2:19-cv-00227-MTL

v.

MEMORANDUM\*

JAFFE, Dr. (CHS) - County Health Services.  
Doctor at Psychiatric Unit 3 (MCSO); et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the District of Arizona  
Michael T. Liburdi, District Judge, Presiding

Submitted January 19, 2022\*\*

Before: SILVERMAN, CLIFTON, and HURWITZ, Circuit Judges.

Arizona state prisoner Adam Paul Blomdahl appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging constitutional violations while he was a pretrial detainee. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Gordon v. County of Orange*, 888 F.3d 1118, 1122

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(9th Cir. 2018). We affirm.

The district court properly granted summary judgment on Blomdahl's conditions-of-confinement claim because Blomdahl failed to bring this claim within the applicable statute of limitations or establish a basis for equitable tolling.

*See Lukovsky v. City & County of San Francisco*, 535 F.3d 1044, 1048 (9th Cir. 2008) (under federal law, which determines accrual, "a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action" (citation and internal quotation marks omitted)); *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (§ 1983 claims are governed by the forum state's statute of limitations for personal injury claims, including state law regarding tolling); *see also* Ariz. Rev. Stat. Ann. § 12-542(1) (two-year statute of limitations for personal injury claim); *Doe v. Roe*, 955 P.2d 951, 964 (Ariz. 1998) (unsound mind equitable tolling may not be established by "conclusory averments" but rather requires the plaintiff to set forth "hard evidence").

The district court properly granted summary judgment on Blomdahl's excessive force claim because Blomdahl failed to exhaust his administrative remedies and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable to him. *See Ross v. Blake*, 578 U.S. 632, 638, 641-44 (2016) (explaining that an inmate must exhaust such administrative remedies as are available before bringing suit, and describing

limited circumstances in which administrative remedies are unavailable); *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (“[P]roper exhaustion of administrative remedies . . . means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits).” (citation, internal quotation marks, and emphasis omitted)); *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (en banc) (once the defendant has carried the burden to prove there was an available administrative remedy, the burden shifts to the plaintiff to produce evidence showing that administrative remedies were effectively unavailable to him).

The district court did not abuse its discretion by denying Blomdahl’s motion for appointment of counsel because Blomdahl failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and “exceptional circumstances” requirement for appointment of counsel).

The district court did not abuse its discretion by denying Blomdahl’s motion to stay and motion relating to discovery. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997) (the district court “has broad discretion to stay proceedings as an incident to its power to control its own docket”); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (the district court has broad discretion to permit or deny discovery, and “its decision to deny discovery will not be disturbed except upon the clearest

showing that denial of discovery results in actual and substantial prejudice”  
(citation and internal quotation marks omitted)).

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

All pending motions are denied.

**AFFIRMED.**

**MARICOPA COUNTY SHERIFF'S OFFICE**  
**INMATE LEGAL SERVICES**  
**CERTIFICATION**

I hereby certify that on this date April 20, 2022

I mailed the original to the Clerk of the United States Court of Appeals for the Ninth Circuit.

I further certify that copies of the original have been forwarded to:

Judge Superior Court, Maricopa County, State of Arizona.

Commissioner Superior Court, Maricopa County, State of Arizona.

County Attorney, Maricopa County, State of Arizona

County Attorney, Pinal County, State of Arizona

Public Defender, Maricopa County, State of Arizona

Attorney

Other

Other

Other

a. callagram  
Legal Support Specialist Signature

B3853  
S/N

INMATE LEGAL SERVICES  
Maricopa County Sheriff's Office  
3250 W. Lower Buckeye Rd.  
Phoenix, AZ 85009

Pg. 18  
FEB 08 2022

(24)

I.L.S.

MAILED

Adam Blondahl (727047)  
Maricopa Co. Sheriff's Office  
3250 W. Lower Buckeye Rd.  
Phoenix AZ, 85009

United States Court of Appeals

for the 9<sup>th</sup> Circuit

1 Adam P. Blondahl,

3 Plaintiff - Appellant, ) No. 20-17321

4 V. 1 D.C. No. 2:19-cv-00227-MTZ

5 Staff, Dr. (Chs) Co. 1

6 health services, P3 1 Plaintiffs Motion to Stay Pursuant

7 (MCDO) et al. 1 the Mandate (Fed. R. App. P. 41) and

8 Defendants - Appellees) Memorandum filed Jan. 27<sup>th</sup>, 2022

9  
10 Appellant - Plaintiff, "Mr. B". makes this Motion in good  
11 faith to "Stay the Mandate" of the Memorandum (1/27/22),  
12 Pursuant to 9<sup>th</sup> Cir. R. 41-1 & Fed. R. App. P. 41. Also, Pursuant  
13 to (Fed. R. App. P. 40; 9<sup>th</sup> Cir. R. 40-1). Petition for Panel Rehearing.  
14 Mr. B. has been subject to excessive transfers by defendants  
15 on behalf of the state, would like to file a petition for  
16 Certiorari and Panel Rehearing, but after being transferred  
17 from ADC to (MCDO) Defendants jail, Mr. B. has not been able  
18 to retain all the evidence/documents in his case file for this  
19 instant case. An extension of time is requested to regath  
20 the lost documentation to continue to litigate in this case.

21 The following points and authorities apply to this  
22 Motion to Stay the Mandate:

23 (1) A point of law and fact has been overlooked  
24 by the district court, regarding "hard evidence" disclosed to  
25 the court, but not Mr. B. during critical proceedings, in Opp-  
26 osition to defendants Summary Judgment Motion. On re-  
27 cord, "that Mr. B. currently does not have access to, exhibits

1 and evidentiary disclosure, of both defendants (Telle/Shamrock),  
2 declarations, including a diagnosis report was w/held  
3 from Mr.B., thus proving a "resulting actual substantial pre-  
4 judge." see: pg. 4, ¶1 of (9<sup>th</sup> Cir.) memorandum, Jan 27<sup>th</sup>, 2022.  
5 Also see: Bell v. Thompson 545 U.S. 794, 125 S.Ct. 2825 (2005),  
6 "Court of Appeals issued amended opinion (373 F.3d 688),  
7 vacating district court's judgement & remanding case for  
8 evidentiary hearing," and "Supreme Court held: Mandate  
9 may be stayed w/o entering an order."

