

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 15 2022

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

KHOSROW RAHIMI,

Plaintiff-Appellant,

v.

**CITY OF SHERIDAN; STATE OF
OREGON,**

Defendants-Appellees.

No. 21-35714

D.C. No. 3:20-cv-01607-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, District Judge, Presiding

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Khosrow Rahimi appeals pro se from the district court's judgment
dismissing his 42 U.S.C. § 1983 action arising out of the rezoning of real property.
We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on
the basis of the applicable statute of limitations and under Federal Rule of Civil

* 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).

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KHOSROW RAHIMI,

Case No. 3:20-cv-01607-AC

Plaintiff,

FINDINGS AND
RECOMMENDATION

v.

CITY OF SHERIDAN and STATE OF
OREGON,

Defendants.

ACOSTA, Magistrate Judge:

Introduction

Plaintiff Khosrow Rahimi (“Rahimi”) filed this lawsuit seeking to recover money damages from defendants City of Sheridan (“Sheridan”) and the State of Oregon (“State”) (collectively “Defendants”) allegedly resulting from the designation of nearly eighty-two acres of real property located in Sheridan, Oregon (“Property”) as wetlands. Defendants move to dismiss the case under Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Rule 12(b)(6)”) as barred by the relevant

statute of limitations or, alternatively, ask the court to require Rahimi to replead his allegations and claims to conform with Federal Rules of Civil Procedure.

The court finds Rahimi failed to file this lawsuit within the time required by the relevant statute of limitations. Accordingly, Defendants' motions should be granted and this case should be dismissed with prejudice.

Preliminary Procedural Matter

Sheridan asks the court to take judicial notice of a trustee's deed bearing a Yamhill County recording stamp dated December 11, 2002, which shows the Property was sold to Abbas S. Rahimi at a trustee's sale on December 8, 2002 ("Trustee's Deed"). (Jones Decl. dated. November 2, 2020, ECF No. 10 ("Jones Decl."), Ex. 1.) Rahimi does not oppose the request for judicial notice.

Sheridan offers materials outside of the pleadings in support of their Rule 12(b)(6) motion to dismiss. In general, material outside the pleadings may not be considered in ruling on a motion to dismiss unless the motion is treated as one for summary judgment and the parties are "given reasonable opportunity to present all materials made pertinent to such motion by Rule 56."

Jacobson v. AEG Capital Corp., 50 F.3d 1493, 1496 (9th Cir. 1995). This rule has two exceptions. First, a court may consider "material which is properly submitted to the court as part of the complaint." *Lee v. County of Los Angeles*, 240 F.3d 754, 774 (9th Cir. 2001). A document is not "outside" the complaint if the complaint specifically refers to the document, its authenticity is not questioned, and the plaintiff's complaint necessarily relies on it. *Id.* at 774. When the plaintiff fails to introduce a pertinent document as part of his pleading, the defendant may introduce the exhibit as part of his motion attacking the pleading. *Cooper v. Pickett*, 137 F.3d 616 (9th Cir. 1998). The second exception is under Rule 201 of the Federal Rules of Evidence, which allows

the court to take judicial notice of “matters of public record.” *Lee*, 240 F.3d at 774. Facts contained in public records are considered appropriate subjects for judicial notice. *Santa Monica Food not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 (9th Cir. 2006).

The Trustee’s Deed offered by Sheridan bears an “Official Yamhill County Records” recording stamp. (Jones Decl., Ex. 1.) Accordingly, the Trustee’s Deed is a matter of public record and appropriate for judicial notice. Sheridan’s request for judicial notice is granted.

Background

On September 15, 2020, Rahimi initiated this action by filing his complaint (“Complaint”). (Compl. ECF No. 1.) In the Complaint, Rahimi alleged:

I owned 82 acres of commercial/residential/industrial land/airport in Sheridan, OR. that I wanted to improve. Without notice, the city & state changed the zoning to wetland. I could not sell or build on the land any more and lost it to lenders. I was not familiar with laws and had no money or legal help. I was not compensated and my taxes were not changed to show wetland status. After 20 years of asking for compensation I lost the land. In 2017 the zoning was changed back in favor of the new owner. What was the reason that I was hurt but the new owner was helped, the land had not changed at all during this time.

(Compl. at 4.) Rahimi described the amount controversy as: “Commercial/industrial & residential land damage. Land was valued at \$3,750,000. Loss of family, damage to health. Taking advantage of minority” and specifically sought damages for “value of property (\$3,750,000) as well as overpayment of taxes (\$25,000 +/-).” (Compl. at 4.)

