

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

BRYAN E. RANSOM,  
CDCR #H-71641,

Plaintiff,

vs.

JR. WESTPHAL, R. MOUNCE, K.  
HOLLAND, E. HOUGH, and D. THISSEN,

Defendants.

Civil No. 1:08-1327 DMS (AJB)

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT PURSUANT TO  
FED.R.CIV.P. 12(b)(6)**

[Doc. No. 22]

**I. PROCEDURAL BACKGROUND**

Plaintiff, proceeding *pro se* and *in forma pauperis* pursuant to 28 U.S.C. § 1915(a), is a state inmate currently incarcerated at California State Prison in Corcoran, California. He filed a civil rights Complaint on September 8, 2008, pursuant to 42 U.S.C. § 1983 [Doc. No. 1].

On January 29, 2009, the Court issued a *sua sponte* order dismissing the Complaint without prejudice pursuant to 28 U.S.C. sections 1915(e)(2)(B) & 1915A(b), because it appeared from the face of Plaintiff's pleading that some of his claims were barred by the statute of limitations. [See Doc. No. 14 at 3.] However, Plaintiff was granted leave to file a First Amended Complaint to address the deficiencies of the pleading as noted in the dismissal order.

1 (*Id.* at 5.)

2 On February 12, 2009, Plaintiff filed a First Amended Complaint. [Doc. No. 16.] On  
3 June 15, 2009, Defendants Thissen, Mounce, Holland and Hough filed a Motion to Dismiss  
4 pursuant to Federal Rule of Civil Procedure 12(b)(6) [Doc. No. 22], which is the subject of this  
5 Order. On October 20, 2009, Defendant Westphal filed a joinder in the Motion to Dismiss [Doc.  
6 No. 26]. Plaintiff has failed to file an opposition or statement of no opposition within the time  
7 period scheduled in the Court’s Order Setting Briefing Schedule, filed on September 17, 2009.  
8 Pursuant to that Order, the Court now considers the matter fully briefed and hereby issues its  
9 ruling with regard to the motion without hearing or oral argument.

10 **II. STANDARD UNDER FED. R. CIV. P. 12(b)(6)**

11 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal  
12 sufficiency of a claim” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Because Rule  
13 12(b)(6) focuses on the “sufficiency” of a claim rather than the claim’s substantive merits, “a  
14 court may [typically] look only at the face of the complaint to decide a motion to dismiss.” *Van*  
15 *Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).

16 A motion to dismiss should be granted if a plaintiff’s complaint fails to contain “enough  
17 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
18 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that  
19 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
20 alleged.” *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550  
21 U.S. at 556, 570).

22 While allegations of material fact are accepted as true and construed in the light most  
23 favorable to the nonmoving party, *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th  
24 Cir. 1996), the court need not accept as true generic legal conclusions, unwarranted deductions  
25 of fact or unreasonable inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988  
26 (9th Cir. 2001); *Iqbal*, 129 S.Ct. at 1949 (“Threadbare recitals of the elements of a cause of  
27 action, supported by mere conclusory statements, do not suffice.”); *Twombly*, 550 U.S. at 555  
28 (on motion to dismiss court is “not bound to accept as true a legal conclusion couched as a

1 factual allegation.”). “The pleading standard Rule 8 announces does not require ‘detailed factual  
2 allegations,’ but it demands more than an unadorned, the defendant-unlawfully-harmed-me  
3 accusation.” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555).

4 Thus, “[w]hile legal conclusions can provide the framework of a complaint, they must be  
5 supported by factual allegations. When there are well-pleaded factual allegations, a court should  
6 assume their veracity and then decide whether they plausibly give rise to an entitlement to  
7 relief.” *Iqbal*, 129 S.Ct. at 1950. “The plausibility standard is not akin to a ‘probability  
8 requirement,’ but it asks for more than a sheer possibility that defendant has acted unlawfully.”  
9 *Id.* at 1949. Where a complaint pleads facts that are “merely consistent with” a defendant’s  
10 liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”  
11 *Id.*; *Twombly*, 550 U.S. at 570 (when a plaintiff has not “nudged [his] claims across the line  
12 from conceivable to plausible, [his] complaint must be dismissed.”).

