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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

HARLAN DEAN GRAVES,
Plaintiff,
v.
LUIS MOSQUEDA,
Defendant.

Case No. [16-cv-03736-BLF](#)

**ORDER GRANTING IN PART MOTION
TO DISMISS WITH LEAVE TO
AMEND AND VACATING THE CASE
MANAGEMENT CONFERENCE**

[Re: ECF 13]

Plaintiff Harlan Dean Graves Jr., proceeding *pro se* and *in forma pauperis*, brings nine claims against Luis Mosqueda, a City of Monterey police officer: (1) violation of civil rights under 42 U.S.C. § 1983; (2) excessive use of force; (3) intentional infliction of emotional distress, (4) false imprisonment, (5) battery, (6) assault, (7) malicious prosecution, (8) negligence, and (9) malice. *See generally* Compl., ECF 1. Plaintiff’s allegations arise out of his arrest on June 29, 2014.

Now before the Court is Defendant’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Mot., ECF 13. For the reasons stated herein, Defendant’s motion is GRANTED IN PART WITH LEAVE TO AMEND. Accordingly, the Court VACATES the case management conference scheduled for January 5, 2017.

I. BACKGROUND

Graves claims that on June 29, 2014, he was using the Stevenson Monterey motel’s (“motel”) Wi-Fi signal from outside the premises. *Id.* at 5. After about half an hour, an employee instructed him to leave immediately. *Id.* Graves became upset, began crying, and declined to leave. *Id.* Several minutes later, Graves alleges that the police arrived and asked him several

1 questions, which he answered respectfully and completely. *Id.* Nevertheless, the police asked
2 Graves to stand up and put his hand behind his back because he was under arrest for public
3 intoxication. *Id.*

4 Graves objected to his arrest, stating that he was not drunk and encouraged the officers to
5 give him a breathalyzer test. *Id.* Graves refused to cooperate with the arrest and instructed Officer
6 Mosqueda to call his supervisor and obtain proof of intoxication. *Id.* Mosqueda ignored Graves,
7 and physically forced him out of the chair he was sitting in. *Id.* The officer then handcuffed
8 Graves and forced him into the patrol car, causing injuries to Plaintiff’s wrists and neck. *Id.*; Exs.
9 A& B to Compl., ECF 1. Graves was subsequently transported to the Monterey City Jail, cited for
10 a public intoxication charge, and released eight hours later. *Id.*

11 Mosqueda now moves to dismiss the action with prejudice because Plaintiff has not
12 alleged compliance with the California Government Claims Act, and even if he could allege
13 compliance, the statute of limitations bars the federal and state law claims. *See generally* Mot.
14 Mosqueda also argues that the first cause of action should be dismissed for failure to state a claim
15 because section 1983 is not a source of substantive rights. *Id.* Plaintiff did not file an opposition
16 to Defendant’s motion, and Defendant filed a notice of no opposition. ECF 17.

17 **II. LEGAL STANDARD**

18 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
19 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
20 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
21 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
22 as true all well-pled factual allegations and construes them in the light most favorable to the
23 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the
24 Court need not “accept as true allegations that contradict matters properly subject to judicial
25 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or
26 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
27 (internal quotation marks and citations omitted). While a complaint need not contain detailed
28 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to

1 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the
3 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

4 **III. DISCUSSION**

5 **A. California Government Claims Act**

6 Defendant first argues that Plaintiff’s state law claims must be dismissed because Graves
7 fails to allege compliance with California’s claims presentation requirements under the California
8 Tort Claims Act (“CTCA”), Cal. Gov’t Code § 905. Mot. 4–5. The CTCA provides, in relevant
9 part, that “a cause of action against a public employee or former public employee for injury
10 resulting from an act or omission in the scope of his employment as a public employee is barred if
11 an action against the employing public entity for such injury” is barred by the CTCA. Cal. Gov’t
12 Code § 950.2. As a result, “[b]efore a person can sue a public entity or public employee for
13 money damages for actions taken within the scope of the person’s employment, he or she must
14 first file a government claim.” *Robinson v. Alameda County*, 875 F. Supp. 2d 1029, 1043 (N.D.
15 Cal. 2012); *see also Briggs v. Lawrence*, 230 Cal. App. 3d 605, 612–13 (1991) (“[T]he Legislature
16 included in the Tort Claims Act what amounts to a requirement that . . . one who sues a public
17 employee on the basis of acts or omissions in the scope of the defendant’s employment have filed
18 a claim against the public-entity employer pursuant to the procedure for claims against public
19 entities.”). Claims under the CTCA must be filed within six months of the accrual of the cause of
20 action. *See A.C. by and through Calhoun v. City of Santa Clara*, No. C13-3276 EMC, 2014 WL
21 1678004, at *2 (N.D. Cal. Apr. 28, 2014). The claim filing requirement “must be satisfied even in
22 the face of the public entity’s actual knowledge of the circumstances surrounding the claim.” *City*
23 *of Stockton v. Superior Court*, 42 Cal. 4th 730, 738 (2007).

24 Mosqueda correctly argues that all of the claims against him in this action arise out of
25 actions or omissions he took within the scope of his employment as a City of Monterey police
26 officer. Mot. 5. Accordingly, the notice requirement of the CTCA applies. Defendant also
27 correctly argues that the complaint contains no allegations regarding compliance with the notice
28 requirement. Thus, the Court DISMISSES claims 3 through 9.

