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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMANDA SANTILLO,)	Case No.: 3:10-cv-02469 AJB (POR)
)	
Plaintiff,)	ORDER GRANTING DEFENDANT’S
v.)	MOTION TO DISMISS PLAINTIFF’S
)	FIRST, SECOND, THIRD, FIFTH, AND
UNITED STATES OF AMERICA,)	SIXTH CAUSES OF ACTION
ERIC NICHOLS CAMARILLO, and)	
DOES 1-10,)	
)	
Defendants.)	

On December 1, 2010, Plaintiff filed this action against Defendants, the United States of America, Eric Nichols Camarillo, and Does 1 through 10. (Doc. No. 1.) Pending is the United States’ Motion to Dismiss Plaintiff’s first, second, third, fifth, and sixth causes of action, filed March 25, 2011. (Doc. No. 5.)

RELEVANT CASE HISTORY

In her Complaint, Plaintiff alleges that Camarillo, a law enforcement officer employed by the United States Bureau of Prisons, raped Plaintiff against her will while she was an inmate at the Federal

1 Correctional Complex, Victorville. Plaintiff alleges that she became pregnant and sustained harm as a
2 result of the sexual assault.

3 Plaintiff brings this case against the USA pursuant to the Federal Tort Claims Act (FTCA) 28
4 U.S.C. § 1346(b) and against Camarillo pursuant to *Bivens v. Six Unknown Named Agents of the*
5 *Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges six causes of action: (1) Negligence
6 against the USA; (2) Negligent Hiring, Training, Retention and Supervision against the USA; (3)
7 Wrongful Conduct against the USA; (4) Violation of Plaintiff's Eighth Amendment Rights against
8 Camarillo; (5) Violation of California Civil Code Section 52.1 against Camarillo and Does 1-10; and (6)
9 Violation of Gender Motivated Violence Act 42 U.S.C. § 13981 *et seq.* against Camarillo and Does 1-
10 10.

11 On March 25, Defendant USA filed a motion to dismiss Plaintiff's first, second, third, fifth, and
12 sixth causes of action. Plaintiff's fourth claim alleging a *Bivens* claim against Camarillo is not
13 addressed in the Defendant's motion.

14 15 **LEGAL STANDARD FOR RULE 12(b)(6) MOTION TO DISMISS**

16
17 A complaint must contain "a short and plain statement of the claim showing that the pleader is
18 entitled to relief." Fed. R. Civ. P. 8(a). A motion to dismiss pursuant to Rule 12(b)(6) of the Federal
19 Rules of Civil Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R. Civ.
20 P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual
21 allegations pleaded in the complaint as true, and must construe them and draw all reasonable inferences
22 from them in favor of the nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th
23 Cir.1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations,
24 rather, it must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp.*
25 *v. Twombly*, 550 U.S. 544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual
26 content that allows the court to draw the reasonable inference that the defendant is liable for the
27 misconduct alleged." *Ashcroft v. Iqbal*, — U.S. —, 129 S.Ct. 1937, 1949 (2009) (citing *Twombly*,
28 550 U.S. at 556).

1 trative claim until March 17, 2010. The United States argues that her FTCA claims should be dismissed
2 for her failure to file within the required two year period.

3 In her response, Plaintiff acknowledges that more than two years passed between the alleged
4 rape and the filing of her FTCA claim. However, Plaintiff argues that the applicable time period is
5 tolled based on the time between the rape and her release from prison on March 17, 2008. California
6 Code of Civil Procedure 325.1 provides that when a person entitled to bring an action “is, at the time the
7 cause of action accrued, imprisoned on a criminal charge or in execution under the sentence of a
8 criminal court for a term less than for life, the time of that disability is not a part of the time limited for
9 the commencement of the action, not to exceed two years.”

