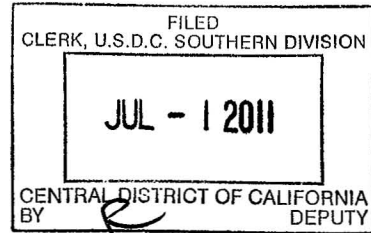


1  
2 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
3 FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL *Plaintiff*  
4 (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
5 RECORD IN THIS ACTION ON THIS DATE.

DATED: 7.1.11

DEPUTY CLERK



8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

11 MICHAEL THOMAS DOSS,

12 Plaintiff,

13 vs.

14 CITY OF LONG BEACH  
15 POLICE OFFICER A. RIM, et  
16 al.,

Defendants.

) Case No. CV 10-7134-VBF (RNB)

) ORDER ACCEPTING FINDINGS AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE

17 On May 20, 2011, the assigned Magistrate Judge issued a Report and  
18 Recommendation herein recommending that (a) defendants' motion to dismiss be  
19 granted with leave to amend with respect to plaintiff's Fourteenth Amendment claim  
20 against defendants Birdsall, Rios, and McMahan based on their alleged refusal to  
21 provide prompt medical care; (b) defendants' motion to dismiss be denied with  
22 respect to plaintiff's Fourth Amendment claim against defendant Rim and his  
23 Fourteenth Amendment claim against defendants Birdsall, Rios, and McMahan based  
24 on their alleged refusal to allow plaintiff to use the restroom during his interrogation;  
25 and (c) plaintiff be ordered, if he still desired to pursue his Fourteenth Amendment  
26 claim against defendants Birdsall, Rios, and McMahan based on their alleged refusal  
27 to provide prompt medical care, to file a First Amended Complaint within (30) days  
28 remedying the deficiencies of that claim as discussed in the Report and

1 Recommendation.

2 Defendants did not file objections to the Report and Recommendation within  
3 the allotted time. On June 6, 2011, plaintiff filed a document captioned "Plaintiff's  
4 Objection to Magistrate's Report and Recommendation." However, plaintiff stated  
5 therein that he wished to accept the Report and Recommendation as to his Fourteenth  
6 Amendment claim based on defendants' alleged refusal to provide prompt medical  
7 care, and that he would not be filing a First Amended Complaint reasserting that  
8 claim. Nevertheless, plaintiff stated that he "would like to object to, and revisit the  
9 issue of the time bar," which the Magistrate Judge had referenced in footnote 5 of the  
10 May 20, 2011 Report and Recommendation. Plaintiff proceeded to set forth his  
11 position on the time bar issue, supported by attached exhibits.

12 The time bar issue had come up earlier in the case. After screening the  
13 Complaint prior to ordering service in accordance with 28 U.S.C. §§ 1915(e)(2) and  
14 1915A(b), the Magistrate Judge had found that the Complaint failed to state a federal  
15 civil rights claim on which relief might be granted in that it appeared from the face  
16 of the Complaint that plaintiff's claims were time-barred. On that basis, the  
17 Magistrate Judge had issued an initial Report and Recommendation in which he  
18 recommended that the Complaint be dismissed without leave to amend and that  
19 Judgment be entered dismissing this action with prejudice. However, after duly  
20 considering plaintiff's ensuing objections to the Report and Recommendation, which  
21 the Magistrate Judge construed as an attempt to invoke the equitable tolling doctrine  
22 based on difficulties that plaintiff had encountered pursuing his claims because of his  
23 custodial status, the Magistrate Judge concluded that the time bar issue was not ripe  
24 for adjudication at the screening stage of the proceedings. Accordingly, on  
25 November 3, 2010, the Magistrate Judge issued an order vacating the October 5, 2010  
26 Report and Recommendation.

27 In footnote 5 of the May 20, 2011 Report and Recommendation, the Magistrate  
28 Judge stated the following:

1        *The Court notes that, in their Motion, defendants have not asserted that*  
2        *plaintiff's claims are time-barred. However, the Court previously has*  
3        *found only that the time bar issue was not yet ripe for adjudication.*  
4        *Accordingly, if plaintiff chooses to file a First Amended Complaint, and*  
5        *if he is contending that he is entitled to equitable tolling, plaintiff should*  
6        *plead facts to support that he acted in a "reasonable and good faith"*  
7        *effort to pursue his claims. See, e.g., Fink v. Shedler, 192 F.3d 911, 916*  
8        *(9th Cir. 1999).*

9  
10        Since defendants did not raise the time bar issue in their Motion to Dismiss,  
11        and since the May 20, 2011 Report and Recommendation contained no finding on the  
12        time bar issue, there is no need for the Court to address that issue at this time. The  
13        Court also notes that, in deciding a motion to dismiss pursuant to Rule 12(b)(6), a  
14        Court may not look outside the pleadings without converting the motion into a motion  
15        for summary judgment. See Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996).  
16        Thus, none of plaintiff's allegations regarding the time bar issue in his "objection"  
17        to the Report and Recommendation is properly before the Court at this time.

18        Having reviewed all the records and files herein, and the Report and  
19        Recommendation of the United States Magistrate Judge, pursuant to 28 U.S.C. § 636,  
20        the Court accepts the findings and recommendation of the Magistrate Judge.  
21        However, the recommendation that plaintiff be afforded thirty (30) days to rectify the  
22        deficiencies of his Complaint with respect to his Fourteenth Amendment claim  
23        against defendants Birdsall, Rios, and McMahan based on their alleged refusal to  
24        provide prompt medical care has now been rendered moot by plaintiff's statement that  
25        he does not intend to file a First Amended Complaint reasserting that claim.

26        IT THEREFORE IS ORDERED THAT (1) defendants' motion to dismiss is  
27        granted with respect to plaintiff's Fourteenth Amendment claim against defendants  
28        Birdsall, Rios, and McMahan based on their alleged refusal to provide prompt

1 medical care, and that claim is dismissed without prejudice; (2) defendants' motion  
2 to dismiss is denied with respect to plaintiff's Fourth Amendment claim against  
3 defendant Rim and his Fourteenth Amendment claim against defendants Birdsall,  
4 Rios, and McMahan based on their alleged refusal to allow plaintiff to use the  
5 restroom during his interrogation; and (3) within thirty (30) days of the service date  
6 of this Order, defendants shall file an Answer to plaintiff's Fourth Amendment claim  
7 against defendant Rim and his Fourteenth Amendment claim against defendants  
8 Birdsall, Rios, and McMahan based on their alleged refusal to allow plaintiff to use  
9 the restroom during his interrogation.

10  
11 DATED: June 29, 2011

*Valerie Baker Fairbank*

12  
13  
14 VALERIE BAKER FAIRBANK  
UNITED STATES DISTRICT JUDGE