

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 30 2025

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

TIMOTHY PEOPLES, Jr.,

Plaintiff - Appellant,

v.

RAUL MACHUCA, Jr.; et al.,

Defendants - Appellees.

No. 25-4823
D.C. No.
1:19-cv-05468-RMI
Northern District of California,
San Francisco
ORDER

Appellant has not paid \$605 to the district court in fees for this appeal and filed proof of payment with this court, as ordered by this court on September 30, 2025.

The court's September 30, 2025 order stated that no motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status will be entertained. Therefore, the court will take no action on appellant's motion at Docket Entry No. 12.

This appeal is therefore dismissed. *See* 9th Cir. R. 42-1.

This order becomes the mandate of the court in 21 days.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY PEOPLES,
Plaintiff,
v.
RAUL MACHUCA, et al.,
Defendants.

Case No. 19-cv-05468-RMI

**ORDER RE: DEFENDANTS' MOTION
FOR JUDGMENT ON THE
PLEADINGS**

Re: Dkt. No. 158

Plaintiff, a state prisoner, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. He argued that Defendants used excessive force, were deliberately indifferent to his serious medical needs, and retaliated against him. Now pending before the court is Defendants' Motion for Judgment on the Pleadings (dkt. 158), which seeks to dismiss the complaint because the action is barred by the statute of limitations. Plaintiff filed an opposition (dkt. 163) and Defendants filed a reply (dkt. 164). For the reasons stated below, Defendants' motion is GRANTED.

BACKGROUND

On March 14, 2012, Plaintiff filed a case against the same Defendants with the same claims. *See Peoples v. Mack*, Case No. 3:12-cv-1281-CRB ("*Peoples I*"). On February 2, 2015, the court granted Defendants' motion for summary judgment based on Plaintiff's failure to exhaust administrative remedies. (*Peoples I*, dkt. 110). The claims against these Defendants were dismissed without prejudice, and Plaintiff could refile if he exhausted administrative remedies. *Id.* at 15.

After summary judgment was granted in *Peoples I*, Plaintiff attempted to exhaust administrative remedies at the prison. (Dkt. 1 in the instant action, pp. 18–19, 27–30.). The administrative appeal was denied as untimely by prison officials. (*id.* at 28, 33, 42–43). Plaintiff mailed this instant action to the court on August 14, 2019. (Dkt. 1, p. 4). Defendants filed a

1 motion for summary judgment based on Plaintiff's failure to properly exhaust administrative
2 remedies. (Dkt. 65). The motion was denied on January 13, 2022. (Dkt. 86).

3 Counsel was later appointed for Plaintiff and the case was proceeding towards trial.
4 Counsel for Plaintiff withdrew on April 3, 2024, and Plaintiff again continued *pro se*. Based on
5 the parties' joint stipulation with several discovery and disclosure deadlines, and due to new
6 discovery obtained, Defendants were allowed to file an additional dispositive motion. (Dkt. 140).
7 After this motion was fully briefed, the case was referred for settlement; but did not settle.
8 Therefore, the court will look to the merits of the motion.

9 **LEGAL STANDARD**

10 Under Rule 12(c), a party may move for "judgment on the pleadings" after the pleadings
11 are closed. The difference between a motion under Rule 12(c) and motion under Rule 12(b)(6) is
12 the time of filing; otherwise, they are functionally identical. *Dworkin v. Hustler Magazine, Inc.*,
13 867 F.2d 1188, 1192 (9th Cir. 1989). To obtain judgment on the pleadings, the moving party must
14 clearly establish that the pleadings cannot raise a triable issue of fact, and that judgment as a
15 matter of law should be entered. *Hal Roach Studios, Inc., v. Richard Feiner & Co.*, 896 F.2d
16 1542, 1550 (9th Cir. 1989). In evaluating a motion for judgment on the pleadings, all material
17 allegations in the complaint are accepted as true and construed in the light most favorable to the
18 non-moving party. *See Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004).

19 Section 1983 does not contain its own limitations period. Instead, courts in § 1983 actions
20 apply the forum state's statute of limitations for personal injury torts. *See Wilson v. Garcia*, 471
21 U.S. 261, 276 (1985), *superseded by statute on other grounds as stated in Jones v. R.R. Donnelley*
22 *& Sons Co.*, 541 U.S. 369 377-78 (2004); *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).
23 In California, the statute of limitations for § 1983 actions is the two-year period set forth in
24 California Civil Procedure Code § 335.1. *See Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir.
25 2004). Section 352.1 recognizes imprisonment as a disability that tolls the statute of limitations
26 when a person is "imprisoned on a criminal charge, or in execution under the sentence of a
27 criminal court for a term of less than for life." *Id.* § 352.1(a). However, the disability of
28 imprisonment only delays the accrual of the cause of action for a maximum of two years. *See id.*

United States District Court
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1 It is federal law that determines when a cause of action accrues, and thus, when the statute
2 of limitations begins to run in a § 1983 action. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). Under
3 federal law, a claim generally accrues when the plaintiff knows or has reason to know of the injury
4 which is the basis of the action. *See TwoRivers*, 174 F.3d at 991–92.