1 However, the Court will grant Graves leave to amend his complaint to include such
2 allegations because Defendant admits that Plaintiff actually did file a government claim in a timely
3 manner. Mot. 3 (“On December 17, 2014, the City received a Claim for Damages to Person or
4 Property (‘Tort Claim’) from Plaintiff alleging that he suffered bodily harm and emotional distress
5 as a result of his arrest by Officer Mosqueda.”); Ex. 1 to Freeman Decl., ECF 13-1 (Graves’ claim
6 form).

7 **B. Statute of Limitations**

8 Mosqueda also argues that the statute of limitations bars Graves’ state law and federal
9 claims. Mot. 5–8. As to the state law claims, under the CTCA, a litigant is required to file suit
10 within six-months after the public entity provides written notice rejecting the claim. Cal Gov’t
11 Code § 945.6(a)(1); *A.C. by and through Calhoun*, 2014 WL 1678004, at *2. The City mailed its
12 rejection of Graves’ Tort Claim on January 22, 2015. Mot. 6. Graves, however, did not
13 commence this action until July 1, 2016, a year and a half later and almost a year after the
14 limitations period expired.

15 As to the federal claims, section 1983 takes its limitations period from the forum state’s
16 statute of limitations for personal injury torts, *see Wilson v. Garcia*, 471 U.S. 261, 276 (1985),
17 which, in California, is two years. *Maldonado v. Harris*, 370 F.3d 945, 954–55 (9th Cir. 2004).
18 Here, Graves was arrested on June 29, 2014, and released from jail on June 30, 2014. Ex. A to
19 Compl.; Mot. 7. Thus, to be timely, Graves was required to file this action on or before June 30,
20 2016. Again, Graves did not commence this action until July 1, 2016.

21 Accordingly, the Court GRANTS Defendant’s motion to dismiss on this ground.
22 However, a motion to dismiss based on the statute-of-limitations defense should be granted “only
23 if the assertions of the complaint, read with the required liberality, would not permit the plaintiff
24 to prove that the statute was tolled.” *Conerly v. Westinghouse Elec. Corp.*, 623 F.2d 117, 119 (9th
25 Cir. 1980) (citation and internal quotation marks omitted). Therefore, in recognition of Plaintiff’s
26 *pro se* status, the Court grants Plaintiff LEAVE TO AMEND to allege facts relating to the
27 timeliness of his filing or reasons for his delay. *See, e.g., Azer v. Connell*, 306 F.3d 930, 936 (9th
28 Cir. 2002) (“Where the danger of prejudice to the defendant is absent, and the interests of justice

1 so require, equitable tolling of the limitations period may be appropriate.”); *Dutro v. Cty. of*
2 *Contra Costa*, No. 12-cv-2972, 2013 WL 544431, at *5 (N.D. Cal. Sept. 30, 2013) (“A public
3 entity may be estopped from asserting the limitations of the claims statute where its agents or
4 employees have prevented or deterred the filing of a timely claim by some affirmative act.”).

5 **C. Section 1983 Claims**

6 Lastly, Mosqueda argues that Graves’ first cause of action for deprivation of rights under
7 42 U.S.C. § 1983 should be dismissed because section 1983 is not a source of substantive rights.
8 Mot. 8. While Defendant is technically correct, courts are to broadly construe pleadings filed by
9 *pro se* litigants and give such plaintiffs “the benefit of any doubt.” *See, e.g., Bretz v. Kelman*, 773
10 F.2d 1026, 1027 n.1 (9th Cir. 1985). Looking at the complaint, it is evident that Graves brings his
11 section 1983 claim for excessive force and unlawful arrest in violation of his 4th Amendment
12 rights. *See* Compl. at 7–8. Accordingly, the Court DENIES Defendant’s motion as to this
13 argument.

14 **IV. ORDER**

15 For the foregoing reasons, IT IS HEREBY ORDERED that:

16 1. Defendant’s motion to dismiss the state law claims because Graves has not alleged
17 compliance with the CTCA is GRANTED WITH LEAVE TO AMEND. Plaintiff may amend his
18 complaint to allege that he timely filed a Tort Claim.

19 2. Defendant’s motion to dismiss the state law and federal claims as untimely is
20 GRANTED WITH LEAVE TO AMEND.

21 3. Defendant’s motion to dismiss Plaintiff’s first cause of action because section 1983
22 is not a source of substantive rights is DENIED.¹

23 Plaintiff must file any amended complaint **on or before January 13, 2017**. Failure to file
24

25 _____
26 ¹ The Court notes that much of Defendant’s motion is hyper-technical, particularly with regard to
27 challenging Plaintiff’s compliance with the CTCA while attaching his timely filed Tort Claim and
28 asking the Court to dismiss Plaintiff’s first cause of action because he erroneously split his claim
under section 1983 and the Fourth Amendment. As Defendant is aware, courts are to broadly
construe pleadings filed by *pro se* litigants and give such plaintiffs the benefit of the doubt. The
Court trusts that in any future motion to dismiss, if any, Defendant will not waste the Court’s
resources by invoking similar arguments that would not warrant dismissal.

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an amended complaint will result in dismissal of this action. Additionally, the case management conference scheduled for January 5, 2017, is VACATED.

IT IS SO ORDERED.

Dated: December 14, 2016


BETH LABSON FREEMAN
United States District Judge