UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JUAN MANUEL REYES,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>COUNTY OF WASHINGTON, Oregon; et al.,<br><br>Defendants-Appellees. | No. 22-36006<br><br>D.C. No. 3:21-cv-00509-YY<br>District of Oregon, Portland<br><br>ORDER |

Before: PAEZ, WATFORD, and FORREST, Circuit Judges.

Upon a review of the record, the responses to the court's February 10, 2023 order to show cause, and the opening brief filed on February 6, 2023, we conclude that this appeal is frivolous. *See Klein v. City of Beverly Hills*, 865 F.3d 1276, 1279 (9th Cir. 2017) ("In a traditional Fourth Amendment case, the plaintiff is placed on constructive notice of the illegal conduct when the search and seizure takes place."); *Belanus v. Clark*, 796 F.3d 1021, 1026 (9th Cir. 2015) ("[F]ederal law holds that a cause of action for illegal search and seizure accrues when the wrongful act occurs, even if the person does not know at that time that the search was warrantless." (citation omitted)). We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 11), *see* 28 U.S.C. § 1915(a), and

dismiss this appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2) (providing that court shall dismiss case at any time, if court determines it is frivolous).

All other pending motions are denied as moot.

**DISMISSED.**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JUAN MANUEL REYES,

Plaintiff,

v.

WASHINGTON COUNTY OREGON; CITY OF BEAVERTON, OR; BEAVERTON POLICE DEPARTMENT; CARES NW; DHS; JOHN DOES, BPD Detectives; JANE DOES, DHS Workers; and JANE DOES, CARES Workers,

Defendants.

No. 3:21-cv -00509-YY

ORDER

HERNÁNDEZ, District Judge:

Magistrate Judge You issued a Findings and Recommendation on August 29, 2022, in which she recommends that this Court grant Defendants' motions to dismiss and deny Plaintiff's

motion for default judgment. F&R, ECF 39. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings and Recommendation. Pl. Obj., ECF 41. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiff's objections and concludes that there is no basis to modify the Findings & Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings & Recommendation.

**CONCLUSION**

The Court ADOPTS Magistrate Judge You's Findings and Recommendation [39]. Therefore, Defendants' Motions to Dismiss [15][20][25][30] are GRANTED, Plaintiff's Motion for Default Judgment [17] is DENIED, and this case is DISMISSED with prejudice.

IT IS SO ORDERED.

DATED: November 10, 2022.

Marco Hernandez

MARCO A. HERNANDEZ
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

JUAN MANUEL REYES,

Civil No. 3:21-cv-00509-YY

Plaintiff,

FINDINGS AND RECOMMENDATIONS

v.

WASHINGTON COUNTY OREGON;
CITY OF BEAVERTON, OR;
BEAVERTON POLICE DEPARTMENT;
CARES NW; DHS; JOHN DOES, BPD Detectives;
JANE DOES, DHS Workers; and
JANE DOES, CARES NW Workers,

Defendants.

YOU, Magistrate Judge.

**FINDINGS**

Plaintiff, an adult in custody at the Eastern Oregon Correctional Institution, brings this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are defendants' motions to dismiss (ECF 15, 20, 25, and 30) and plaintiff's motion for default judgment (ECF 17). For the reasons set forth below, defendants' motions should be GRANTED, plaintiff's motion should be DENIED, and this case should be DISMISSED with prejudice.

## I. Background

Plaintiff alleges defendants violated his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments in connection with events surrounding a search and seizure and an

arrest that all occurred between August 19 and August 21, 2015. In the caption of his Complaint, plaintiff names the following defendants: Washington County Oregon; City of Beaverton, OR; Beaverton Police Department; CARES NW; DHS; BPD Detective's John Does; DHS Workers Jane Does; and CARES NW workers Jane Does. At page 2 of the Complaint, however, plaintiff also identifies Beaverton Police Department Lead Detective Chris Crosslin and DHS Lead Investigator Jennifer Harsh. By way of remedy, plaintiff seeks money damages.

Defendants City of Beaverton, Beaverton Police Department, and Detective Crosslin ("City defendants"), CARES NW and Jane Does CARES NW Workers ("CARES defendants"), Washington County ("County defendant"), and Oregon Department of Human Services ("DHS") have all appeared in this case and filed motions to dismiss the Complaint. The remaining Doe defendants have not been identified by plaintiff or served.[1]

## II. Legal Standards

Under Federal Rule of Civil Procedure 8(a)(2), "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief[.]" The pleading standard under Rule 8 does not require detailed factual allegations, but it demands more than an unadorned the-defendant-unlawfully-harmed-me-accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

To state a claim upon which relief may be granted, a plaintiff must allege facts that, when accepted as true, give rise to a plausible inference that the defendant violated the plaintiff's

[1] Plaintiff paid the civil filing fee and, as such, was not granted leave to proceed *in forma pauperis*. Accordingly, plaintiff was not entitled to service of process by the U.S. Marshal's Service under 28 U.S.C. § 1915(d). Nevertheless, the court directed service of process by the U.S. Marshal's Service under Federal Rule of Civil Procedure 4(c)(3). *See* ECF 13. However, plaintiff has never identified the BPD Detective John Does or the DHS Workers Jane Does for service.

constitutional rights. *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. *Id.* (internal quotations omitted). Accordingly, "to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."Id. (internal quotations omitted). Moreover, a district court must dismiss an action initiated by a prisoner seeking redress from a governmental entity or officer or employee, if the court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b).

