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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Jennifer Foor,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendants.
14

No. CV-16-01895-PHX-GMS

ORDER

15 Before the Court are Plaintiff Jennifer Foor's request for a temporary restraining
16 order ("TRO"), motion and request for return of property, motion to stay the order of a
17 Phoenix City judge, and application to proceed *in forma pauperis* ("IFP"). (Doc. 2-5.)
18 For the following reasons, the Court grants Plaintiff's request to proceed IFP, but denies
19 her other motions and dismisses her Complaint without prejudice.

20 **BACKGROUND**

21 On or about December 4, 2012, Defendant Arizona Humane Society ("AHS")
22 entered Plaintiff's property and seized approximately forty of Plaintiff's feral cats.
23 (Compl. ¶ 12.) On or about December 7, 2012, the Phoenix Municipal Court ruled
24 during Plaintiff's post-seizure hearing that the seizure of Plaintiff's cats was lawful.
25 (Compl. ¶ 15.) After receiving a "Notice of Right to Appeal," Plaintiff filed a special
26 action on December 24, 2012 in the Maricopa County Superior Court. (Compl. ¶¶ 19-
27 21.) During the hearing on March 25, 2013, the Superior Court ordered the Municipal
28 Court to clarify its order and ruling. (Compl. ¶ 25.) On April 15, 2013, the Municipal

1 Court clarified that in its previous ruling it had not forfeited Plaintiff's rights to the cats.
2 (Compl. ¶ 27.) As a result, the Municipal Court held a civil forfeiture hearing on April
3 29, 2013, and any right Plaintiff had to the cats was forfeited due to sanitation issues.
4 (Compl. ¶ 29.)

5 On October 29, 2013, the Superior Court denied Plaintiff's motion for special
6 action and ruled that it could not substitute its judgment for the Municipal Court ruling.
7 (Compl. ¶ 36.) On or about April 2, 2016, the Arizona Court of Appeals Division One
8 affirmed the Superior Court's decision. (Compl. ¶ 37.) On April 11, 2016, the Arizona
9 Supreme Court denied review and subsequently denied Plaintiff's motion for
10 reconsideration. (Compl. ¶ 38.) On May 19, 2016, Plaintiff filed a motion for return of
11 property, a motion to vacate the civil forfeiture, and a motion to reconsider the civil
12 forfeiture in the Municipal Court. (Compl. ¶ 41.) The Municipal Court denied Plaintiff's
13 motion for return of property for lack of jurisdiction. (Compl. ¶ 42.)

14 On February 7, 2013, the City of Phoenix Prosecutor's Office filed an animal
15 cruelty complaint against Plaintiff. (Compl. ¶ 24.) However, on or around August 6,
16 2013, the criminal complaint was dismissed. (Compl. ¶ 31.) Upon dismissal, Plaintiff
17 requested the return of her cats, but the City of Phoenix denied her request explaining that
18 she needed to appeal her civil forfeiture. (Compl. ¶ 33.)

19 On May 26, 2016, Plaintiff filed a complaint, a request for temporary restraining
20 order, and a motion to stay within this District. (Doc. 8.) On May 27, 2016, the
21 complaint was dismissed for lack of jurisdiction. *Id.*

22 Plaintiff filed the instant complaint and motion on June 13, 2016, which seeks
23 another TRO prohibiting the City of Phoenix and the AHS from disposing of her cats.
24 Plaintiff's Complaint, moreover, has been recast to raise federal questions and now
25 alleges violations of her First, Fourth, Fifth, and Eighth Amendment rights pursuant to 42
26 U.S.C. § 1983, as well as claims of malicious prosecution, intentional infliction of severe
27 emotional distress, negligent infliction of severe emotional distress, criminal trespass, and
28 intentional damage to private property.

1 The Court grants Plaintiff’s request for IFP and also dismisses the case for “failure
2 to state a claim.” § 1915(e)(2). To survive dismissal for failure to state a claim, a
3 complaint must contain more than “labels and conclusions” or a “formulaic recitation of
4 the elements of a cause of action;” it must contain factual allegations sufficient to “raise a
5 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007). When analyzing a complaint for failure to state a claim under Rule 12(b)(6),
7 “[a]ll allegations of material fact are taken as true and construed in the light most
8 favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir.
9 1996).

10 The Rooker-Feldman doctrine “bars federal courts from exercising subject-matter
11 jurisdiction over a proceeding in which a party losing in state court seeks what in
12 substance would be appellate review of the state judgment . . . based on the losing party’s
13 claim that the state judgment itself violates the loser’s federal rights.” *Doe v. Mann*, 415
14 F.3d 1038, 1041 (9th Cir. 2005) (citing *Johnson v. De Grandy*, 512 U.S. 997, 1005–06
15 (1994) (internal quotation marks omitted)).

16 Here, Plaintiff’s claims for relief arising from the Superior Court case amounts to
17 a de-facto appeal of the state court’s decision. *See Cooper v. Ramos*, 704 F.3d 772, 782
18 (9th Cir. 2012) (finding that the Rooker-Feldman doctrine also bars any ancillary claims
19 that are “inextricably intertwined” with the state court’s judgment). This Court could not
20 grant Plaintiff’s requested remedy without reviewing the Municipal Court and Superior
21 Court’s decision regarding the forfeiture of Plaintiff’s cats that has already been reviewed
22 by the state Court of Appeals with review denied by the Arizona Supreme Court.
23 Consequently, this Court lacks jurisdiction over such a review, and thus, Plaintiff’s
24 claims are precluded by the Rooker-Feldman doctrine.

