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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KARYL CLARKE,	)	Case No. CV 10-6066-GW (JEM)
	)	
Plaintiff,	)	
	)	ORDER TO SHOW CAUSE WHY CASE
v.	)	SHOULD NOT BE DISMISSED AS
	)	UNTIMELY
	)	
EBONY LARRY, et al.,	)	
	)	
Defendants.	)	
	)	
_____	)	

On August 13, 2010, Karyl Clarke (“Plaintiff”), proceeding pro se and in forma pauperis, lodged a civil rights complaint pursuant to 28 U.S.C. § 1983 (“Complaint”), which was filed by the Court on August 18, 2010.

**FACTUAL ALLEGATIONS**

In his Complaint, Plaintiff alleges that, on March 1, 2006, he was falsely accused of kidnapping by Defendants Ebony and Lisa Larry. (Complaint, ¶ 47.) Thereafter, Los Angeles Police Department (“LAPD”) Detective James Miller conducted an investigation of the alleged kidnapping incident. (Complaint, ¶¶ 48-51.) Thereafter, Plaintiff was arrested and prosecuted. (Complaint, ¶¶ 52-53.) Defendants Ebony Larry, Lisa Larry, and Miller testified against Plaintiff at trial and allegedly made “a variety of slanderous and malicious statements during trial and in open court.” (Id., ¶ 59.) On October 25, 2006, a Los Angeles

1 County Superior Court jury convicted Plaintiff of making criminal threats, in violation of Cal.  
2 Penal Code § 422. (Complaint, ¶ 60, Exhibit C.) On November 15, 2006, Plaintiff was  
3 sentenced to a term of six years in state prison. (Complaint, ¶ 61, Exhibit C.) Plaintiff  
4 appealed the judgment. (Complaint, ¶ 62.)

5 The public docket of the California Court of Appeal indicates that it reversed Plaintiff's  
6 conviction in an unpublished opinion filed March 12, 2008, and modified April 3, 2008, and  
7 issued a remittitur to the trial court on May 15, 2008. On July 23, 2008, Plaintiff appeared  
8 before the trial court and his case was called for a jury trial. (Complaint, Exhibit E.) When  
9 the People indicated that they could not proceed, the case was dismissed, and a release  
10 order was issued. (Id.) Plaintiff was released from custody on August 6, 2008. (Complaint,  
11 ¶ 85.)

12 Plaintiff alleges that, during his time in the custody of the Los Angeles County  
13 Sheriff's Department ("LACSD") and the California Department of Corrections and  
14 Rehabilitation ("CDCR"), he was falsely imprisoned and was the victim of numerous  
15 incidents of excessive force and other abuse. (See Complaint, ¶¶ 54-58, 63-83.)

16 On August 13, 2010, Plaintiff lodged his Complaint. After his request to proceed  
17 without prepayment of the filing fee was granted, the Complaint was filed on August 18,  
18 2010.

### 19 **PLAINTIFF'S CLAIMS**

20 Plaintiff sets forth the following ten claims in his Complaint:

- 21 1. Conspiracy in violation of 42 U.S.C. §§ 1983 and 1985. "[A]ll Defendants"  
22 conspired to deprive him of his right to equal protection. (Complaint, ¶¶ 87-88.)
- 23 2. Refusing or neglecting to prevent harm, in violation of 42 U.S.C. § 1983.  
24 Defendant City of Los Angeles "failed to instruct, supervise, control, and discipline on a  
25 continuing basis the [Defendant] Miller in his duties to refrain from" harassing Plaintiff,  
26 maliciously prosecuting Plaintiff, and conspiring to violate Plaintiff's constitutional rights.  
27 (Complaint, ¶¶ 89-94.)

1           3.       Conspiracy. All of the Defendants conspired to investigate, arrest, and  
2 prosecute Plaintiff maliciously based on the false statements of Defendants Ebony and Lisa  
3 Larry. (Complaint, ¶¶ 95-97.)

4           4.       Intentional infliction of emotional distress. All defendants “intentionally and  
5 deliberately inflicted emotional distress on Plaintiff” by maliciously investigating, arresting,  
6 and prosecuting him. Defendants City of Los Angeles, Baca, and Cate are liable under the  
7 doctrine of respondeat superior. (Complaint, ¶¶ 98-105.)