5 DISCUSSION

6 Statute of Limitations

7 The events giving rise to this case occurred in May 2011. (Dkt. 1, pp. 7–8, 13; dkt. 26, pp.
8 5–6). Because Plaintiff was imprisoned, he had four years to commence the instant case: two
9 years under California Civil Procedure Code § 335.1, and two more years under California Civil
10 Procedure Code § 352.1 because he was imprisoned. Therefore, the statute of limitations expired
11 in May 2015. Because this case was filed on August 14, 2019, it is untimely by several years.

12 Plaintiff's opposition only briefly discusses the statute of limitations. Plaintiff contends
13 that he exhausted administrative remedies and timely filed the prior case. Plaintiff does not
14 address any of Defendants' specific contentions, nor does he present any arguments for statutory
15 or equitable tolling.

16 A review of the record indicates that the two main issues regarding the statute of
17 limitations are the effects of *Peoples I* and if any tolling is appropriate. Defendants argue that
18 limitations period was not tolled during the pendency of *Peoples I*. Their argument is well taken.
19 Generally, an action that is dismissed without prejudice does not toll the statute of limitations:

20 The filing of a suit stops the running of the statute of limitations,
21 though only contingently. . . . [I]f the suit is dismissed without
22 prejudice, meaning that it can be refiled, then the tolling effect of the
23 filing of the suit is wiped out and the statute of limitations is deemed
24 to have continued running from whenever the cause of action accrued,
without interruption by that filing. . . . In other words, a suit dismissed
without prejudice is treated for statute of limitations purposes as if it
had never been filed.

25 *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000); *see also Cirlasky v. CIA*, 355 F.3d
26 661, 672 n.11 (D.C. Cir. 2004) (collecting cases). The Ninth Circuit and other courts in California
27 have reached the same conclusion. *See O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1111 (9th Cir.
28 2006); *Wood v. Elling Corp.*, 572 P.3d 755, 758 (1977) ("In the absence of a statute, a party

1 cannot deduct from the period of the statute of limitations applicable to his case the time
2 consumed by the pendency of an action in which he sought to have the matter adjudicated, but
3 which was dismissed without prejudice to him.”); *Gibbs v. Wood*, 2017 WL 1407727, at *3–4
4 (N.D. Cal. Apr. 20, 2017); *Sandoval v. Barneburg*, 2013 WL 5961087, at *3 (N.D. Cal. Nov. 6,
5 2013) (finding *pro se* prisoner not entitled to equitable tolling during pendency of his prior federal
6 lawsuit, the dismissal of which was affirmed on appeal).

7 In this case, Plaintiff pursued *Peoples I*, but he failed to complete the administrative
8 exhaustion process, so the claims and Defendants were dismissed without prejudice. Accordingly,
9 the statute of limitations on Plaintiff’s claims continued running from the date those claims
10 accrued. Because the statute of limitations expired in May 2015, this case is untimely absent any
11 additional tolling. See *Epps v. Deleon*, 2019 WL 2339430, at *2–3 (E.D. Cal. June 3, 2019)
12 (second case was untimely because the prior case was dismissed without prejudice and did not toll
13 the limitations period), *aff’d*, 804 F. App’x 772 (9th Cir. 2020).

14 **Statutory Tolling**

15 The statute of limitations is tolled for the period in which a prisoner administratively
16 exhausted his underlying grievances pursuant to the requirements of the Prison Litigation Reform
17 Act (“PLRA”). See *Soto v. Unknown Sweetman*, 882 F.3d 865, 875 (9th Cir. 2018) (holding that a
18 prisoner “is entitled to tolling [of the applicable statute of limitations] while he was actively
19 exhausting his remedies” under the PLRA); *Brown v. Valoff*, 422 F.3d 926, 942-43 (9th Cir. 2005)
20 (“the applicable statute of limitations must be tolled while a prisoner completes the mandatory
21 exhaustion process”).

22 The court in *Peoples I* found that Plaintiff had not exhausted his administrative remedies
23 related to these claims. There is no clear consensus among district courts in the Ninth Circuit as to
24 whether a plaintiff is entitled to tolling for grievances that were rejected under prison regulations
25 and therefore would not properly exhaust a claim for purposes of the PLRA. Compare *Baker v.*
26 *German*, 2018 WL 276762, at *4 (E.D. Cal. Jan. 3, 2018) (finding that the plaintiff was “not
27 entitled to exhaustion-based tolling because his appeal was cancelled as untimely” but noting that,
28 even with such tolling, “the instant action would still be time barred”) with *Jackson v. Harrison*,

1 2010 WL 3895478, at *12, *18 (C.D. Cal. Aug. 25, 2010), *adopted*, 2010 WL 3895468 (C.D. Cal.
2 Sept. 28, 2010) (finding prison officials “were justified in screening out the” grievance “as
3 untimely, since more than fifteen days had elapsed since the” incident, but the plaintiff was
4 “entitled to equitable tolling while he completed, or at least attempted to complete[,] the
5 mandatory exhaustion process[;]” ultimately finding that this tolling did not render the claim
6 timely).