10 (2) Due Process demands that the actual elements in-  
11 volved, w/ regards to "unsound mind doctrine" and "sta-  
12 tute of limitations," including grievance procedure, must  
13 set out the findings in the district court first in the form  
14 of a legal disclosure. Going by memory, it is "Mr.B's"  
15 recollection that during his Opening Brief in the App-  
16 elate court, Mr.B was first disclosed exhibits and  
17 declarations evidence that should have been found and  
18 litigated while he filed his opposition to summary  
19 judgement in the district court. Indeed, even in the  
20 dist. ct. the record references the defendants missing ex-  
21 hibits. see: Backus v. State, 220 A.2d 101, 203 P.3d 499 (2009),  
22 a remand due to a "failure to provide medical treatment &  
23 a deliberate attempt to misrepresent facts." This has  
24 been apoplectic to Mr.B. Also see: Brown v. Recinos, Ct. App.  
25 Ariz. 2, 2018 WL 2435394, (¶5) "liability for public en-  
26 tities, should be the rule rather than the exception.  
27 (3) Pursuant to FRCP, Title V. Disclosure & Discovery,

Rule 35(b)(1)(i)(2) Physical & Mental Examinations; defendants treatment disclosures "must set out findings, including diagnosis & results," of which are less important now, considering Mr. B. was denied diagnosis discovery during a critical phase of litigation prejudicially affecting the outcome of summary judgement in the district court. Also, the depraved diagnosis info, relating to the "Unsound mind" doctrine, has created a collateral estoppel claim in Mr. B.'s criminal PCR case, w/ a liberty interest involved, violating his due process, in an incompetency evaluation. While a pre-trial detainee, Mr. B. was forced incompetent by defendants imposed conditions of confinement, but found competent through a pre-judicial Mental Health Evaluation, which also did not include defendants diagnosis discovery. As a matter of fact, after spending some time on this motion, Mr. B. is weary of submitting this motion to I.L.S., as it is likely to come up missing, & Mr. B. is very lucky if it does not. see: Dobbs v. Zant, 506 U.S. 357, 113 S.Ct. 835 (1993), "Discovery delay resulted substantially from the state's own erroneous assertions", also see: Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), Certiorari is case remanded, based on "conditions of confinement affidavits". Mr. B.'s confinement is discriminatory.

(4) Pursuant to Federal Rules of Evidence, 103(a)(1)(A)(B)(2), relates to mentioned exhibits as evidence and 401(a)(b) references the undisclosed evidence as being "overlooked hard evidence" in the 9th Cir. Court's memorandum, pertaining to "Unsound mind doctrine". To be sure this case should be remanded to the dist. ct. for further evidentiary hearings.

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Conclusion

1 This issue of defendants missing exhibits/disclosure in the  
2 district court is an overwhelming prejudice to Mr. B. during  
3 a critical phase proceeding and must be remanded as  
4 a matter of federal law.

5 The 9th Cir. Court of Appeals fails to address this  
6 particular claim, regarding declarations of defendant(s) w/  
7 held from Mr. B., by defendant(s). The evidence w/held vio-  
8 lates due process in this case & Mr. B's CR case, in which he  
9 is currently pursuing PCR/Habeas Corpus. Wherefore:

10 Mr. B. prays for relief and asks this court to Stay  
11 the Mandate, in this case.

12  
13 Respectfully submitted on 2/2/22; by  
14 Pro-Se Plaintiff-Appellant, "Mr. B.", 

15  
16  
17  
18  
19  
20

**MARICOPA COUNTY SHERIFF'S OFFICE  
INMATE LEGAL SERVICES**

**CERTIFICATION**

I hereby certify that on this date February 8, 2022

I mailed the original to the Clerk of the United States Court of Appeals for the Ninth Circuit.

I further certify that copies of the original have been forwarded to:

Judge Superior Court, Maricopa County, State of Arizona.

Commissioner Superior Court, Maricopa County, State of Arizona.

County Attorney, Maricopa County, State of Arizona

County Attorney, Pinal County, State of Arizona

Public Defender, Maricopa County, State of Arizona

Attorney

Other

Other

Other

a. Callaghan  
Legal Support Specialist Signature

B3853

S/N

INMATE LEGAL SERVICES  
Maricopa County Sheriff's Office  
3250 W. Lower Buckeye Rd.  
Phoenix, AZ 85009

pg. 1 of 1

(29)  
FEB 28 2022

I.L.S.  
MAILED

Adam Blomdahl (727047)  
Maricopa Co. Sheriff's office  
3250 W. Laser Buckeye Rd.

Phoenix, AZ 85009 U.S. Court of Appeals  
for the 9th Circuit

1 2 Adam P. Blomdahl 1

3 Plaintiff, ff - Appellant 1 No. 20-17321

4 V. 1 D.C. No. 2:19-cv-00227-MTL

5 Dr. Jaffe (chs)(MCSO) et al. / Second Motion to Extend Time to

6 Defendants - Appellees / File for Panel Rehearing Petition

7

8 Plaintiff - Appellant, "Mr. B.", makes this second motion  
9 to extend time to file for Panel Rehearing. Mr. B. has been  
10 subject to excessive transfers and due process violations  
11 by defendants on behalf of the State. See: Blomdahl v. Sher  
12 iff Penzone et al., 2:22-cv-00094-MTL (DAMF), wherefore more  
13 time is needed.

14 On Feb. 8<sup>th</sup>, 2022 & Feb 9<sup>th</sup>, 2022, Mr. B. filed a Motion to  
15 Stay the Mandate, a Motion for Court Filed Records and his  
16 first Motion to Extend Time for Panel Rehearing. Mr. B. was  
17 not able to retain his case file documents in this case upon  
18 transfer from ADC, here to MCSO. Mr. B. has not heard back  
19 from this court regarding his last (3) three motions, and  
20 has not received the records requested, see: Motion for Court  
21 Filed records (filed 2/8/22).

22 In this second motion (to extend time), Mr. B. asks this  
23 court, to allow the (14) days, (referenced in F.R.A.P. 40(a)(1)), to  
24 provide 2 weeks when Mr. B. actually receives the requested  
25 documents, see: Motion for Court Filed Records (2/8/22). Other-  
26 wise any further litigation is futile as Mr. B. does not have  
27 his case file, respectfully submitted on: 2/25/22; By: Mr. B. (pro-se)

**MARICOPA COUNTY SHERIFF'S OFFICE  
INMATE LEGAL SERVICES**

**CERTIFICATION**

I hereby certify that on this date February 28, 2022

I mailed the original to the Clerk of the United States Court of Appeals for the Ninth Circuit.

I further certify that copies of the original have been forwarded to:

Judge Superior Court, Maricopa County, State of Arizona.

Commissioner Superior Court, Maricopa County, State of Arizona.

County Attorney, Maricopa County, State of Arizona \_\_\_\_\_

County Attorney, Pinal County, State of Arizona \_\_\_\_\_

Public Defender, Maricopa County, State of Arizona \_\_\_\_\_

Attorney \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_

a. callaghan  
Legal Support Specialist Signature

B3853

S/N

INMATE LEGAL SERVICES  
Maricopa County Sheriff's Office  
3250 W. Lower Buckeye Rd.  
Phoenix, AZ 85009

(31)

**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

**Court of Appeals Docket #:** 20-17321

**Docketed:** 11/27/2020

**Nature of Suit:** 3555 Prison Condition

Adam Blomdahl v. Jaffe, et al

**Appeal From:** U.S. District Court for Arizona, Phoenix

**Fee Status:** Partially Paid

**Case Type Information:**

- 1) prisoner
- 2) state
- 3) civil rights

**Originating Court Information:**

**District:** 0970-2 : 2:19-cv-00227-MTL

**Trial Judge:** Michael T. Liburdi, District Judge

**Date Filed:** 01/11/2019

<b>Date</b>	<b>Date Order/Judgment</b>	<b>Date NOA</b>	<b>Date Rec'd</b>
<b>Order/Judgment:</b>	<b>EOD:</b>	<b>Filed:</b>	<b>COA:</b>
11/05/2020	11/05/2020	11/24/2020	11/25/2020

**Prior Cases:**

None

**Current Cases:**

	<b>Lead</b>	<b>Member</b>	<b>Start</b>	<b>End</b>
<b>Related</b>				
	20-17321	<u>21-15832</u>	05/10/2021	06/11/2021

ADAM PAUL BLOMDAHL (-: T727047)

Plaintiff - Appellant,

Adam Paul Blomdahl

[NTC Pro Se]

LBJ - LOWER BUCKEYE JAIL

Maricopa County Jail ~~Sheriff~~

3250 W. Lower Buckeye

Phoenix, AZ 85009

v.

