

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

BRUCE BERNNA,

Plaintiff,

V.

DEPARTMENT OF JUSTICE BUREAU OF
FIREARMS, et al.,

Defendants.

Case No. 1:14-cv-01972---SAB

**ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND WITHIN THIRTY (30)
DAYS**

January 20, 2015, Plaintiff Bruce Berna (“Plaintiff”) filed the First Amended Complaint in this action. (ECE No. 5.)

For the reasons set forth below, the Court finds that Plaintiff's First Amended Complaint fails to state any cognizable claims.

L.

SCREENING

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §

1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff's claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a defendant's liability" falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

II.

BACKGROUND

Plaintiff filed the original complaint in this action on December 11, 2014. (ECF No. 1.) The Court screened and dismissed the original complaint, with leave to amend, on December 22, 2014. The Court construed the original complaint as attempting to sue the United States Department of Justice for failing to respond to Plaintiff's request for documents pursuant to California's Public Records Act. Since California's Public Records Act only applies to state and local agencies, and the United States Department of Justice is a federal agency, the Court found that the original complaint did not state any cognizable claims. The Court further found that the original complaint did not state any cognizable claims concerning Plaintiff's complaints about the Department of Justice's refusal to comply with Plaintiff's demands that a shotgun seized at

1 Plaintiff's residence be delivered to a "Ron Hendricks."

2 Plaintiff's First Amended Complaint consists of a narrative in which Plaintiff attempts to
3 "explain what I hoped to accomplish and why." (First Am. Compl., at pg. 1.) Plaintiff describes
4 an incident on September 8, 2011 when he was arrested by two law enforcement officers.
5 Plaintiff contends that these law enforcement officers entered his home without his permission
6 and without a warrant and found a shotgun. Plaintiff was arrested for a firearms related offense.

7 Plaintiff contends that the law enforcement officers lied during multiple court
8 proceedings. Plaintiff further contends that the judge in his criminal proceedings was biased and
9 protected the officers' despite their lies. Plaintiff pled no contest to the criminal charges and
10 appealed.

11 Plaintiff explains that he requested the documents from the Department of Justice to
12 corroborate his claims that the law enforcement agents lied during court proceedings. Plaintiff
13 claims that he requested the documents five times over four months and sent his neighbor to the
14 Department of Justice to retrieve the requested documents. Plaintiff further states that "[n]ow I
15 have decided to file suit for '[i]llegal search and seizure, false arrest, false imprisonment, 42
16 U.S.C. 1988, 42 U.S.C. 1983, 28 U.S.C., eleventh amendment and continued tort claim." (First
17 Am. Compl., at pg. 3.)

18 **III.**

19 **DISCUSSION**

20 **A. Plaintiff's Claims**

21 Plaintiff's First Amended Complaint fails to cure the deficiencies identified by the Court
22 regarding the original complaint. As an initial matter, the Court notes that Plaintiff's First
23 Amended Complaint fails to identify who the defendants are. The original complaint named the
24 United States Department of Justice – Bureau of Firearms and Sonia Rios (Department of Justice
25 Clerk) as defendants. The First Amended Complaint has no one named as defendant.

26 Furthermore, the First Amended Complaint does not address the deficiencies identified
27 by the Court in its prior screening order. The Court dismissed the original complaint in this
28 matter because Plaintiff attempted to sue a federal agency and one of its employees for failure to

1 comply with a California Public Records Act request despite the fact that the California Public
2 Records Act does not apply to federal agencies. Plaintiff's First Amended Complaint fails to
3 cure this deficiency and instead only provides a narrative explanation as to why Plaintiff is
4 seeking the documents he requested from the Department of Justice. Plaintiff's motivation for
5 seeking his records from the Department of Justice has no bearing on the legal deficiencies
6 identified by the Court in its prior screening order. Plaintiff has made no effort to address the
7 Court's analysis of Plaintiff's complaints about the Department of Justice's refusal to give a
8 shotgun to his neighbor, Ron Hendricks and has made no effort to address the Court's concerns
9 regarding Plaintiff's failure to allege the basis of jurisdiction in his complaint.

10 Finally, the Court notes that the First Amended Complaint alludes to a claim under
11 Section 1983 for illegal search and seizure and for false arrest. It is unclear whether Plaintiff was
12 attempting to raise these claims in his First Amended Complaint or if Plaintiff was simply
13 narrating his intention to raise such claims in a future proceeding. In either case, such claims are
14 barred by the statute of limitations.

15 The statute of limitations in Section 1983 actions is governed by the law of the state in
16 which the cause of action arose. Wallace v. Kato, 549 U.S. 384, 387 (2007). In California, the
17 applicable statute of limitations is two years. Cal. Code. Civ. Proc. § 335.1; see also Maldonado
18 v. Harris, 370 F.3d 945, 954 (9th Cir. 2004). Section 1983 claims premised on an unlawful
19 search and seizure generally accrue at the time the search and seizure occurs. Matthews v.
20 Macanas, 990 F.2d 467, 469 (9th Cir. 1993), abrogated on other grounds; see also Easley v.
21 County of El Dorado, No. 2:08-cv-01432 MCE KJN PS, 2010 WL 4569137, at *5 (E.D. Cal.
22 Nov. 3, 2010).

23 The First Amended Complaint contends that the allegedly unlawful search and seizure
24 and unlawful arrest occurred on September 8, 2011. Plaintiff filed suit on December 11, 2014,
25 long after the expiration of the two year statute of limitations.¹ Accordingly, to the extent that

26 ¹ Although Plaintiff cites language from Heck v. Humphrey, 512 U.S. 477 (1994), in the First Amended Complaint,
27 the Ninth Circuit has held that Heck does not apply in circumstances where a plaintiff is raising a 1983 claim for an
28 allegedly unlawful search and seizure, but the plaintiff plead guilty or nolo contendere. Jackson v. Barnes, 749 F.3d
755, 760 (9th Cir. 2014). In such cases, the conviction is derived from the plaintiff's plea, not from verdicts
obtained with supposedly illegal evidence. Id. Therefore, the Section 1983 would not demonstrate the invalidity of

1 the First Amended Complaint could be construed as raising claims under Section 1983 relating to
2 the September 8, 2011 search and seizure or arrest, such claims are barred by the statute of
3 limitations.

4 **B. Leave to Amend**

5 “Generally, Rule 15 advises the court that ‘leave [to amend the complaint] shall be freely
6 given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’”
7 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v.
8 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). The factors the Court
9 should consider in deciding whether to grant leave to amend include undue delay, bad faith or
10 dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments
11 previously allowed, undue prejudice to the opposing party by virtue of allowance of the
12 amendment, and futility of the amendment. Id. at 1052.

13 In accordance with the “extreme liberality” with which leave to amend should be granted,
14 the Court will grant Plaintiff one final opportunity to amend the complaint to cure the
15 deficiencies identified herein.

16 **IV.**

17 **CONCLUSION AND ORDER**

18 Based upon the foregoing, the Court finds that Plaintiff’s complaint fails to state any
19 cognizable claims.

20 Accordingly, it is HEREBY ORDERED that Plaintiff’s complaint is dismissed, with
21 leave to amend. Plaintiff shall file his amended complaint, if any, within thirty (30) days from
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28 the conviction. Id. Plaintiff alleged that he plead nolo contendere to his criminal charges. (First Am. Compl., at pg. 3.)

1 the date of service of this order. Plaintiff is forewarned that failure to file a timely amended
2 complaint will result in a recommendation that this action be dismissed.

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4 IT IS SO ORDERED.

5 Dated: February 24, 2015


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10 UNITED STATES MAGISTRATE JUDGE