7 Even if Plaintiff was entitled to additional tolling while he attempted to exhaust
8 administrative remedies prior to *Peoples I*, this case would still be untimely. The Court in *Peoples*
9 *I* found that Plaintiff attempted to submit 23 grievances between March 2011 to May 2012, but
10 that no properly filed grievances concerned the Defendants and events for the case. (*Peoples I*,
11 dkt. 110, p. 6). Even if Plaintiff did attempt to exhaust a grievance relevant to these Defendants
12 and claims, and even if he was provided fourteen months of tolling for exhaustion and the
13 additional two-year tolling for California Civil Procedure Code section 352.1, the instant case
14 would still be untimely by roughly three years.

15 The court previously held in the instant case that Plaintiff properly exhausted his claims
16 after the earlier dismissal in *Peoples I*. (Dkt. 86). However, the court found that Plaintiff’s initial
17 inmate appeal after the dismissal in *Peoples I* was filed on June 1, 2017. (Dkt. 86, pp. 7–8).¹
18 Plaintiff started the exhaustion process more than two years after the statute of limitations expired.
19 No amount of tolling during the exhaustion of his claims can cure the fact that the statute of
20 limitations had already expired.

21 **Equitable Tolling**

22 “Equitable tolling under California law operates independently of the literal wording of the
23 Code of Civil Procedure to suspend or extend a statute of limitations as necessary to ensure
24 fundamental practicality and fairness.” *Jones v. Blanas*, 393 F.3d 918, 928 (9th Cir. 2004) (citing
25 *Lantzy v. Centex Homes*, 73 P.3d 517, 523 (Cal. 2003)) (cleaned up). “The purpose of
26

27
28 ¹ To the extent Plaintiff now contends that he was also exhausting administrative remedies in the
years prior to 2017, he has not provided sufficient arguments or evidence to support this assertion,
nor has he discussed how this would affect the statute of limitations.

1 California's equitable tolling doctrine 'is to soften the harsh impact of technical rules which might
2 otherwise prevent a good faith litigant from having a day in court.'" *Id.* (citing *Daviton v.*
3 *Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1137 (9th Cir. 2001) (en banc)).

4 California law recognizes tolling "in a later suit when an earlier suit was filed and where
5 the record shows: (1) timely notice to the defendant in filing the first claim; (2) lack of prejudice to
6 the defendant in gathering evidence to defend against the second claim; and (3) good faith and
7 reasonable conduct by the plaintiff in filing the second claim." *Azer v. Connell*, 306 F.3d 930, 936
8 (9th Cir. 2002) (citing *Collier v. City of Pasadena*, 142 Cal. App. 3d 917, 924 (Cal. Ct. App.
9 1983), and *Addison v. State*, 578 P.3d 941, 943-44 (Cal. 1978)) (internal quotations omitted).

10 However, such tolling does not apply when the two lawsuits were filed in the same forum.

11 *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 878 F. Supp. 2d
12 1009, 1018 (C.D. Cal. 2011) ("In *Addison*, however, the California Supreme Court also explained
13 that the doctrine of equitable tolling applies when a plaintiff has several legal remedies and
14 reasonably, and in good faith, pursues one. . . . California's equitable tolling doctrine does not
15 apply in this case because this case and [the first] were filed in the same forum: this Court."); *see*
16 *also Jamison v. Garza*, 2017 WL 3226472, at *4 (E.D. Cal. July 31, 2017) ("when a plaintiff does
17 not pursue one remedy when several are available, but instead repeatedly pursues the same claim
18 in the same forum, equitable tolling does not apply"). Because Plaintiff filed both actions in the
19 same forum, this court, he is not entitled to this type of tolling.

20 In addition, under the so-called "*Bollinger* rule," "a plaintiff may also argue the statute of
21 limitations should be tolled based on the filing of an earlier, timely action based upon general
22 equitable principles[.]" *Carranza v. Lewis*, 2017 WL 1050538, at *19 (N.D. Cal. Mar. 17, 2017)
23 (citing *Bollinger v. National Fire Ins. Co.*, 25 Cal. 2d 399 (1944) and *Addison*, 21 Cal. 3d at 318-
24 19). The *Bollinger* rule applies where the plaintiff shows that three factors are met:

25 (1) the plaintiff [has] diligently pursued his or her claim; (2) the fact
26 that the plaintiff is left without a judicial forum for resolution of the
27 claim [is] attributable to forces outside the control of the plaintiff,
28 [i.e., the dismissal of the first action was in error and, thus, due to
forces outside of his own control]; and (3) the defendant [is not]
prejudiced by application of the doctrine (which is normally not a
factor since the defendant will have had notice of the first action).

**Additional material
from this filing is
available in the
Clerk's Office.**