JAFFE, Dr. (CHS) - County Health Services  
 Doctor at Psychiatric Unit 3 (MCSO)  
 Defendant - Appellee,

Joseph James Branco, Assistant Counsel

Direct: 602-506-8541

Email: brancoj@mcao.maricopa.gov

Fax: 602-506-4317

[COR NTC Dep County Counsel]

Maricopa County Attorney's Office

Civil Services

225 W Madison Street

(32)

Phoenix, AZ 85003

Jennifer Lockerby  
Direct: 480-772-0594  
Email: lockerbj@mcao.maricopa.gov  
[COR NTC Dep County Counsel]  
MARICOPA COUNTY ATTORNEY'S  
OFFICE  
Division of County Counsel  
Suite 1100  
222 North Central Avenue  
Phoenix, AZ 85004-2206

Maxine S. Mak, Esquire  
Direct: 602-506-8541  
Email: makm@mcao.maricopa.gov  
Fax: 602-506-4317  
[COR NTC County Counsel]  
Maricopa County Attorney's Office  
Civil Services  
225 W Madison Street  
Phoenix, AZ 85003

SHAMROCK, Sgt. (MCSO) - Close Custody  
Sgt. 4th Floor at MCSO 4th Ave. Jail  
Defendant - Appellee,

Joseph James Branco, Assistant Counsel  
Direct: 602-506-8541  
[COR NTC Dep County Counsel]  
(see above)

Jennifer Lockerby  
Direct: 480-772-0594  
[COR NTC Dep County Counsel]  
(see above)

Maxine S. Mak, Esquire  
Direct: 602-506-8541  
[COR NTC County Counsel]  
(see above)

PAUL PENZONE  
Defendant - Appellee,

REBBECA POTTON, Detective/ Case Agent at  
Phoenix Police Department  
Defendant - Appellee,

JESSI WADE, Attorney at Maricopa County  
Attorney's Office  
Defendant - Appellee,

(33)

ADAM PAUL BLOMDAHL,

Plaintiff - Appellant,

v.

JAFFE, Dr. (CHS) - County Health Services Doctor at Psychiatric Unit 3 (MCSO); SHAMROCK, Sgt. (MCSO) - Close Custody Sgt. 4th Floor at MCSO 4th Ave. Jail; PAUL PENZONE; REBBECA POTTON, Detective/ Case Agent at Phoenix Police Department; JESSI WADE, Attorney at Maricopa County Attorney's Office,

Defendants - Appellees.

- 11/27/2020 1 DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL AND PRO SE APPELLANT. SEND MQ: No. The schedule is set as follows: Appellant Adam Paul Blomdahl opening brief due 01/25/2021. Appellees Jaffe and Shamrock answering brief due 02/22/2021. Appellant's optional reply brief is due 21 days after service of the answering brief. [11907924] (JPD) [Entered: 11/27/2020 02:00 PM]
- 11/30/2020 2 CLERK ORDER FILED (Deputy Clerk CKP) Prisoner fee authorization form sent to prisoner. [11909846] (CKP) [Entered: 11/30/2020 03:41 PM]
- 12/07/2020 3 Received PLRA authorization response from appellant. Dated 12/03/2020. [11919755] (RR) [Entered: 12/09/2020 09:04 AM]
- 12/07/2020 4 Received Appellant Adam Paul Blomdahl notice regarding filing of notice of appeal. [11919761] (RR) [Entered: 12/09/2020 09:05 AM]
- 12/09/2020 5 CLERK ORDER FILED (Deputy Clerk CKP) Prisoner completed authorization fee order. [11920336] (CKP) [Entered: 12/09/2020 12:11 PM]
- 12/10/2020 6 Filed Appellant Adam Paul Blomdahl motion to extend time to file appellant opening brief. Deficiencies: None. Served on 12/10/2020. [11922137] (RR) [Entered: 12/10/2020 10:17 AM]
- 12/10/2020 7 Filed clerk order (Deputy Clerk: th): Granting Appellant's Motion [6] to extend time to file opening brief. Appellant Adam Paul Blomdahl opening brief due 02/25/2021. Appellees Jaffe, Paul Penzone, Rebbecca Potton, Jessi Wade and Shamrock answering brief due 03/29/2021. The appellant's optional reply brief is due 21 days after service of the answering brief. This order was issued prior to the expiration of time within which a response may be filed. Fed. R. App. P. 27(b). [11922302] (TH) [Entered: 12/10/2020 11:27 AM]
- 12/10/2020 8 Filed (ECF) notice of appearance of Joseph J. Branco (Maricopa County Attorney's Office, Civil Services Division, 225 W. Madison Street, Phoenix, AZ 85003) for Appellees Jaffe and Shamrock. Date of service: 12/10/2020. (Party was previously proceeding with counsel.) [11922549] [20-17321] (Branco, Joseph) [Entered: 12/10/2020 12:59 PM]

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- |            |           |  |
|------------|-----------|--|
| 12/10/2020 | <u>9</u>  | Added Attorney(s) Joseph James Branco for party(s) Appellee Jaffe Appellee Shamrock, in case 20-17321. [11922748] (RR) [Entered: 12/10/2020 01:55 PM]  |
| 12/18/2020 | <u>10</u> | Filed Appellant Adam Paul Blomdahl motion to appoint counsel. Deficiencies: None. [11934297] (RR) [Entered: 12/21/2020 09:05 AM]   |
| 01/05/2021 | <u>11</u> | Filed (ECF) Appellees Jaffe and Shamrock response non-opposing motion/form/notice at [10] Party Motion. Date of service: 01/05/2021. I certify that I have separately notified all parties not registered for Appellate Electronic Filing in this case with notice of this non-opposition. [11952740] [20-17321] (Branco, Joseph) [Entered: 01/05/2021 11:55 AM]   |
| 01/27/2021 | <u>12</u> | Filed Appellant Adam Paul Blomdahl motion to unseal medical documents. Deficiencies: None. [11984416] (RR) [Entered: 01/28/2021 10:35 AM]  |
| 02/03/2021 | <u>13</u> | Filed Appellant Adam Paul Blomdahl motion to extend time to file appellant opening brief. Deficiencies: None. [11992992] (RR) [Entered: 02/04/2021 01:47 PM]   |
| 02/04/2021 | <u>14</u> | Filed (ECF) Appellees Jaffe and Shamrock response opposing motion ([12] Party Motion). Date of service: 02/04/2021. [11993158] [20-17321] (Branco, Joseph) [Entered: 02/04/2021 02:33 PM]  |
| 02/10/2021 | <u>15</u> | Filed Appellant Adam Paul Blomdahl reply to Appellees Jaffe and Shamrock opposition in 20-17321 served on 2/10/2021 [12002257] (RR) [Entered: 02/12/2021 12:07 PM]   |
| 02/16/2021 | <u>16</u> | Filed (ECF) Appellees Jaffe and Shamrock response to motion ([13] Party Motion). Date of service: 02/16/2021. [12003916] [20-17321] (Branco, Joseph) [Entered: 02/16/2021 11:01 AM]  |
| 02/17/2021 | <u>17</u> | Received original and 0 copies of Appellant Adam Paul Blomdahl opening brief of 37 pages (Informal: No). Served on 02/17/2021. Served by Court via CM/ECF. Major deficiency: briefing is stayed (appointment of counsel motion pending). Notified Appellant. [12007083] (KWG) [Entered: 02/17/2021 03:28 PM]   |
| 03/10/2021 | <u>18</u> | Filed Appellant Adam Paul Blomdahl motion to unseal document. Deficiencies: None. [12032988] (RR) [Entered: 03/11/2021 04:10 PM]   |
| 03/25/2021 | <u>19</u> | Filed (ECF) Appellees Jaffe and Shamrock response opposing motion ([12] Party Motion). Date of service: 03/25/2021. [12052990] [20-17321] (Branco, Joseph) [Entered: 03/25/2021 09:57 AM]  |
| 03/31/2021 | <u>20</u> | Filed Appellant Adam Paul Blomdahl reply to Appellees Jaffe and Shamrock opposition in 20-17321 [12062741] (RR) [Entered: 04/02/2021 07:58 PM]   |
| 04/14/2021 | <u>21</u> | Filed order (RICHARD R. CLIFTON and DANIEL A. BRESS) Appellant's motions to unseal documents (Docket Entry Nos. [12] and [18]) are denied. Appellant's motion for appointment of counsel (Docket Entry No. [10]) is denied. No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained. Appellant's motion to extend time to file the opening brief (Docket Entry No. [13]) is denied as unnecessary. The Clerk shall file the opening brief received on February 17, 2021 (Docket Entry No. [17]). |

(35)

The answering brief is due May 17, 2021. The optional reply brief is due within 21 days after service of the answering brief. Because appellant is proceeding without counsel, appellant is not required to file excerpts of record. See 9th Cir. R. 30-1.3. If appellant does not file excerpts of record, appellees "must file Supplemental Excerpts of Record that contain all of the documents that are cited in the pro se opening brief or otherwise required by Rule 30-1.4, as well as the documents that are cited in the answering brief." See id. [12073923] (WL) [Entered: 04/14/2021 11:39 AM]

- 04/14/2021 22 Filed original and 0 copies of Appellant Adam Paul Blomdahl opening brief of 37 pages (Informal: No). Served on 02/17/2021. [12074457] (KWG) [Entered: 04/14/2021 03:17 PM]
- 05/14/2021 23 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellees Jaffe and Shamrock. New requested due date is 06/16/2021. [12113057] [20-17321] (Branco, Joseph) [Entered: 05/14/2021 10:05 AM]
- 05/14/2021 24 Streamlined request [23] by Appellees Jaffe and Shamrock to extend time to file the brief is approved. Amended briefing schedule: Appellees Jaffe and Shamrock answering brief is due 06/16/2021. The optional reply brief is due 21 days from the date of service of the answering brief. [12113346] (BG) [Entered: 05/14/2021 12:23 PM]
- 06/14/2021 25 Submitted (ECF) Answering Brief for review. Submitted by Appellees Shamrock and Jaffe. Date of service: 06/14/2021. [12143283] [20-17321] (Branco, Joseph) [Entered: 06/14/2021 12:35 PM]
- 06/14/2021 26 Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Jaffe and Shamrock. Date of service: 06/14/2021. [12143628] [20-17321] --[COURT UPDATE: attached consolidated PDF of supplemental excerpts of record, volume 3. 06/14/2021 by KT] (Branco, Joseph) [Entered: 06/14/2021 03:05 PM]
- 06/14/2021 27 Filed clerk order: The answering brief [25] submitted by Jaffe and Shamrock is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The supplemental excerpts of record [26] submitted by Jaffe and Shamrock are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12143762] (KT) [Entered: 06/14/2021 04:07 PM]
- 06/16/2021 28 Received 3 paper copies of supplemental excerpts of record [26] in 3 volume(s) and index volume filed by Appellees Jaffe and Shamrock. [12146124] (KWG) [Entered: 06/16/2021 01:34 PM]
- 06/16/2021 29 Received 6 paper copies of Answering Brief [25] filed by Jaffe and Shamrock. [12146218] (SD) [Entered: 06/16/2021 02:16 PM]
- 06/29/2021 30 Filed Appellant Adam Paul Blomdahl motion for stay pending release of appellee's excerpts record. Deficiencies: None. Served on 6/29/2021 [12159204] (RR) [Entered: 06/30/2021 01:27 PM]

