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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 SHANA MCCLOUD, an individual,

No. 2:13-cv-02404-JAM-KJN

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Plaintiff,

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v.

**ORDER DENYING DEFENDANTS' MOTION
TO DISMISS**

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JOSEPH A. FARROW,
individually and in his
official capacity as
California Highway Patrol
Commissioner; RUDY BRIONES;
JOHN EDWARDS,

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Defendants.

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Defendants California Highway Patrol Officers John Edwards and Rudy Briones (collectively "the Defendant Officers") move to dismiss (Doc. #23) Plaintiff Shana McCloud's ("Plaintiff") first amended complaint ("FAC") (Doc. #19) as barred by the statute of limitations.¹ Plaintiff opposes the motion, contending that Federal Rule of Civil Procedure 15(c) allows the FAC to "relate back" to the filing of the original complaint, placing it within

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 15, 2014.

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1 the limitations period. For the reasons stated below, the Court
2 finds the FAC, naming the Defendant Officers, is not time barred.

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4 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

5 This action arises out of an incident that occurred on
6 November 19, 2011. FAC ¶ 8. Plaintiff was riding as a passenger
7 in a car driven by her friend ("the driver") when the Defendant
8 Officers attempted to pull him over. FAC ¶¶ 8-11. The driver
9 attempted to evade the Defendant Officers and eventually crashed
10 into a fence. Immediately after the crash, the Defendant
11 Officers allegedly opened fire on Plaintiff and the driver,
12 killing the driver instantly and inflicting multiple gunshot
13 wounds upon Plaintiff. According to Plaintiff, the Defendant
14 Officers then ignored her urgent medical condition for some time,
15 before finally transporting Plaintiff to a local medical center.

16 Plaintiff filed the original complaint (Doc. #1) against
17 California Highway Patrol Commissioner Joseph A. Farrow
18 ("Commissioner Farrow"), both in his official capacity and
19 individually, and against DOES 1-50. The original complaint was
20 filed on November 19, 2013, exactly two years after the incident,
21 alleging a Monell claim against Commissioner Farrow in his
22 official capacity and a claim against DOES 1-25 for
23 constitutional violations pursuant to 42 U.S.C. § 1983 ("§1983").
24 Comp. ¶¶ 12-19. The Court dismissed the complaint (Doc. #18)
25 with leave to amend.

26 The FAC drops the claim against Commissioner Farrow and
27 reasserts the §1983 cause of action against the Defendant
28 Officers for violations of Plaintiff's Fourth Amendment rights to

1 be free from unreasonable searches and seizures and the right to
2 be free from excessive force. FAC ¶ 14. The FAC was filed on
3 April 14, 2014.

4 5 II. OPINION

6 Defendants contend the FAC must be dismissed because the
7 claims are time barred by California Code of Civil Procedure
8 § 335.1 ("§335.1"), which is the applicable two-year statute of
9 limitations in California. MTD at pp. 3-4.

10 "A party may raise a statute of limitations argument in a
11 motion to dismiss if it is apparent from the face of the
12 complaint that the complaint was not timely filed and that
13 plaintiff will be unable to prove facts that will establish the
14 timeliness of the claim." Hardesty v. Sacramento Metro. Air
15 Quality Mgmt. Dist., 935 F. Supp. 2d 968, 979 (E.D. Cal. 2013)
16 (citing Von Saher v. Norton Simon Museum, 592 F.3d 954, 969 (9th
17 Cir. 2010); Supermail Cargo, Inc. v. United States, 68 F.3d 1204,
18 1206 (9th Cir. 1995)).

19 Civil rights actions brought under §1983 are governed by the
20 statute of limitations for personal injury actions of the forum
21 state. Wilson v. Garcia, 471 U.S. 261, 279-80 (1985); Jones v.
22 Blanas, 393 F.3d 918, 927 (9th Cir. 2004). California law
23 provides for a two-year statute of limitations for personal
24 injury, applicable to civil rights claims brought under §1983.
25 §335.1; Neveu v. City of Fresno, 392 F. Supp. 2d 1159, 1174 (E.D.
26 Cal. 2005).

27 Therefore, based on §335.1, Defendants are correct in noting
28 that the claims against the Defendant Officers in the FAC were

1 filed outside of the limitations period. Plaintiff does not
2 dispute this, but rather contends the relation back doctrine of
3 Federal Rule of Civil Procedure 15(c) ("Rule 15(c)") applies,
4 tying the filing of the FAC back to the date the original
5 complaint was filed. Opp. at pp. 4-5. Defendants respond that
6 the relation back doctrine of Rule 15(c) only applies if the
7 newly named Defendants had notice of the actual lawsuit "within
8 the time period provided by Rule 4(m)," which is 120 days. Reply
9 at p. 2. They argue this was clearly not the case.

10 Plaintiff's analysis of Rule 15(c) states the FAC should
11 relate back because the Defendant Officers "received notice of
12 the institution of the action; will not be prejudiced in
13 maintaining their defense on the merits; and knew or should have
14 known that, but for a mistake concerning the identity of the
15 proper parties, the action would have been brought against them."
16 Opp. at p. 5. Defendants' arguments in support of their motion
17 fail to discuss relevant state statutes and case law applicable
18 to the relation back doctrine. Both parties' arguments are
19 woefully inadequate and their application of the circumstances of
20 this case to the applicable law is entirely conclusory, simply
21 tracking the elements of Rule 15(c). However, for reasons
22 discussed below and not found in either party's briefs, the
23 Court, as required by law, finds Rule 15(c) does allow Plaintiff
24 to substitute the Defendant Officers for Does 1 and 2.
25 Defendants' motion is therefore DENIED.