Attached to the Complaint were a letter dated September 13, 2001, addressed to the City Manager of Sheridan from the assistant director to the Division of State Lands (“Letter”) and an article authored by Bill Moshofsky, President of the OIA Education Center, published in September/October 2002 (“Article”). (Compl. at 12-14.) In the Letter, the State informed Sheridan it generally agreed with the conclusions included in the “wetland delineation report” for

property located in Sheridan, Oregon, and noted a September 20, 2001 meeting “to discuss wetland planning and permit operations in this area.” (Compl. at 14.) The Article described Rahimi’s immigration to Oregon in the late 1970’s or early 1980’s, his purchase of the Property, then zoned for industrial use, and Rahimi’s dream to develop an aeronautics-related business on the Property. (Compl. at 12.) As a result of Defendants’ decision to designate the Property as wetlands, which prevented development on the Property, without a lengthy, expensive permitting process, and Rahimi’s inability to pay for the permits, Rahimi was “forced into bankruptcy, and lost his home, planes, and other nearby airport property to pay debts.” (Compl. at 12.)

Defendants move to dismiss the Complaint as barred by the applicable statute of limitations. Defendants assume Rahimi has stated a claim for unlawful regulatory taking under 42 U.S.C. § 1983 (“Section 1983”), identify the applicable statute of limitations to be two years, and argue Rahimi’s claims accrued when the Property was designated as wetlands in 2001 or when the Property was sold at a trustee’s sale in 2002, both well over two years before Rahimi filed the Complaint.

In response, Rahimi clarifies his claims are based on the rezoning of the Property back to industrial use on September 20, 2017. Rahimi explains:

We are seeking solid reasons for the recent issue of why the land at 414 nw Richard st. and the including 82 acres and Airport is now be zoned industrial where when Plaintiff owned said property, he was told there is nothing they could do about this zone change, which hurt his investment and loss of his life savings. And now the recent changes helped the new owner. The land is the same so how is it suddenly not a wetland! Plaintiff feels he was taken advantage of as he is a minority and English is his second language.

(Pl.’s Resp. to Def.’s Rule 12 Mot. to Dismiss, ECF No. 17 (“First Resp.”), at 2.) He claims he did not hear about the 2017 rezoning until 2020 and relies on the “discovery rule” found in OR.

REV. STAT. 12.080 (Section 12.080), which he quoted as providing “that cause of action accrues when plaintiff attained or reasonably should have obtained knowledge of tort,” to defeat Defendants’ motions. (Pl.’s Resp. to Def. State of Oregon’s Mot. to Dismiss, ECF No. 20 (“Second Resp.”), at 1.) He asserts he seeks damages for injury to real property to which he claims a six-year statute of limitations applies under Section 12.080. He also requests due process under the Fifth and Fourteenth Amendments.

Legal Standard

Under Rule 12(b)(6), a party may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6) (2020). A court may dismiss ““based on the lack of cognizable legal theory or the absence of sufficient facts alleged”” under a cognizable legal theory. *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)).

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.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also CallerID4u, Inc. v. MCI Commc’ns Servs. Inc.*, 880 F.3d 1048, 1061 (9th Cir. 2018). “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017). The plausibility standard is not akin to a probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Twombly*, 550 U.S. at 556. When a plaintiff’s complaint pleads facts that are “merely consistent with” a defendant’s liability,

the plaintiff's complaint "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* at 557 (brackets omitted).

The court must accept as true the allegations in the complaint and construe them in favor of the plaintiff. *Teixeira*, 873 F.3d at 678; *see also Iqbal*, 556 U.S. at 679; *Snyder & Assocs. Acquisitions LLC v. United States*, 859 F.3d 1152, 1156-57 (9th Cir. 2017). 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." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); *see also* FED. R. CIV. P. 8(a) (2) (2020).

Discussion

In the Complaint and opposition briefing, Rahimi apparently asserts claims for unlawful taking, race discrimination, or violation of his due process rights. Each of these possible claims arise under 42 U.S.C. § 1983 ("Section 1983") which provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights. 42 U.S.C. § 1983 (2020); *see also Conn v. Gabbert*, 526 U.S. 286, 290 (1999). To state a claim for relief in an action brought under Section 1983, a plaintiff must establish he was deprived of a right secured by the Constitution or laws of the United States and the alleged deprivation was committed under color of state law. *See Azer v. Connell*, 306 F.3d 930, 935 (9th Cir. 2002).

Although Section 1983 contains no statute of limitations, the Supreme Court "requires courts to borrow and apply to all [Section] 1983 claims the one most analogous state statute of limitations." *Owens v. Okure*, 488 U.S. 235, 240 (1989); *Cooper v. City of Ashland*, 871 F.2d 104, 105 (9th Cir. 1989) ("Oregon's two-year statute of limitations for personal injury actions applies to actions under 42 U.S.C. § 1983."); *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) ("For

actions under [Section] 1983, courts apply the forum state's statute of limitations for personal injury actions, along with the forum state's law regarding tolling, including equitable tolling, except to the extent any of these laws is inconsistent with federal law.”). Federal law determines when a cause of action accrues and the statute of limitations begins to run for a Section 1983 claim. *Norco Construction, Inc. v. King County*, 801 F.2d 1143, 1145 (9th Cir. 1986). A federal claim accrues when the plaintiff “knows or has reason to know of the injury which is the basis of the action.” *Id.* (quoting *Trotter v. Int'l Longshoreman's & Warehouse Union*, 704 F.2d 1141, 1143 (9th Cir. 1983)).