- 06/29/2021 31 Filed Appellant Adam Paul Blomdahl motion to extend time to file reply brief until 07/29/2021. Deficiencies: None. Served on 06/29/2021. [12159205] (RR) [Entered: 06/30/2021 01:29 PM]
- 06/29/2021 32 Filed Appellant Adam Paul Blomdahl motion to amend appellant's request for relief and jury trial remand. Deficiencies: None. Served on 06/29/2021. [12159208] (RR) [Entered: 06/30/2021 01:31 PM]
- 07/12/2021 33 Filed (ECF) Appellees Jaffe and Shamrock response to motion ([32] Party Motion). Date of service: 07/12/2021. [12170150] [20-17321] (Branco, Joseph) [Entered: 07/12/2021 03:30 PM]
- 07/12/2021 34 Filed (ECF) Appellees Jaffe and Shamrock response to motion ([30] Party Motion). Date of service: 07/12/2021. [12170281] [20-17321] (Branco, Joseph) [Entered: 07/12/2021 04:28 PM]
- 07/13/2021 35 Filed clerk order (Deputy Clerk: KD): Appellant's unopposed motion for an extension of time to file the reply brief (Docket Entry No. [31]) is granted. The optional reply brief is due July 29, 2021. Appellant's other pending motions (Docket Entry Nos. [30] and [32]) are referred to the panel that will consider the merits of this appeal. [12171433] (WL) [Entered: 07/13/2021 03:03 PM]
- 07/13/2021 36 Filed Appellant Adam Paul Blomdahl motion for injunctive relief pursuant to FRCP 65. Deficiencies: None. Served on 7/12/2021. [12173174] (RR) [Entered: 07/15/2021 09:07 AM]
- 07/16/2021 37 Filed (ECF) Appellees Jaffe and Shamrock response to motion ([36] Party Motion). Date of service: 07/16/2021. [12174765] [20-17321] (Branco, Joseph) [Entered: 07/16/2021 12:45 PM]
- 07/21/2021 39 Filed Appellant Adam Paul Blomdahl reply to Appellees Jaffe and Shamrock in 20-17321 opposition to motion for injunctive relief. [12180907] (RR) [Entered: 07/23/2021 08:10 AM]
- 07/21/2021 40 Filed Appellant Adam Paul Blomdahl reply to Appellees Jaffe and Shamrock in 20-17321 opposition to amend request for relief and jury remand. [12180916] (RR) [Entered: 07/23/2021 08:20 AM]
- 07/22/2021 38 Filed Appellant Adam Paul Blomdahl reply to motion for stay. [12180557] (JFF) [Entered: 07/22/2021 03:35 PM]
- 11/01/2021 41 Filed Appellant Adam Paul Blomdahl letter dated 10/26/2021 re: update of case. Paper filing deficiency: None. [12276522] (RR) [Entered: 11/02/2021 05:45 PM]
- 11/18/2021 42 Received notice of change of address dated 11/05/2021 from Adam Paul Blomdahl. New address: Maricopa County Sheriff's Office, Booking No.T727047, Phoenix, AZ 85009, and request for docket sheet. [12291778] (RR) [Entered: 11/18/2021 12:24 PM]



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

9 Adam Paul Blomdahl,  
10 Plaintiff,  
11 v.  
12 Unknown Jaffe, et al.,  
13 Defendant

NO. CV-19-00227-PHX-MTL (DMF)

## JUDGMENT IN A CIVIL CASE

15        **Decision by Court.** This action came for consideration before the Court. The  
16 issues have been considered and a decision has been rendered.

17       **IT IS ORDERED AND ADJUDGED** that, pursuant to the Court's Order filed  
18 November 5, 2020, which granted the Motion for Summary Judgment, judgment is  
19 entered in favor of defendants and against plaintiff. Plaintiff to take nothing, and the  
20 complaint and action are hereby terminated.

Debra D. Lucas  
District Court Executive/Clerk of Court

23 | November 5, 2020

By s/ E. Aragon  
Deputy Clerk

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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8

9 Adam Paul Blomdahl,

10 Plaintiff,

11 v.

12 Unknown Jaffe, et al.,

13 Defendants.

14

15 No. CV 19-00227-PHX-MTL (DMF)

16

17 **ORDER**

18

19

20 Plaintiff Adam Paul Blomdahl, who is currently confined in Arizona State Prison

21 Complex (ASPC)-Florence, Browning Unit in Florence, Arizona, brought this civil rights

22 action pursuant to 42 U.S.C. § 1983.<sup>1</sup> Defendants move for summary judgment and

23 Plaintiff opposes. (Docs. 57, 60.)<sup>2</sup> Also before the Court are Plaintiff's Motion for Joinder

24 of Parties (Doc. 68) and Motion for Sanctions (Doc. 74).

25 **I. Background**

26 Upon screening Plaintiff's First Amended Complaint (Doc. 7) under 28 U.S.C.

27 § 1915A(a), the Court determined that Plaintiff stated a Fourteenth Amendment

28 conditions-of-confinement claim against Maricopa County Health Services Psychiatrist

Dr. Jaffe in Count Two and a Fourteenth Amendment excessive force claim against

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26 <sup>1</sup> The events that gave rise to Plaintiff's claims in this action took place while

27 Plaintiff was confined at the Maricopa County Fourth Avenue Jail in Phoenix, Arizona.

(See Doc. 7 at 1.)

28 <sup>2</sup> The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952,

962 (9th Cir. 1998) (en banc), regarding the requirements of a response. (Doc. 59.)

1 Maricopa County Sheriff's Office (MSCO) Sergeant Shamrock in Count Three. (Doc. 8.)  
2 The Court directed Defendants Jaffe and Shamrock to answer and dismissed the remaining  
3 claims and Defendants. (*Id.*)

4 In Count Two, Plaintiff alleges that in October 2016, while he was confined at the  
5 Maricopa County Fourth Avenue Jail, Defendant Jaffe had him moved out of the jail's  
6 psychiatric unit and placed into a "flat cell" in which Plaintiff did not have a working toilet  
7 or shower and was deprived of clothing, reasonable shelter, sanitation, medical care, and  
8 safety. (Doc. 7 at 11–12.) In Count Three, Plaintiff alleges that when he refused to be  
9 moved from close custody back to general population in June 2017, he was beaten and  
10 pepper sprayed by several detention officers at Defendant Shamrock's orders. (*Id.* at 19–  
11 20.)

12 Defendants now move for summary judgment on the grounds that Plaintiff failed to  
13 exhaust the available administrative remedies as to his claims in Counts Two and Three,  
14 that his claim in Count Two is barred by the applicable statute of limitations, and that  
15 Defendant Shamrock was not present during the events that gave rise to Plaintiff's claims.  
16 (Doc. 57.)

17 **II. Motion for Joinder of Parties**

18 Plaintiff moves to add new Defendants to this action and to consolidate this action  
19 with *Blomdahl v. Jones, et al*, 20-CV-01207-MTL-DMF. (Doc. 68.) Plaintiff previously  
20 sought to add new Defendants to this action, and the Court determined that the request was  
21 untimely and denied the motion. (Docs. 61, 65.) Plaintiff's attempt to add new Defendants  
22 is still untimely and will be denied again. Further, the Court has broad discretion when  
23 deciding a motion to consolidate cases under Rule 42(a) of the Federal Rules of Civil  
24 Procedure. The Court, in its discretion, declines to consolidate this case with 20-CV-01207  
25 because these two cases are in entirely different procedural positions. The instant case was  
26 filed nearly two years ago and summary judgment briefing has been completed. In  
27 contrast, the Defendant in 20-CV-01207 was just recently served, and a scheduling order  
28 has not been issued. It would not promote the conservation of judicial resources to

1 consolidate these cases at this time. *See* Fed. R. Civ. P. 42(a)(3) (consolidation of cases  
2 may be warranted “to avoid unnecessary cost or delay”). Nor would consolidation secure  
3 a speedy determination of the present action, which has already incurred significant delays.  
4 *See* Fed. R. Civ. P. 1 (the procedural rules should be “administered to secure the just,  
5 speedy, and inexpensive determination of every action”). Accordingly, the Motion for  
6 Joinder of Parties will be denied.