26 Prior to the 1991 amendments to Rule 15(c), the Ninth
27 Circuit found that the relation back provisions of state law,
28 rather than Rule 15(c) govern a federal cause of action for

1 §1983. Merritt v. Cnty. of Los Angeles, 875 F.2d 765, 768 (9th
2 Cir. 1989); Cabrales v. Cnty. of Los Angeles, 864 F.2d 1454, 1463
3 (9th Cir. 1988). The advisory committee notes accompanying the
4 amended version of Rule 15(c) state that the new provision "is
5 intended to make it clear that the rule does not apply to
6 preclude any relation back that may be permitted under the
7 applicable limitations law." Rule 15(c)(1) advisory committee
8 notes (1991). The Ninth Circuit recently discussed the impact of
9 those amendments on the law of this circuit:

10 Rule 15(c)(1) incorporates the relation back rules of
11 the law of a state when that state's law provides the
12 applicable statute of limitations and is more lenient.
13 As a result, if an amendment relates back under the
14 state law that provides the applicable statute of
15 limitations, that amendment relates back under Rule
16 15(c)(1) even if the amendment would not otherwise
17 relate back under the federal rules.

18 Butler v. Nat'l Cmty. Renaissance of California, 766 F.3d 1191,
19 1198-1201 (9th Cir. 2014).

20 Defendants essentially argue that the amendment does not
21 relate back under Rule 15 because it does not meet the 120-day
22 requirement of Federal Rule of Civil Procedure 4(m). However, if
23 Plaintiff's amendment relates back under California law, it will
24 relate back pursuant to Rule 15(c) despite the fact a different
25 outcome would result if based solely on the federal rules.

26 Based on the circumstances of this case, California Code of
27 Civil Procedure § 474 ("§474") is the applicable relation back
28 rule. Section 474 "allows DOE defendants to be added within
three years of the filing date of the original complaint if: (1)
the complaint states a cause of action against each DOE

1 defendant; (2) the complaint alleges that the plaintiff is
2 ignorant of the true name of each DOE defendant; (3) the
3 plaintiff is actually ignorant of the true name at the time of
4 filing; and (4) the plaintiff amends once the true name of the
5 defendant is discovered." Jones v. Cnty. of Sacramento, 2:12-CV-
6 01141 TLN, 2014 WL 2918850, at *3 (E.D. Cal. 2014) ("Jones")
7 (citing Fireman's Fund. Ins. Co. v. Sparks Const., Inc., 114 Cal.
8 App. 4th 1135, 1143 (2004)).

9 If the requirements of §474 are fulfilled, the amendment
10 naming new parties is said to relate back to the original
11 complaint for the purposes of the statute of limitations. See
12 Jones, 2014 WL 2918850, at *4; Tandel v. Cnty. of Sacramento,
13 2:11-CV-00353-MCE-AC, 2014 WL 202740, at *7-8 (E.D. Cal. 2014).
14 Therefore, although §474 would alter the statute of limitations
15 by allowing a relation back that would not otherwise be permitted
16 under the federal rules, Rule 15(c) would allow the amendment to
17 relate back if the requirements of §474 were met. Butler, 766
18 F.3d at 1198-1201; Jones, at *4.

19 As to the first requirement of §474, the original complaint
20 specifically asserts the first cause of action against DOES 1-25
21 pursuant to §1983. Comp. ¶ 13. The complaint states that
22 "Plaintiff is ignorant of the true names and/or capacities of
23 Defendants sued herein as DOES 1-50" and will "amend this
24 complaint to allege their true names and capacities when
25 ascertained." Comp. ¶ 5. As the statute should be "liberally
26 construed" (Dieckmann v. Superior Court, 175 Cal. App. 3d 345,
27 355 (1985)), the Court finds the second requirement has also been
28 satisfied.

1 The third and fourth requirements provide that a plaintiff
2 must be actually ignorant of the names of the DOE defendants when
3 the original complaint is filed and amend that complaint once the
4 identities have been discovered. Jones, at *3. Defendants have
5 not presented any evidence or argument indicating Plaintiff was
6 aware of the Defendant Officers' identities when the original
7 complaint was filed or that Plaintiff unreasonably delayed naming
8 the Defendant Officers once their identities were determined.

9 In fact, in its previous order (Doc. #18), the Court found
10 the "difficulty facing plaintiff at the time she filed the
11 Complaint was that she did not know the identities of the
12 [California Highway Patrol] officers involved." The Court also
13 noted that at oral argument the parties agreed that Plaintiff was
14 then aware of the actual names of the officers and was "in a
15 position to amend the Complaint to name those officers."
16 Plaintiff filed the FAC, specifically naming the Defendant
17 Officers, five days after the Court's order was issued. The
18 Court finds the requirements of §474 have been met, and thus, the
19 amended complaint relates back to the original filing under Rule
20 15(c). Defendants' motion to dismiss is DENIED.

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22 III. ORDER

23 For the reasons set forth above, the Court DENIES
24 Defendant's motion to dismiss.

25 IT IS SO ORDERED.

26 Dated: November 13, 2014

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE