

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
NORTHERN DISTRICT OF CALIFORNIA

THOMAS A. SPITZER, et al.,
Plaintiffs,
v.
TRISHA A. ALJOE, et al.,
Defendants.

Case No. [13-cv-05442-MEJ](#)
**ORDER FOR SUPPLEMENTAL
BRIEFING**
Re: Dkt. No. 72

Now pending before the Court is Plaintiffs’ Motion for Leave to File a Third Amended Complaint. Dkt. No. 72. The City Defendants oppose the motion on futility grounds, arguing among other things that Plaintiffs’ proposed claims against Officer Martinez and Sergeant Leong are time-barred by the statute of limitations. Dkt. No. 76 at 8 & n.3. Specifically, the City Defendants indicate that the claims against Officer Martinez and Sergeant Leong accrued on November 7, 2011, and thus, even assuming Plaintiffs could relate those claims back to the time of the filing of their initial Complaint on November 22, 2013, those claims were barred by California’s two year statute of limitations, which ran on November 7, 2013. *Id.* at 8 & n.3; *see also Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014) (because Section 1983 does not contain its own statute of limitations, federal courts apply the forum state’s statute of limitations for personal injury actions); Cal. Civ. Proc. Code § 335.1 (two year statute of limitations for personal injury actions in California).

The Court requires supplemental briefing from Plaintiffs and the City Defendants to address the following:

- 1) What allegations from Plaintiffs’ proposed Third Amended Complaint or Second Amended Complaint indicate that the claims against Officer Martinez and Sergeant

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

Leong accrued on November 7, 2011 or are otherwise timely?

- 2) Whether the statutory filing deadline for the claims against Officer Martinez and Sergeant Leong is subject to any defense, such as waiver or equitable tolling.

The City Defendants and Plaintiffs shall each have 5 pages, double-spaced to respond to the questions above. Plaintiffs' response is due by March 17, 2015, and the City Defendants' response is due by March 24, 2015.

IT IS SO ORDERED.

Dated: March 10, 2015



MARIA-ELENA JAMES
United States Magistrate Judge