7 **III. Summary Judgment Standard**

8 A court must grant summary judgment “if the movant shows that there is no genuine  
9 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
10 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The  
11 movant bears the initial responsibility of presenting the basis for its motion and identifying  
12 those portions of the record, together with affidavits, if any, that it believes demonstrate  
13 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

14 If the movant fails to carry its initial burden of production, the nonmovant need not  
15 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,  
16 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts  
17 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in  
18 contention is material, i.e., a fact that might affect the outcome of the suit under the  
19 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable  
20 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
21 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th  
22 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its  
23 favor, *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,  
24 it must “come forward with specific facts showing that there is a genuine issue for trial.”  
25 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal  
26 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

27 At summary judgment, the judge’s function is not to weigh the evidence and  
28 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,

1 477 U.S. at 249. In its analysis, the court must believe the nonmovant's evidence and draw  
2 all inferences in the nonmovant's favor. *Id.* at 255. The court need consider only the cited  
3 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

4 **IV. Exhaustion**

5 The Court will first address Defendants' argument that Plaintiff failed to exhaust his  
6 claims in Counts Two and Three.

7 **A. Legal Standard**

8 Under the Prison Litigation Reform Act, a prisoner must exhaust "available"  
9 administrative remedies before filing an action in federal court. *See* 42 U.S.C. § 1997e(a);  
10 *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9th Cir. 2006); *Brown v. Valoff*, 422 F.3d 926,  
11 934-35 (9th Cir. 2005). The prisoner must complete the administrative review process in  
12 accordance with the applicable rules. *See Woodford v. Ngo*, 548 U.S. 81, 92 (2006).  
13 Exhaustion is required for all suits about prison life, *Porter v. Nussle*, 534 U.S. 516, 523  
14 (2002), regardless of the type of relief offered through the administrative process, *Booth v.*  
15 *Churner*, 532 U.S. 731, 741 (2001).

16 The defendant bears the initial burden to show that there was an available  
17 administrative remedy and that the prisoner did not exhaust it. *Albino v. Baca*, 747 F.3d  
18 1162, 1169, 1172 (9th Cir. 2014); *see Brown*, 422 F.3d at 936-37 (a defendant must  
19 demonstrate that applicable relief remained available in the grievance process). Once that  
20 showing is made, the burden shifts to the prisoner, who must either demonstrate that he, in  
21 fact, exhausted administrative remedies or "come forward with evidence showing that there  
22 is something in his particular case that made the existing and generally available  
23 administrative remedies effectively unavailable to him." *Albino*, 747 F.3d at 1172. The  
24 ultimate burden, however, rests with the defendant. *Id.* Summary judgment is appropriate  
25 if the undisputed evidence, viewed in the light most favorable to the prisoner, shows a  
26 failure to exhaust. *Id.* at 1166, 1168; *see* Fed. R. Civ. P. 56(a).

27 If summary judgment is denied, disputed factual questions relevant to exhaustion  
28 should be decided by the judge; a plaintiff is not entitled to a jury trial on the issue of

1 exhaustion. *Albino*, 747 F.3d at 1170-71. But if a court finds that the prisoner exhausted  
2 administrative remedies, that administrative remedies were not available, or that the failure  
3 to exhaust administrative remedies should be excused, the case proceeds to the merits. *Id.*  
4 at 1171.

5 **B. MCSO Grievance Procedure**

6 The Fourth Avenue Jail's administrative remedy process is set forth in MCSO  
7 Policy DJ-3 and in Section 13 of the MCSO Rules and Regulations for Inmates. (Doc. 58-  
8 1 at 25-28 (Defs.' Ex. 2), 58-66 (Defs.' Ex. 4, Attach. 1).) There are five steps in the  
9 Inmate Grievance Procedure; the first three steps are documented on one form, the  
10 Grievance Form. (*Id.* at 26.) The inmate initiates the process by submitting the Grievance  
11 Form to an officer, who attempts to resolve the issue and documents on the Grievance Form  
12 what action was taken. (*Id.* at 26, 59-60.) If the issue is not resolved, the officer informs  
13 the inmate that the Grievance Form will be forwarded to a shift supervisor. (*Id.*) The shift  
14 supervisor attempts to resolve the grievance and documents on the Grievance Form what  
15 action was taken and whether the issue is resolved. (*Id.*) If the issue is not resolved, the  
16 grievance is forwarded as a formal grievance to the Hearing Unit Sergeant, who attempts  
17 to resolve the issue. (*Id.* at 26, 61.) A hearing sergeant responds to the grievance and  
18 documents on the Grievance Form the actions taken and whether the issue is resolved or  
19 not. (*Id.*)

20 If the issue is still not resolved, the fourth step provides for the inmate to appeal to  
21 the jail commander via a separate form, the Institutional Grievance Appeal Form. (*Id.*)  
22 The jail commander's response and recommended action is documented on this same form.  
23 (*Id.* at 26, 62.) The Appeal Form also includes a space to mark either that the grievance  
24 is resolved and should be forwarded to the Bureau Hearing Unit for filing, or that the  
25 grievance is unresolved and should be forwarded to the External Referee, which is the final  
26 step in the inmate grievance procedure. (*Id.*)

27 If the inmate seeks to appeal, he will be given an External Grievance Appeal Form,  
28 to which he must attach copies of the Inmate Grievance Form and the Institutional

1 Grievance Appeal Form. (*Id.*) The External Grievance Appeal Form is then forwarded to  
2 the Bureau Hearing Unit Commander who will either determine that the appeal lacks merit  
3 or that it should be forwarded to the External Referee. (*Id.* at 26, 63.) If the unit  
4 commander decides not to forward the appeal to the External Referee, the grievance  
5 process is concluded. (*Id.*) Otherwise, the appeal is forwarded to the External Referee  
6 whose response and written decision end the formal inmate grievance procedure. (*Id.* at  
7 27, 64.)

8 If a staff member fails to respond to a grievance within the time allowed, the inmate  
9 may proceed to the next step in the grievance process. (*Id.* at 25.)

10 All inmates are notified of the grievance procedures when they receive a copy of  
11 the MCSO Rules and Regulation for Inmates. (Doc. 58-1 (Defs' Ex 4, Bretado Decl. ¶ 4).)  
12 On August 20, 2016, Plaintiff was given a copy of the MCSO Rules and Regulations for  
13 Inmates, but Plaintiff was unable to sign the receipt page because he was in a safe cell and  
14 was not allowed to have a pencil at that time. (Doc. 58-1 at 52 (Defs.' Ex. 3).) Plaintiff  
15 received another copy of the MCSO Rules and Regulations for Inmates on July 5, 2017,  
16 and he was able to sign for receipt of this copy. (*Id.* at 117 (Defs.' Ex. 5).)

