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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 ROBERT AMATRONE, et al.,
8 Plaintiffs,
9 v.
10 ERIC WINKLER, et al.,
11 Defendants.

Case No. 17-cv-03003-JST

**ORDER GRANTING MOTION TO
DISMISS**

Re: ECF No. 15

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13 Before the Court is Defendant California Department of Insurance (“CDI”) and Defendant
14 Eric Winkler’s (collectively, “Defendants”) motion to dismiss. The Court will grant the motion.

15 **I. INTRODUCTION**

16 On May 24, 2017, Plaintiffs filed suit against CDI and Eric Winkler, a “Sergeant” with
17 CDI. ECF No. 1 at 2. Plaintiffs claim that Winkler and various law enforcement officials
18 conducted an illegal search of their home on March 26, 2014. Id.¹ During the search, Plaintiffs
19 allege that Winkler planted evidence “to build a criminal insurance fraud case against Robert
20 Amatrone.” Id. at 3. Plaintiffs also allege that Winkler interrogated Plaintiff Sharlow, threatened
21 her, and confiscated her property. Id. at 3-5. In addition to these facts specific to Defendants CDI
22 and Winkler, the Complaint contains multiple allegations relating to the other officials present
23 during the search. See generally ECF No. 1 (e.g., “Approximately 10 to 15 armed officers with
24 assault rifles and guns entered the home and held plaintiff Marla Sharlow at gun point.”)

25 Plaintiffs allege three causes of action. First, Plaintiffs “claim damages under 42 U.S.C.
26 § 1983 for the injuries set forth against Defendant Winkler.” ECF No. 1 at 5. Second, Plaintiffs

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28 ¹ This March 26 search is the subject of a second lawsuit, which is also pending before this Court.
Case No. 15-cv-1356. Plaintiffs named Defendant CDI and Winkler in that case as well.

1 assert a false imprisonment claim against Defendant Winkler. Id. Third, Plaintiffs assert a section
2 1983 claim against CDI for maintaining “policies or customs exhibiting deliberate indifference to
3 the constitutional rights of persons in the State of California which caused the violation of
4 Plaintiff’s rights.” Id. at 6. Defendants now move to dismiss all three claims. ECF No. 15.
5 Plaintiffs did not file an opposition to the motion.

6 **II. LEGAL STANDARD**

7 A complaint must contain “a short and plain statement of the claim showing that the
8 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While a complaint need not contain detailed
9 factual allegations, facts pleaded by a plaintiff must be “enough to raise a right to relief above the
10 speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). “To survive a motion
11 to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to
12 relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation
13 marks omitted). “A claim has facial plausibility when the plaintiff pleads factual content that
14 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
15 alleged.” Id. While the legal standard is not a probability requirement, “where a complaint pleads
16 facts that are merely consistent with a defendant’s liability, it stops short of the line between
17 possibility and plausibility of entitlement to relief.” Id. (internal quotation marks omitted). The
18 Court must “accept all factual allegations in the complaint as true and construe the pleadings in the
19 light most favorable to the nonmoving party.” Knievel v. ESPN, 393 F.3d 1068, 1072 (9th Cir.
20 2005).

21 **III. ANALYSIS**

22 **A. Section 1983 Claims**

23 Defendants’ first ground for relief is that Plaintiffs’ claims are barred by the Eleventh
24 Amendment to the United States Constitution. “[I]n the absence of consent a suit in which the
25 State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh
26 Amendment.” Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). The same
27 is true for “a suit against a state official in his or her official capacity[, which] is not a suit against
28 the official but rather is a suit against the official’s office.” Will v. Michigan Dep’t of State

1 Police, 491 U.S. 58, 71 (1989). Accordingly, all claims against the California Department of
2 Insurance and against Eric Winkler in his official capacity² are dismissed without prejudice to
3 Plaintiffs’ right to seek any available relief in state court.³ This finding does not apply to
4 Plaintiffs’ claims for “prospective injunctive relief,”⁴ Flint v. Dennison, 488 F.3d 816, 825 (9th
5 Cir. 2007), or to Plaintiffs’ claims against Eric Winkler in his personal capacity.

6 Those section 1983 claims that are not barred by the Eleventh Amendment were filed after
7 the applicable statute of limitations had expired. The statute of limitations for section 1983
8 actions is governed by the statute of limitations for personal injury actions in the forum state.
9 Maldonado v. Harris, 370 F.3d 945, 954 (9th Cir. 2004). In California, for conduct occurring after
10 2003, that statute of limitations is two years. Id. at 954-55. In this case, the allegedly wrongful
11 conduct occurred on March 26, 2014, ECF No. 1 at 2, yet Plaintiffs did not file suit until May 23,
12 2017. Plaintiffs’ remaining section 1983 claims are dismissed as untimely.⁵ Plaintiffs may file an
13 amended complaint to include tolling allegations.

14 **B. False Imprisonment Claim**

15 After dismissal of Plaintiffs’ section 1983 claims, only Plaintiffs’ state law false
16 imprisonment claim remains. “A district court’s decision whether to exercise [supplemental]
17 jurisdiction after dismissing every claim over which it had original jurisdiction is purely
18 discretionary.” Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639 (2009). Generally,
19 however, “if the federal claims are dismissed before trial, . . . the state claims should be dismissed
20 as well.” United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). Here, the Court

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22 ² Plaintiffs sued Winkler in his personal and professional capacity. ECF No. 1 at 2.

23 ³ “[A]s we have stated on many occasions, ‘the Eleventh Amendment does not apply in state
24 courts.’” Hilton v. S.C. Pub. Railways Comm’n, 502 U.S. 197, 204-05 (1991) (quoting Will v.
Michigan Dep’t of State Police, 491 U.S. 58, 63-64 (1989)).

25 ⁴ In their prayer for relief, Plaintiffs ask the Court to “[e]nter a permanent injunction . . . requiring
26 Defendant California Department of Insurance to adopt appropriate policies related to the hiring
and supervision of its offices.” ECF No. 1 at 7.

27 ⁵ Plaintiffs do not argue for delayed accrual of their claims based on the discovery rule. Nor does
28 their Complaint allege facts showing: “(1) the time and manner of discovery and (2) the inability
to have made earlier discovery despite reasonable diligence.” Fox v. Ethicon Endo-Surgery, Inc.,
110 P.3d 914, 921 (2005)

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declines to exercise supplemental jurisdiction over Plaintiffs’ false imprisonment claim.

CONCLUSION

The Court dismisses with prejudice Plaintiffs’ section 1983 claims for damages against Defendant CDI and Defendant Winkler in his official capacity. The Court dismisses without prejudice Plaintiffs’ section 1983 claims for prospective injunctive relief and against Defendant Winkler in his personal capacity. If Plaintiffs choose to re-plead those claims, they may also re-plead their state law false imprisonment claim. Any amended complaint is due by December 15, 2017.

IT IS SO ORDERED.

Dated: November 20, 2017



JON S. TIGAR
United States District Judge