8           5.       Malicious Prosecution. Defendants Ebony Larry, Lisa Larry, Miller, and the  
9 LAPD maliciously instituted criminal process against Plaintiff. The charges were not based  
10 on probable cause. Miller had a duty to investigate properly and he breached that duty.  
11 The criminal proceedings terminated in Plaintiff’s favor when the trial court dismissed all  
12 charges against Plaintiff. Defendants City of Los Angeles and Bratton are liable under the  
13 doctrine of respondeat superior. (Complaint, ¶¶ 106-110.)

14           6.       False Arrest and Imprisonment. Defendants intentionally and wrongfully  
15 confined Plaintiff against his will from the time he was arrested until he was released from  
16 custody. Defendants City of Los Angeles and Bratton are liable under the doctrine of  
17 respondeat superior. (Complaint, ¶¶ 111-116.)

18           7.       Assault. “Defendants Buchanan and Peterson intentionally created an  
19 apprehension of immediate physical harm by means of an overt gesture, detaining the  
20 Plaintiff and clearing the main prison yard of all other inmates for no known purpose other  
21 than to create in Plaintiff an apprehension of immediate physical harm.” Defendants CDCR  
22 and Cate are liable under the doctrine of respondeat superior. (Complaint, ¶¶ 117-121.)

23           8.       Battery. Defendants Buchanan and Peterson “intentionally, harmfully, and  
24 offensively touched the Plaintiff by using tactical holds excessively and handcuffing him.”  
25 They also caused others to do the same “when chaining and shackling Plaintiff in a 2'x2'x7'  
26 cage” and strip searching him. Defendants CDCR and Cate are liable under the doctrine of  
27 respondeat superior. (Complaint, ¶¶ 122-126.)

28



1 388 (2007). Under federal law, a civil rights claim accrues when the plaintiff knows or has  
2 reason to know of the injury that forms the basis of the claim. Maldonado v. Harris, 370  
3 F.3d 945, 955 (9th Cir. 2004).

4 Here, it appears that Plaintiff was on inquiry and actual notice of the injuries that form  
5 the basis of his civil rights claims no later than July 23, 2008, when the trial court dismissed  
6 Plaintiff's case and ordered him released. However, the limitations period was tolled  
7 pursuant to Cal. Code Civ. P. § 352.1(a) until Plaintiff was released from custody on August  
8 6, 2008. Upon his release, the two year limitations period began to run and expired August  
9 6, 2010. Petitioner did not lodge his Complaint until August 13, 2010. Thus, absent  
10 additional tolling, it appears that Plaintiff's civil rights claims are barred by the statute of  
11 limitations.

## 12 **II. Statutes of Limitations for State Law Claims**

### 13 **A. Negligent and Intentional Infliction of Emotional Distress, Assault, 14 Battery, Malicious Prosecution, Negligence (Claims Four, Five, Seven, Eight, Nine, and Ten)**

15 In California, the statute of limitations for personal injury claims is set forth in Cal.  
16 Code Civ. P. § 335.1, which provides a two year statute of limitations for "[a]n action for  
17 assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or  
18 neglect of another." Thus, a two year statute of limitations applies to Plaintiff's claims for  
19 intentional infliction of emotional distress (Claim 4), assault (Claim 7), battery (Claim 8),  
20 negligent infliction of emotional distress (Claim 9), and negligence (Claim 10).

21 Under California's "discovery rule," the accrual of a cause of action is delayed until a  
22 plaintiff either becomes aware of the injury and its cause or could have discovered the injury  
23 and cause through reasonable diligence. Jolly v. Eli Lilly & Co., 44 Cal.3d 1103, 1110-11  
24 (1988). Plaintiff must plead specific facts to show the time and manner of discovery and the  
25 inability to have made an earlier discovery despite reasonable diligence. Fox v. Ethicon  
26 Endo-Surgery, Inc., 35 Cal.4th 797, 808 (2005). The acts that form the basis of Plaintiff's  
27 claims for negligent and intentional infliction of emotional distress, assault, battery, and  
28 negligence occurred between March 1, 2006, when the criminal investigation against him

1 commenced, and August 6, 2008, when he was released from custody. Accordingly, these  
2 claims accrued no later than August 6, 2008, and the statute of limitations expired August 6,  
3 2010.