17 **C. Discussion**

18 Plaintiff was a pre-trial detainee in MCSO custody from August 19, 2016 until he  
19 was sentenced to the Arizona Department Corrections on November 22, 2019. (Doc. 58  
20 (Defs.' Statement of Facts) ¶ 6.) Plaintiff filed the First Amended Complaint in this action  
21 on February 19, 2019. (Doc. 7.) Defendants have presented Plaintiff's MCSO grievance  
22 records, which indicate that Plaintiff filed eight grievances between August 19, 2016—the  
23 day he was booked into MCSO custody—and February 19, 2019—the day he filed the First  
24 Amended Complaint. (*See* Doc. 58-1 at 4–6 (Defs.' Ex. 1).) These eight grievances  
25 pertained to the following: Plaintiff's request to see a different doctor; Plaintiff's phone  
26 call with his attorney being interrupted during a lockdown; Plaintiff not receiving the Wall  
27 Street Journal; Plaintiff being denied dayroom; Plaintiff asking for safe drinking water;  
28 Plaintiff asking for a haircut; and Plaintiff challenging a disciplinary report and being

1 harassed by another inmate. (*Id.* at 4.) None of the grievances pertained to Plaintiff's  
2 claims that Defendant Jaffe had him placed in a flat cell under inhumane conditions or that  
3 Defendant Shamrock used excessive force against him. (*See id.*) Thus, Defendants have  
4 met their initial burden at summary judgment of showing that there was an administrative  
5 remedy available to Plaintiff as outlined in MCSO Policy DJ-3 and that Plaintiff did not  
6 complete this process with regard to his claims against Defendants. Accordingly, the  
7 burden shifts to Plaintiff to either show that he exhausted his threat-to-safety claim or that  
8 the administrative remedy was effectively unavailable to him. *Albino*, 747 F.3d at 1172.

9 Plaintiff argues that the grievance process was unavailable to him and that "just  
10 because Rules and Regulations for Inmates . . . says that grievance forms are available,  
11 does not mean at the time Plaintiff was in [the MCSO mental health unit], that Defendants  
12 . . . allowed him to file a grievance." (*Id.* at 13.) Plaintiff contends that he did not have  
13 access to the grievance process while he was housed in the psychiatric unit/flat cell and  
14 that he "had a grievable issue for days and weeks, but Defendants/Jaffe would not allow or  
15 'assist him' in the grievance process" and did not give him a pencil to complete a grievance  
16 form. (*Id.*) But the evidence shows that Plaintiff was released from the psychiatric unit/flat  
17 cell back to the general population on November 4, 2016, and he did not submit a grievance  
18 regarding his claim against Defendant Jaffe upon being returned to the general population.  
19 (Doc. 58 ¶ 13.)

20 Plaintiff argues that he did not sign for receipt of a copy of the MCSO Rules and  
21 Regulation for Inmates until July 5, 2017 and was therefore not aware of the grievance  
22 process until then. (Doc. 60 at 12, 15.) But this argument is belied by the uncontested  
23 evidence which shows that Plaintiff filed a grievance in March 2017 asking to be seen by  
24 a different doctor. (Doc. 58-1 at 4.) Thus, Plaintiff was aware of the grievance process by  
25 the time the events regarding his claim against Defendant Shamrock took place in June  
26 2017. However, Plaintiff asserts that the grievances he filed regarding his excessive force  
27 claim against Defendant Shamrock "were not logged by Defendants and/or were lost by  
28 his lawyer." (Doc. 60 at 14.) Plaintiff does not state when he filed these grievances, who

1 he gave them to, or what the grievances said. Further, the grievance process clearly states  
2 that if an inmate does not receive a response at any stage of the grievance process, the  
3 inmate may move on to the next step.

4 Construing the evidence in Plaintiff's favor, Plaintiff did not receive a copy of the  
5 MCSO Rules and Regulations for Inmates when he was booked into the Maricopa County  
6 Jail in August 2016, and he was not aware of the grievance process until at least March  
7 2017, when he filed his grievance asking to see a different doctor. This was well after his  
8 claim against Defendant Jaffe arose in October 2016. On these facts, the Court finds that  
9 Plaintiff's failure to exhaust his claim against Defendant Jaffe is excused.

10 However, the unrefuted evidence shows that Plaintiff was aware of the grievance  
11 process by the time his claim against Defendant Shamrock arose in June 2017, and Plaintiff  
12 has not shown that the grievance process was unavailable to him as to this claim. Even if  
13 his grievance against Defendant Shamrock was not logged, the grievance procedure  
14 permitted Plaintiff to proceed to the next step in the process once the response deadline had  
15 passed, and Plaintiff failed to do so. Accordingly, Plaintiff's failure to exhaust his claim  
16 against Defendant Shamrock is not excused, and that claim must be dismissed.<sup>3</sup>

17 **V. Statute of Limitations**

18 Defendants next argue that Plaintiff's claim against Defendant Jaffe is barred by the  
19 two-year statute of limitations.

20 **A. Legal Standard**

21 Title 42 U.S.C. § 1983 does not include its own statute of limitations. *Two Rivers*,  
22 174 F.3d at 991. Therefore, federal courts apply the statute of limitations governing  
23 personal injury claims in the forum state, "along with the forum state's law regarding

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24  
25 <sup>3</sup> Even if Plaintiff had exhausted his claim against Defendant Shamrock, or if he was  
26 excused from doing so, Plaintiff concedes to Defendants' argument that Defendant  
27 Shamrock was not present when excessive force was purportedly used against Plaintiff in  
28 June 2017. (Doc. 60 at 16; Doc. 58 ¶ 11 (showing that Defendant Shamrock was on  
scheduled vacation during the excessive force incident).) Plaintiff admits that he  
misidentified Defendant Shamrock as being one of the officers who used excessive force  
against him in June 2017. (Doc. 60 at 16.) Accordingly, Defendant Shamrock is also  
entitled to summary judgment on the merits of Plaintiff's claim in Count Three.

1 tolling, including equitable tolling, except to the extent any of these laws is inconsistent  
2 with federal law.” *Butler v. Nat'l Cnty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th  
3 Cir. 2014) (citation omitted). In Arizona, the limitations period for personal injury claims  
4 is two years. *TwoRivers*, 174 F.3d at 991; *see also* Ariz. Rev. Stat. § 12-542 (providing  
5 that actions for personal injury must be commenced within two years after the cause of  
6 action accrues). “If the defendant establishes a *prima facie* case that the statute was  
7 applicable, the burden of going forward shifts to the plaintiff to show its claims fall within  
8 a recognized exception to the statute.” *Kiley v. Jennings, Strouss & Salmon*, 927 P.2d 796,  
9 799 (Ariz. Ct. App. 1996).

10 Although the statute of limitations applicable to § 1983 claims is borrowed from  
11 state law, federal law continues to govern when a § 1983 claim accrues. *Wallace v. Kato*,  
12 549 U.S. 384, 388 (2007); *TwoRivers*, 174 F.3d at 991. Under federal law, a claim accrues  
13 “when the plaintiff knows or has reason to know of the injury which is the basis of the  
14 action.” *TwoRivers*, 174 F.3d at 991; *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996).