When a plaintiff is proceeding *pro se*, the court must construe the pleadings liberally and afford the plaintiff the benefit of any doubt. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Generally, before dismissing a *pro se* civil rights complaint for failure to state a claim, the court will supply the plaintiff with a statement of the complaint's deficiencies. *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623-24 (9th Cir. 1988); *Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987). A *pro se* litigant will be given leave to amend his or her complaint unless it is clear that the deficiencies of the complaint cannot be cured by amendment. *Karim-Panahi*, 839 F.2d at 623; *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). Where amendment would be futile, a district court acts within its discretion to deny leave to amend. *Chappel v. Lab'y Corp. of Am.*, 232 F.3d 719, 725–26 (9th Cir. 2000).

## III. Defendants' Motions to Dismiss

As noted, the factual incidents underlying all of plaintiff's claims occurred between August 19 and August 21, 2015. Plaintiff filed his Complaint on April 5, 2021, some five and a half years later.

The statute of limitations for actions brought under 42 U.S.C. § 1983 is determined by state law. *See Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009). Section 1983 actions are characterized as personal injury actions for purposes of applying the correct statute of limitations. *Id.* Under Oregon law, the statute of limitations period for general tort actions is two years. *See* Or. Rev. Stat. § 12.110(1). Thus, the limitations period for plaintiff's § 1983 claims is two years.

While state law determines the length of the applicable statute of limitations, federal law determines when the statute of limitations begins to run for a § 1983 claim. *Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir. 2012). Under federal law, the statute of limitations for a § 1983 claim begins to run on the date on which the plaintiff's claim accrues. *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *Pouncil*, 704 F.3d at 573. "[A]ccrual occurs when the plaintiff has a complete and present cause of action and can file suit and obtain relief." *Pouncil*, 704 F.3d at 573-74. Stated differently, a cause of action for a § 1983 claims accrues "when the plaintiff know or has reason to know of the injury of the basis of the action." *Id.* at 574.

Here, the facts underlying all of plaintiff's claims clearly fall outside the two-year limitation period. Plaintiff contends that he did not "discover" the underlying bases for his claims until he obtained a copy of his criminal case file after repeated requests to the state court. Under the "discovery rule," the statute of limitations does not begin until the plaintiff "has knowledge of the 'critical facts' of his injury, which are 'that he has been hurt and who has inflicted the

injury.'" *Bibeau v. Pac. NW Research Found., Inc.*, 188 F.3d 1105, 1108 (9th Cir. 1999) (citing *United States v. Kubrick*, 444 U.S. 111, 122 (1979)).

As to plaintiff's Fourth Amendment unlawful search and seizure claims, the Ninth Circuit has repeatedly held that a plaintiff is on constructive notice when the search and seizure takes place, and that such claims begin accruing at the time of the allegedly illegal act. *See Klein v. City of Beverly Hills*, 865 F.3d 1276, 1279 (9th Cir. 2017) (citing *Belanus v. Clark*, 796 F.3d 1021, 1025-27 (9th Cir. 2015)).[2] Here, plaintiff affirmatively alleges that he was aware of the searches and seizures at the time they occurred. Accordingly, plaintiff's Fourth Amendment claims of unlawful search and seizure are time-barred.

Likewise, the facts underlying plaintiff's Fifth and Sixth Amendment claims relating to *Miranda* warnings and examination of the contents of his cell phone all occurred in plaintiff's presence in 2015. Plaintiff did not need to wait until he obtained a copy of his criminal file to discover the elements of his claims. Accordingly, those claims are also barred by the statute of limitations.

Because all of plaintiff's claims are barred by the statute of limitations, his Complaint should be dismissed. Given it is clear the deficiencies of the Complaint cannot be cured by amendment, i.e., amendment would be futile, the dismissal should be with prejudice.[3]

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[2] In *Belanus*, the plaintiff knew the searches occurred, but similarly claimed he could not have discovered his injury before the statute of limitations expired because state and county officials did not respond to his written request for "the records." *Balanus*, 796 F.3d at 1026. The Ninth Circuit rejected this argument, holding "because [plaintiff] knew of the searches when they occurred (or shortly thereafter), and that they might be warrantless, the defendants' alleged failures to respond to his written inquiries, even if wrongful, do not provide a viable basis for equitable tolling[.]" *Id.* at 1027.

[3] Because all of plaintiff's claims are barred by the statute of limitations, it is unnecessary to address the remaining arguments contained in defendants' motions to dismiss.

## IV. Plaintiff's Motion for Default Judgment

In his motion for default judgment, plaintiff contends that he is entitled to judgment because defendants failed to respond to his Complaint within 60 days. ECF 17. But, as one defendant observed, it had not yet been served when plaintiff filed his motion. DHS Obj. 2, ECF 19. Indeed, plaintiff offered no proof that any of the defendants had been served. Moreover, plaintiff's motion for default judgment was not preceded by a motion for default, which is procedurally required under Federal Rule of Civil Procedure 55. And even if plaintiff had filed a viable motion for default judgment, he would not be able to establish the merits of his claim, which is a prerequisite to obtaining a default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (holding that, in exercising discretion to enter a default judgment, the court must consider several factors, including the merits of the plaintiff's claim). For any of these reasons, plaintiff' motion for default judgment fails.

## RECOMMENDATIONS

Defendants' Motions to Dismiss (ECF 15, 20, 25, and 30) should be GRANTED and plaintiff's Motion for Default Judgment (ECF 17) should be DENIED. Because the deficiencies of plaintiff's claims cannot be cured by amendment, a judgment of DISMISSAL WITH PREJUDICE should be entered.

## SCHEDULING ORDER

These Findings and Recommendation will be referred to a district judge. Objections, if any, are due September 19, 2022. If no objections are filed, then the Findings and Recommendations will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendations will go under advisement.

**NOTICE**

These Findings and Recommendations are not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any Notice of Appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of a judgment.

DATED August 29, 2022.

/s/ Youlee Yim You
Youlee Yim You
United States Magistrate Judge