13 “In sum, for a complaint to survive a motion to dismiss, the non-conclusory ‘factual  
14 content,’ and reasonable inferences [drawn] from that content, must be plausibly suggestive of  
15 a claim entitling the plaintiff to relief.” *Moss v. United States Secret Service*, 572 F.3d 962, 969  
16 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1949).

### 17 **III. DISCUSSION**

18 Defendants seek dismissal of the action on grounds that it is barred by the applicable  
19 statute of limitations. [Doc. No. 22 at 7.] Plaintiff contends equitable tolling applies to save his  
20 First Amended Complaint (FAC). (FAC at 2-3.)

#### 21 **A. Statute of Limitations**

22 While Congress has provided no federal statute of limitations governing section 1983  
23 claims, the Supreme Court has held that federal courts should use the forum state’s single most  
24 appropriate statute of limitations applicable to personal injury actions for all section 1983 claims.  
25 *See Wilson v. Garcia*, 471 U.S. 261, 269 (1985). Relying on *Wilson*, the Ninth Circuit has found  
26 that the one-year statute of limitations of California Code of Civil Procedure § 340(3)<sup>1</sup> is the  
27

28 <sup>1</sup> California Code of Civil Procedure § 340(3) provides a one-year statute of limitations on any  
civil action for “[l]ibel, slander, assault, battery, false imprisonment, seduction, injury or death from  
wrongful act or neglect. . . .” CAL. CIV. PROC. CODE § 340(3). On January 1, 2003, this code section  
was replaced with § 335.1 which now provides for a two-year statute of limitations for these actions.

1 most appropriate. *Usher v. City of Los Angeles*, 828 F.2d 556, 558 (9th Cir. 1987); *Trimble v.*  
2 *City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (per curiam). Federal law, however,  
3 determines when a section 1983 cause of action accrues. *Hardin v. Staub*, 490 U.S. 536, 543-44  
4 (9th Cir. 1996) (internal citations omitted). Additionally, the statute of limitations is tolled for  
5 a maximum of two years during a prisoner's incarceration. See CAL. CODE CIV. P. § 352.1; *Fink*  
6 *v. Shedler*, 192 F.3d 911, 916 (9th Cir. 1999) (CAL. CODE CIV. P. § 352.1 tolls a California  
7 prisoner's personal injury claims accruing before January 1, 1995 for two years, or until January  
8 1, 1995, whichever occurs later, unless application of the statute would result in "manifest  
9 injustice.").

10 The entirety of Plaintiff's Complaint arises from allegations relating to events that  
11 occurred in April of 2000.<sup>2</sup> (See FAC at 6-10.) Plaintiff filed this action on September 8, 2008,  
12 eight years after Plaintiff alleges Defendants violated his constitutional rights. He should have  
13 filed no later than April of 2004, allowing for tolling of two years during incarceration and  
14 thereafter the running of California's two-year statute of limitations. Therefore, in the absence  
15 of equitable tolling considerations, this action is barred by the statute of limitations.

16 B. Equitable Tolling

17 Generally, federal courts also apply the forum state's law regarding equitable tolling.  
18 *Fink*, 192 F.3d at 914; *Bacon v. City of Los Angeles*, 843 F.2d 372, 374 (9th Cir. 1988). Under  
19 California law, a plaintiff must meet three conditions to equitably toll a statute of limitations: (1)  
20 he must have diligently pursued his claim; (2) his situation must be the product of forces beyond  
21 his control; and (3) the defendants must not be prejudiced by the application of equitable tolling.  
22 See *Hull v. Central Pathology Serv. Med. Clinic*, 28 Cal. App 4th 1328, 1335 (Cal. Ct. App.  
23 1994); *Addison v. State of California*, 21 Cal.3d 313, 316-17 (Cal. 1978); *Fink*, 192 F.3d at 916.

24 Plaintiff contends the statute of limitations was equitably tolled during the pendency of  
25 a prior complaint filed November 2, 2000, and dismissed without prejudice, for failure to exhaust  
26 remedies, on January 4, 2008, following the filing of a third amended complaint. (FAC at 2-3.)  
27 The prior complaint included allegations raised against Defendants in the current case. (See  
28

---

<sup>2</sup> Plaintiff claims his Eighth and First Amendment rights were violated when Defendants used excessive force against his person, displayed deliberate indifference to his needs, and intercepted his administrative appeal in retaliation.