4 Plaintiff's claim for malicious prosecution (Claim 5) is also subject to a two year  
5 limitations period under California law. See Stavropoulos v. Superior Court, 141 Cal. App.  
6 4th 190, 192 (2006). A state malicious prosecution action accrues, and the statute of  
7 limitations begins to run, upon a favorable termination of the underlying action. See  
8 Drummond v. Desmarais, 176 Cal. App. 4th 439, 458 (2009); see also Yount v. City of  
9 Sacramento, 43 Cal.4th 885, 902 (2008) (claim that would necessarily imply invalidity of  
10 conviction does not accrue until that conviction is invalidated; applying rationale of Heck v.  
11 Humphrey, 512 U.S. 477 (1994), to state tort claims). Here, a favorable termination of the  
12 underlying action against Plaintiff occurred on July 23, 2008, when the trial court dismissed  
13 all charges against him and ordered his release. Accordingly, Plaintiff's cause of action for  
14 malicious prosecution accrued at that time. The statute of limitations was tolled until he was  
15 released on August 6, 2008, and expired August 6, 2010.

16 **B. False Arrest and Imprisonment**  
17 **(Claim Six)**

18 Claims for false arrest and imprisonment are subject to a one year statute of  
19 limitations. See Cal. Code Civ. P. § 340. Plaintiff's claim for false arrest and imprisonment  
20 accrued on July 23, 2008, when the charges against him were dismissed and he was  
21 ordered released from prison. See Yount, 43 Cal.4th at 902. The statute of limitations was  
22 tolled until he was released on August 6, 2008, and expired August 6, 2009.

23 **C. Conspiracy**  
24 **(Claim Three)**

25 Here, Plaintiff alleges a conspiracy to commit malicious prosecution and false arrest  
26 and imprisonment. Civil conspiracy is not a separate and distinct cause of action under  
27 California law. Instead, it is "a legal doctrine that imposes liability on persons who, although  
28 not actually committing a tort themselves, share with the immediate tortfeasors a common  
plan or design in its perpetration." Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 7

1 Cal.4th 503, 510-11 (1994) (citation omitted). Plaintiff’s conspiracy claim is predicated on  
2 his claims of false arrest and imprisonment and malicious prosecution. If these claims are  
3 barred by the statute of limitations, so is the conspiracy claim.

4 **III. Equitable Tolling**

5 Under California law, equitable tolling “reliev[es] plaintiff from the bar of a limitations  
6 statute when, possessing several legal remedies he, reasonably and in good faith, pursues  
7 one designed to lessen the extent of his injuries or damage.” Addison v. California, 21  
8 Cal.3d 313, 317 (1978). To invoke equitable tolling, a plaintiff must establish the following  
9 factors: “1) timely notice to the defendants in filing the first claim; 2) lack of prejudice to the  
10 defendants in gathering evidence for the second claim; and 3) good faith and reasonable  
11 conduct in filing the second claim.” Cervantes v. City of San Diego, 5 F.3d 1273, 1275 (9th  
12 Cir. 1993) (citation omitted). At its core, “[t]he doctrine of equitable tolling focuses on the  
13 effect of the prior claim in warning the defendants in the subsequent claim of the need to  
14 prepare a defense.” Id. If a plaintiff is entitled to equitable tolling, “the limitations period  
15 *stops running* during the tolling event, and begins to run again only when the tolling event  
16 has concluded.” Lantzy v. Centex Homes, 31 Cal.4th 363, 370 (2003) (emphasis in  
17 original). “[T]he tolled interval, no matter when it took place, is tacked onto the end of the  
18 limitations period, thus extending the deadline for suit by the entire length of time during  
19 which the tolling event previously occurred.” Id. at 370-71. The burden is on the plaintiff to  
20 establish his entitlement to equitable tolling. See Hinton v. Pacific Enterprises, 5 F.3d 391,  
21 395 (9th Cir. 1993); U.S. v. Marolf, 173 F.3d 1213, 1218 (9th Cir. 1999).

22 To the extent that Plaintiff contends that the doctrine of equitable tolling applies, he  
23 must set forth specific facts demonstrating his eligibility for such tolling under the standards  
24 set forth above.

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1 **ORDER TO SHOW CAUSE**

2 For the reasons set forth herein, Plaintiff Karyl Clarke is hereby **ORDERED TO**  
3 **SHOW CAUSE** why this action should not be dismissed as untimely.

4 Plaintiff shall file a written response to this Order to Show Cause no later than  
5 **September 27, 2010**. Failure to respond by this deadline may result in a recommendation  
6 that this action be dismissed with prejudice.

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8 DATED: August 26, 2010

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE

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