To the extent Rahimi is seeking redress for injuries suffered by him as a result of the designation of the Property as wetlands, that injury occurred at the time of the rezoning or, at the latest, at the time Rahimi lost the Property at the trustee's sale. Rahimi clearly knew, or should have known, of his injuries on or before the trustee's sale in 2002, well over two years before filing this lawsuit. Consequently, Rahimi's Section 1983 claims are barred by the applicable two-year statute of limitations.

Rahimi now asserts his claims are based on the rezoning of the Property back to industrial use in 2017, and that he was not aware of such rezoning until 2020. Rahimi appears to argue the 2017 rezoning of the Property for the benefit of the new owner is evidence Defendants discriminated against him based on his race and native language in 2001, when they designated the Property as wetlands and told Rahimi there was nothing he could do about the zoning change. Even assuming the 2017 rezoning is evidence of discrimination and would start the statute of limitations anew, the rezoning was a public governmental action discussed at a public hearing in August 2017, notice of which was published in a newspaper and posted in Sheridan for up to a

month before the public hearing. (First Resp. Ex. 3, at 1-2.) Rahimi knew, or could have known with the exercise of reasonable diligence, of the rezoning by the time it became effective in September 2017, still more than two years before he filed this lawsuit. *See Briley v. State of California*, 564 F.2d 849, 855 (9th Cir. 1977) (proper test for when statute of limitations commences is when plaintiff “discovered the fraud, or could have done so in the exercise of reasonable diligence.”)

Rahimi’s reliance on Section 12.080 also is misplaced. The statute applies to actions on contracts, statutory liabilities, or injuries to an interest in property, both personal and real, and does not contain a discovery rule. First, Rahimi’s Section 1983 claims generally alleged personal injury and sound in tort, to which the two-year statute of limitations applies rather than the six-year limitations period under Section 12.080. Second, federal law, not state law, determines when a cause of action accrues, making irrelevant a state discovery rule. Finally, even assuming the six-year statute of limitations applied, Rahimi filed this lawsuit well over six years after suffering an injury to his interest in the Property, of which he would or should have been aware of by 2002.

Rahimi apparently also seeks a tax refund for excess real estate taxes he paid when the Property was improperly listed as zoned for industrial use rather than designated as wetlands. The last time Rahimi could have paid real estate taxes on the Property was before the Property was sold at the trustee’s sale in 2002. Oregon law provides “a refund of taxes may be allowed or made for any year or years not exceeding five years prior to the last certified roll.” OR. REV. STAT. 311.806 (2020). Rahimi’s claim for recovery of excess real estate taxes paid in 2002 or earlier was not brought within five years and thus is barred by the applicable statute of limitations.

Moreover, Rahimi should have pursued his tax refund through county or state avenues, not federal court. Rahimi is also unable to state a viable claim for a tax refund.

Conclusion

Defendants' motions (ECF Nos. 9, 18) to dismiss should be GRANTED and this action dismissed with prejudice.

Scheduling Order

The Findings and Recommendation will be referred to a district judge for review. Objections, if any, are due within seventeen (17) days. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within fourteen (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 Recommendation will go under advisement.

DATED this 8th day of June, 2021.



JOHN V. ACOSTA
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KHOSROW RAHIMI,

No. 3:20-cv-01607-AC

Plaintiff,

ORDER

v.

CITY OF SHERIDAN and
STATE OF OREGON,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge John Acosta issued a Findings and Recommendation on June 28, 2021, in which he recommends that this Court grant Defendants' motion to dismiss. F&R, ECF 23. 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 & Recommendation. Pl. Obj., ECF 25. 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).

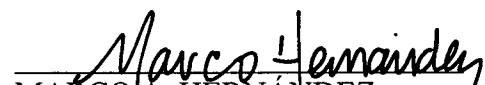
The Court has carefully considered Plaintiff's objections and concludes that there is no basis to modify the Findings & Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings & Recommendation.

CONCLUSION

The Court ADOPTS Magistrate Judge Acosta's Findings and Recommendation [23]. Therefore, Defendants' Motions to Dismiss [9], [18] are GRANTED.

IT IS SO ORDERED.

DATED: July 28, 2021.



MARCO A. HERNÁNDEZ
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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KHOSROW RAHIMI,

No. 21-35714

Plaintiff-Appellant,

V.

**CITY OF SHERIDAN; STATE OF
OREGON,**

Defendants-Appellees.

D.C. No. 3:20-cv-01607-AC
District of Oregon,
Portland

ORDER

Before: **WALLACE, TALLMAN, and BYBEE, Circuit Judges.**

Rahimi's petition for panel rehearing (Docket Entry No. 24) is denied.

No further filings will be entertained in this closed case.