25 Further, “[t]o state a claim for relief in an action brought under § 1983, [plaintiffs]
26 must [allege] that they were deprived of a right secured by the Constitution or laws of the
27 United States, and that the alleged deprivation was committed under color of state law.”
28 *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999). “Section 1983 ‘is not

1 itself a source of substantive rights,' but merely provides 'a method for vindicating
2 federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994)
3 (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). Here, Plaintiff alleges
4 violations of her First, Fourth, Fifth, and Eighth Amendment rights. (Compl. ¶¶ 51, 62,
5 68.)

6 Since § 1983 does not contain a limitations period, federal courts look to the
7 applicable state statute of limitations for determining whether a complaint brought under
8 § 1983 is timely. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). For purposes of
9 identifying the applicable statute of limitations, § 1983 actions are characterized as
10 personal injury actions. *Id.* Under Arizona law, the statute of limitations for personal
11 injury claims is two years. Ariz. Rev. Stat. Ann. § 12-542 (1985). However, federal law
12 determines when a civil rights claim accrues. *Morales v. City of L.A.*, 214 F.3d 1151,
13 1154 (9th Cir. 2000). Under federal law, the time limit on a cause of action begins to run
14 when the plaintiff "knows or has reason to know of the injury which is the basis of the
15 action." *Trotter v. Int'l Longshoremen's & Warehousemen's Union Local 13*, 704 F.2d
16 1141, 1143 (9th Cir. 1983).

17 In this case, Plaintiff's § 1983 claims arise out of the December 4, 2012 seizure of
18 her cats. Plaintiff's December 7, 2012 appearance before the Municipal Court
19 demonstrates her knowledge of the seizure of her cats. Therefore, Plaintiff's § 1983
20 claims are time-barred because she filed her complaint on June 13, 2016, more than three
21 and a half years after the seizure of her cats. While the Complaint alleges "ongoing and
22 continuous disputes between Plaintiff and Defendants" over the release of Plaintiff's cat,
23 "the facts do not give rise to the conclusion that Plaintiffs suffered the kind of injury for
24 which the statute of limitations may be tolled," *Ybarra-Johnson v. Ariz.*, 2014 U.S. Dist.
25 LEXIS 159725, at *11 (D. Ariz. Nov. 12, 2014) (Snow, J.). Further, it is not clear that
26 such disputes have implicated Plaintiff's federal rights in any way. The facts within
27 Plaintiff's Complaint allege, among other things, that since the initial removal of
28 Plaintiff's cats from her property, Defendants have violated her substantive and

1 procedural due process rights, suppressed documents, and caused Plaintiff severe
2 emotional distress. (Compl. ¶¶ 47, 58–100.) Regardless, “the ‘continuing violations’
3 doctrine was not designed to extend the statute of limitations in cases involving discrete
4 unlawful acts or continuing ill effects from an injury occurring outside the limitations
5 period.” *Ybarra-Johnson*, 2014 U.S. Dist. LEXIS 159725, at *12 (citing *Nat’l R.R.*
6 *Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002); *Knox v. Davis*, 260 F.3d 1009,
7 1014–15 (9th Cir. 2001)). As a result, even when Plaintiff’s allegations are construed
8 liberally in light of our notice pleading system, the “continuing violation” exception does
9 not apply. Plaintiff had reason to know of her injuries on the date that the cats were
10 removed from her property. Plaintiff’s allegations regarding Defendants’ wrongful acts
11 that occurred after the initial seizure of her cats are, at most, “discrete, injury-producing
12 acts of which the Plaintiff should have been aware when they occurred—not a continuing
13 violation.” *Id.* Therefore, Plaintiff’s § 1983 claims are time-barred.

14 Since Plaintiff’s rights to the cats were forfeited in an appropriate state judicial
15 proceeding, and because there is no jurisdictional granting claim, Plaintiff does not have
16 standing to pursue the malicious prosecution, intentional infliction of severe emotional
17 distress, negligent infliction of severe emotional distress, criminal trespass, and
18 intentional damage to private property claims in federal court. *See* 28 U.S.C. § 1367.

19 CONCLUSION

20 For the foregoing reasons, the Court denies Plaintiff’s request for TRO and
21 dismisses Plaintiff’s Complaint pursuant to § 1915(e)(2).

22 IT IS THEREFORE ORDERED that:

- 23 1. Plaintiff’s motion for temporary restraining order (Doc. 2) is **DENIED**.
- 24 2. Plaintiff’s application for leave to proceed *in forma pauperis* (Doc. 3) is
25 **GRANTED**.
- 26 3. Plaintiff’s motion and request for return of property (Doc. 4) is **DENIED**.
- 27 4. Plaintiff’s motion to stay (Doc. 5) is **DENIED**.
- 28 5. Plaintiff’s motion to e-file (Doc. 6) is **DENIED**.

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6. The Clerk of Court is directed to dismiss this action without prejudice.

Dated this 21st day of July, 2016.



Honorable G. Murray Snow
United States District Judge