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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Mary D'Ambrosio,

10 Plaintiff,

11 v.

12 Tara Spalding; and County of Maricopa,

13 Defendants.

No. CV-12-01182-PHX-GMS

ORDER

14 Before the Court are Defendants' Motion to Dismiss (Doc. 13) Plaintiff Mary
15 D'Ambrosio's Amended Complaint, D'Ambrosio's Motion to Strike (Doc. 16) the
16 Motion to Dismiss, Motion for Judgment (Doc. 23), and Defendants' Motion to Strike
17 (Doc. 24) D'Ambrosio's Motion for Judgment. The Court grants Defendants' Motion to
18 Dismiss, rendering the remaining Motions moot.

19 **BACKGROUND**

20 On June 4, 2012, D'Ambrosio filed a Complaint in this Court against Defendants
21 Maricopa County and Tara Spalding. (Doc. 1.) Pursuant to its obligations under 28
22 U.S.C. § 1915(e)(2), the Court screened D'Ambrosio's Complaint and dismissed it for
23 failure to state a claim, while providing an opportunity to amend. (Doc. 4.) D'Ambrosio
24 filed her Amended Complaint on June 25, 2012. (Doc. 5.) The Court again performed its
25 screening function and dismissed all claims except those raised against Spalding and the
26 County under 42 U.S.C. § 1983 for excessive force and/or cruel and unusual punishment.
27 (Doc. 6.)

28 In her Amended Complaint, D'Ambrosio states that "pursuant to official policy,

1 usage and practice,” prison guards “caused injury” to her, damaging various body parts
2 and causing her to be placed in isolation. She alleges that as a disabled vulnerable adult
3 she was discriminated against and that as a seriously mentally ill person she was abused.
4 She claims the guards were deliberately indifferent to her health and rights in light of her
5 age and medical record. It seems these acts were committed by Tara Spalding, apparently
6 a corrections officer in the Maricopa County Jail system. Defendants now seek to
7 dismiss these claims.

8 DISCUSSION

9 To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil
10 Procedure 12(b)(6), a complaint must contain more than “labels and conclusions” or a
11 “formulaic recitation of the elements of a cause of action”; it must contain factual
12 allegations sufficient to “raise a right to relief above the speculative level.” *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When analyzing a complaint for failure to
14 state a claim under Rule 12(b)(6), “[a]ll allegations of material fact are taken as true and
15 construed in the light most favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d
16 1213, 1217 (9th Cir. 1996). However, legal conclusions couched as factual allegations are
17 not given a presumption of truthfulness, and “conclusory allegations of law and
18 unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*,
19 139 F.3d 696, 699 (9th Cir. 1998).

20 Defendants assert that D’Ambrosio’s claim is barred by the statute of limitations.
21 “In determining the proper statute of limitations for actions brought under 42 U.S.C. §
22 1983, we look to the statute of limitations for personal injury actions in the forum state.”
23 *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). Arizona law has a two year
24 statute of limitations for personal injury actions. Ariz. Rev. Stat. § 12-542(1).¹ That
25 means this Court cannot entertain D’Ambrosio’s action if her injuries occurred prior to
26 June 4, 2010. D’Ambrosio’s Complaint states that her harm had its “inception . . . in

27 ¹ “Except as provided in § 12-551 there shall be commenced and prosecuted
28 within two years after the cause of action accrues, and not afterward, the following
actions: 1. For injuries done to the person of another”

1 2007.” (Doc. 5 at 4.) In addition, she states in her Response² that “February 2013 will be
2 six years from date of loss.” (Doc. 16 at 7.) Thus it appears that the alleged harm
3 occurred around February 2007, well outside the statute of limitations applicable to §
4 1983 actions.

5 D’Ambrosio insists that she was exhausting her state court remedies before
6 coming to the federal court in an attempt to toll the statute of limitations. Tolling is
7 appropriate where a prisoner navigates mandatory *administrative* processes. *See Brown v.*
8 *Valoff*, 422 F.3d 926, 942-43 (9th Cir. 2005). Here, however, the allegations contained in
9 the Amended Complaint and the statements in D’Ambrosio’s Response reveal that
10 D’Ambrosio was pursuing several actions in state court against a number of defendants,
11 including Maricopa County. Statutes of limitation are not tolled while a plaintiff pursues
12 various remedies in other proceedings; indeed, the similarity between D’Ambrosio’s
13 claims in this case and those she prosecuted in the previous proceedings also make this
14 case a likely candidate for application of *res judicata*. Whatever disagreement
15 D’Ambrosio has with the outcome of those other proceedings, she cannot relitigate her
16 claims forever. There does not appear to be any ground to toll the statute of limitations.
17 Accordingly, the Court must dismiss D’Ambrosio’s Amended Complaint with prejudice.

18 Defendants have requested that this Court enter an order declaring D’Ambrosio a
19 vexatious litigant. They have attached several of D’Ambrosio’s complaints in state court
20 actions and those courts’ disposition. (Docs. 13-1, 13-2, 13-3, Exs. 1-4.) Those
21 complaints raise claims quite similar to those raised here, and the courts uniformly
22 dismissed them. In addition, Defendants have submitted a table that purports to describe
23 the civil cases filed by D’Ambrosio. (Doc. 13-4, Ex. 5.) D’Ambrosio disputes her status
24 as plaintiff in at least one of those cases. (Doc. 16 at 1-2.) The Court declines to enter
25 such an order on the basis of such a sparse record. Nevertheless, cannot continuously
26 litigate claims that have been dismissed by other state and federal courts. A vexatious

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28 ² The Court construes D’Ambrosio’s Motion to Strike (Doc. 16) as a Response to Defendants’ Motion to Dismiss.

1 litigant order may be appropriate if D'Ambrosio continues to file complaints that cover
2 the same conduct.

3 **CONCLUSION**

4 The Court recognizes that D'Ambrosio feels wronged. Nevertheless, the law
5 provides only a limited window of time in which a plaintiff can bring a claim.
6 D'Ambrosio's § 1983 claim falls outside that window of time. Accordingly, the Motion
7 to Dismiss is granted. The Court denies Defendants' request for a vexatious litigant order.

8 **IT IS THEREFORE ORDERED THAT:**

- 9 1. Defendants' Motion to Dismiss (Doc. 13) is **GRANTED**. D'Ambrosio's
10 Amended Complaint is dismissed with prejudice.
- 11 2. D'Ambrosio's Motion to Strike (Doc. 16) is **denied as moot**.
- 12 3. D'Ambrosio's Motion for Judgment (Doc. 23) is **denied as moot**.
- 13 4. Defendants' Motion to Strike (Doc. 24) is **denied as moot**.
- 14 5. The Clerk of Court is directed to terminate this action.

15 Dated this 20th day of December, 2012.

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18 G. Murray Snow
19 United States District Judge
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