1 Doc. No. 22, Exhibit (Exh.) F). Plaintiff asserts the prior proceedings reflect he diligently  
2 pursued the claims in issue, that Defendants were aware of the claims the entire time, and that  
3 the situation was beyond his control. (*Id.* at 3.)

4 At the pleading stage, a plaintiff need only “adequately allege facts supporting equitable  
5 tolling under California law.” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th Cir.  
6 1993). The Court must thus ask whether Plaintiff’s First Amended Complaint alleges facts  
7 showing potential applicability of the equitable tolling doctrine. *Id.* In California, a statute of  
8 limitations is equitably tolled during the pendency of an earlier action if there has been “timely  
9 notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part  
10 of the plaintiff.” *Addison v. State*, 21 Cal.3d 313, 319 (1978); *Retail Clerks Union Local 648,*  
11 *AFL-CIO v. Hub Pharmacy*, 707 F.2d 1030, 1033 (1983). Defendants do not claim lack of  
12 timely notice or that they would suffer prejudice. Indeed, insofar as the previous action by  
13 Plaintiff contained the same claims based on the same incidents, Defendants were given timely  
14 notice of possible liability and have had ample opportunity to gather defense evidence. *Addison*,  
15 21 Cal.3d at 318.

16 Defendants argue Plaintiff failed to act diligently or in good faith in pursuing his claims  
17 because he failed to exhaust his remedies under the Prison Litigation Reform Act (*see* 42 U.S.C.  
18 § 1997e(a)), “and then multiplied the proceedings exponentially with several failed attempts to  
19 add dozens of additional defendants and then appealing the judgment against him.” (Doc. No.  
20 22 at 7.) These assertions may only speak to Plaintiff’s status as a *pro se* litigant traversing an  
21 unfamiliar technical path. Insofar as this may have been the case, courts have “a duty to ensure  
22 that *pro se* litigants do not lose their right to a hearing on the merits of their claim due to  
23 ignorance of technical procedural requirements.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d  
24 696, 699 (9th Cir. 1990). Moreover, the “purpose of the [equitable tolling doctrine] is to soften  
25 the harsh impact of technical rules which might otherwise prevent a good faith litigant from  
26 having a day in court.” *Addison*, 21 Cal.3d at 316.

27 Defendants also claim the delay resulting in the statute of limitations bar was not the  
28 product of forces beyond Plaintiff’s control. (Doc. No. 22 at 9.) However, from November 2,  
2000, when Plaintiff first filed his prior complaint, until January 24, 2003, when he filed his third

1 amended complaint, Plaintiff was actively pursuing his claims within the statutory time period.  
2 (*See* exhs. A,B,C & D.) At that point, he still had until April of 2004 to file a timely complaint.  
3 Not until five years later on January 8, 2008, did the court issue a final denial of Plaintiff's third  
4 amended complaint for failure to exhaust all claims and closed the case. (*See* exhs. A & F.)  
5 During this five-year time period, there was at least one extension of time that was due to the  
6 Defendants' request. (*See* exh. A at 15, doc. no. 68.) The allegations in the Motion to Dismiss  
7 and the exhibits attached thereto do not support a conclusion that Plaintiff's situation was  
8 entirely in his control.

9 Based on the above, Plaintiff has adequately pled facts which would support the equitable  
10 tolling of his claims. *Cervantes*, 5 F.3d at 1277.

11 **IV. CONCLUSION AND ORDER**

12 The Court hereby **DENIES** Defendants' Motion to Dismiss Plaintiff's Complaint  
13 pursuant to FED.R.CIV.P. 12(b)(6) [Doc. No. 22].

14 Defendants shall file an Answer within 10 days from the date this Order is stamped  
15 "Filed" pursuant to FED.R.CIV.P. 12(a)(4)(A).

16 **IT IS SO ORDERED.**

17  
18 DATED: November 5, 2009

19

20

21

22

23

24

25

26

27

28

  
\_\_\_\_\_  
HON. DANA M. SABRAW  
United States District Judge

CC: HONORABLE MAGISTRATE JUDGE ANTHONY J. BATTAGLIA  
ALL PARTIES AND COUNSEL OF RECORD