15 **B. Discussion**

16 The evidence shows that Plaintiff “knew of the injury” that is the basis of his claim  
17 against Defendant Jaffe no later than October 2016 when Plaintiff was placed in the flat  
18 cell in what he considered to be inhumane conditions. (See Doc. 7 at 11 (alleging that  
19 “during most of the month of October 2016 the Plaintiff had spent abandoned, isolated and  
20 desolate inside a flat cell at the “P3” psych unit”)). Thus, Plaintiff’s claim against  
21 Defendant Jaffe accrued at least by October 31, 2016, and any claim against Defendant  
22 Jaffe needed to be filed no later than October 31, 2018. It is undisputed that Plaintiff first  
23 named Defendant Jaffe as a Defendant in this action in the original Complaint, which  
24 Plaintiff filed on January 11, 2019, well after the two-year statutory period for filing that  
25 claim had elapsed. Defendants have therefore made a *prima facie* case that Plaintiff’s  
26 claims against Defendant Jaffe are barred by the applicable statute of limitations. To avoid  
27 dismissal, Plaintiff must show that his claim falls within a recognized exception to that  
28 statute. *Kiley*, 927 P.2d at 799. Plaintiff argues that the statutory period for filing his claim

1 against Defendant Jaffe was equitably tolled because he was of unsound mind. (Doc. 60  
2 at 11.)

3       If a person is of unsound mind when a cause of action accrues, the statute of  
4 limitations is tolled for the period of disability, and after the disability is removed, the  
5 person will have the same time allowed to others. Ariz. Rev. Stat. § 12-502. This rule  
6 arises from the equitable principle that “it is unfair to bar an action in which the plaintiff is  
7 mentally disabled and thus unable to appreciate *or pursue* his or her legal rights.” *Doe v.*  
8 *Roe*, 955 P.2d 951, 963 (Ariz. 1998) (emphasis in original) (internal citations omitted). “In  
9 Arizona, unsound mind occurs when the ‘person is unable to manage his affairs or to  
10 understand his legal rights or liabilities.’” *Id.* (quoting *Allen v. Powell’s Int’l, Inc.*, 518  
11 P.2d 588, 589 (Ariz. App. 1974)). The plaintiff bears the burden of “set[ting] forth specific  
12 facts—hard evidence—supporting the conclusion of unsound mind.” *Doe*, 955 P.2d at  
13 964. But where a plaintiff produces “credible evidence” of unsound mind, he is not  
14 required to discredit all contrary evidence, because the contrary evidence merely raises a  
15 question of fact for a jury to decide. (Doc. 138 at 10.) *Id.*; *Tavilla v. Cephalon, Inc.*, 870  
16 F. Supp. 2d 759, 772 (D. Ariz. 2012), *on reconsideration in part* (May 30, 2012) (where  
17 the plaintiff produced credible evidence of his inability to function on a day-to-day basis,  
18 questions of fact as to unsound mind precluded summary judgment).

19       Plaintiff argues that the limitations period was tolled from October 20, 2016 through  
20 January 11, 2017 because during this time, he was being examined for competency to stand  
21 trial in his state court criminal case. (Doc. 60 at 11.) The Court first looks to whether  
22 Plaintiff has produced “specific facts” that he was unable to manage his affairs during this  
23 time. As to this period, Plaintiff points to the following: (1) an October 11, 2016 Order in  
24 his criminal case granting a full Rule 11 competency evaluation; and (2) a January 3, 2017  
25 Order in his criminal case finding Plaintiff competent to stand trial. (Doc. 60 at 44–46, 48  
26 (Pl.’s Ex. 6).) Plaintiff contends that “his emotional distress[] continued well into the  
27 duration of his stay as a pre-trial detainee” and that he “continued to suffer [emotional  
28

1 distress] even after he left the flat cell on 11/4/16 and the emotional distress continued even  
2 after [the Rule 11 proceedings].” (*Id.* at 11.)

3 Plaintiff’s evidence only shows that he was evaluated for competency between  
4 October 20, 2016 and January 11, 2017. It does not prove that he was actually incompetent  
5 or that he was unable to manage his affairs during this time, and in fact, Plaintiff’s evidence  
6 shows that he was ultimately found competent. For equitable tolling to apply, “it is  
7 insufficient to summarily claim ‘inability to bring the action.’” *Doe*, 955 P.2d at 964  
8 (quoting *Florez v. Sargeant*, 917 P.2d 250, 255 (Ariz. 1996)). “[T]he policy of protecting  
9 defendants against stale and fraudulent claims cannot be overcome by conclusory  
10 averments such as assertions that one was unable to manage daily affairs or understand  
11 legal rights and liabilities.” *Doe*, 955 P.2d at 964. Plaintiff has not provided any sworn  
12 testimony regarding his purported inability to manage his affairs, nor has he provided any  
13 other competent evidence, such as witness declarations, medical records, or medical  
14 opinion evidence to support his assertions. The evidence Plaintiff relies on is too general  
15 to show that he was unable to manage his affairs for purposes of establishing the unsound  
16 mind exception, especially where he was determined to be competent to stand trial.  
17 Moreover, Plaintiff admits that he only pursued the competency proceedings so that he  
18 could have “a safe place to go, so he could focus on his case[.]” (Doc. 60 at 7.) Although  
19 Plaintiff states that he suffered from “emotional distress” throughout the two-year statute  
20 of limitations period, this statement is too vague and conclusory to show that he was unable  
21 to manage his affairs. Plaintiff does not point to any non-conclusory statements about how  
22 his condition affected his daily functioning. Absent any such facts, Plaintiff fails to  
23 produce “credible evidence” that his emotional distress rendered him incapable of  
24 managing his affairs, such that he could not have brought his claim against Defendant Jaffe  
25 during the relevant statutory period.

26 On this record, Defendants have met their burden on summary judgment of showing  
27 that Plaintiff’s claims against Defendant Jaffe are barred by the applicable two-year statute  
28 of limitations, and Plaintiff has not shown or created a triable issue of fact that he is entitled

1 to an exception based on unsound mind or any other equitable doctrine that would render  
2 his claim timely filed. Accordingly, the Court will grant Defendants' Motion for Summary  
3 Judgment on statute of limitations grounds and dismiss Defendant Jaffe from this action.<sup>4</sup>

4 **IT IS ORDERED:**

5 (1) The reference to the Magistrate Judge is withdrawn as to Defendants' Motion  
6 for Summary Judgment (Doc. 57), Plaintiff's Motion for Joinder of Parties (Doc. 68), and  
7 Plaintiff's Motion for Sanctions (Doc. 74).

8 (2) Plaintiff's Motion for Joinder of Parties (Doc. 68) and Motion for Sanctions  
9 (Doc. 74) are **denied**.

10 (3) Defendants' Motion for Summary Judgment (Doc. 57) is **granted** as  
11 discussed herein.

12 (4) The Clerk of Court must terminate the action and enter judgment  
13 accordingly.

14 Dated this 4th day of November, 2020.

15   
16 Michael T. Liburdi

17 Michael T. Liburdi  
18 United States District Judge

27 

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28 <sup>4</sup> Because Plaintiff's claim against Defendant Jaffe is barred by the statute of limitations, the Court will deny Plaintiff's Motions for Sanctions, in which Plaintiff seeks disclosure of the "jail videos" from his interactions with Defendant Jaffe since these videos were not necessary to the resolution of the statute of limitations issue. (See Doc. 74 at 1.)