10 The FTCA represents a waiver of the sovereign immunity of the United States, and, as such,
11 must be strictly construed. *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 94-95 (1990); *United States*
12 *v. Kubrick*, 444 U.S. 111, 117-18 (1979); *Soriano v. United States*, 352 U.S. 270, 276 (1957). While
13 substantively the FTCA follows state liability law, section 2401(b) unequivocally provides a statute of
14 limitations for FTCA claims in order to “encourage the prompt presentation of claims.” *Kubrick*, 444
15 U.S. at 117. Accordingly, courts look to state law for the purpose of defining the actionable wrong for
16 which the United States shall be liable under the FTCA, but to federal law for the limitations of time
17 within which the action must be brought. *Poindexter v. United States*, 647 F.2d 34, 36 (9th Cir. 1981).

18 While the statute of limitations for section 1983 and *Bivens* claims is generally the applicable
19 state-law period for personal-injury torts, this is because the civil rights statute governing these claims
20 does not provide a specific statute of limitations. In contrast, section 2401(b) of the FTCA clearly
21 provides that a “tort claim against the United States shall be forever barred unless it is presented in
22 writing to the appropriate Federal agency within two years after such claim accrues....” 28 U.S.C. §
23 2401(b). The FTCA statute of limitations governs, “even when the state period of limitations is longer
24 or shorter.” *Poindexter*, 647 F.2d at 36. Similarly, because section 2401(b) is considered jurisdictional,
25 the Ninth Circuit has refused to apply principles of equitable tolling to FTCA claims. *Marley v. United*
26 *States*, 567 F.3d 1030, 1038 (9th Cir. 2009).

27 Accordingly, California Code of Civil Procedure § 325.1 does not apply and Plaintiff failed to
28 file her action within the two year statute of limitations provided by section 2401(b) of the FTCA. Thus,

1 the Court grants Defendants' Motion to Dismiss with regard to Plaintiff's first, second, and third causes
2 of action and dismisses these claims with prejudice.

3 **B. Plaintiff's Fifth Cause of Action Must Be Dismissed for Lack of Subject Matter Jurisdiction**

4 Plaintiff's fifth cause of action alleges violations of section 52.1 of the California Civil Code
5 against Defendant Camarillo and Does 1-10. The United States contends Plaintiff's fifth cause of action
6 should be dismissed for lack of subject matter jurisdiction because it falls within the scope of the FTCA
7 and thus is untimely under the FTCA's two year statute of limitations. Plaintiff does not dispute that the
8 claims in her fifth cause of action are governed by the FTCA.

9 California Civil Code § 52.1 provides that if a person interferes, or attempts to interfere, by
10 threats, intimidation, or coercion with the exercise or enjoyment of the constitutional or statutory rights
11 of any individual, the individual may sue for damages independently of any other action that is
12 available. *See Xue Lu v. Powell*, 621 F.3d 944, 950 (9th Cir. 2010) (citing Cal. Civil Code § 52.1(a)-(b);
13 *Stamps v. Superior Court*, 136 Cal. App.4th 1441, 39 Cal. Rptr. 3d 706, 707-08 (2006)). Section 52.1
14 claims fall within the scope of the FTCA as recognized by the Ninth Circuit in *Xue Lu v. Powell*. 621
15 F.3d 944, 949-50 (9th Cir. 2010). As a result, Plaintiff's fifth cause of action suffers the same defi-
16 ciency as her first, second and third. Therefore, Plaintiff's section 52.1 claim is dismissed with
17 prejudice for failure to file within the FTCA's two year statute of limitations.¹ California Civil
18 Procedure § 325.1 does not apply for the reasons already explained by the Court.

19 **C. Plaintiff's Sixth Claim for Relief under the VAWA Should Be Dismissed**

20 The United States argues that Plaintiff's Sixth Cause of Action should be dismissed inasmuch as
21 the United States Supreme Court found the civil remedy provision in the VAWA unconstitutional as an
22 invalid exercise of federal power under the Commerce Clause in *United States v. Morrison*, 529 U.S.
23 598, 619, 627 (2000). In that case, the Supreme Court affirmed the dismissal of civil claims brought
24

25 ¹ Additionally, the United States argues that Plaintiff's fifth cause of action cannot be alleged
26 against Defendant Camarillo in his individual capacity inasmuch as the United States is the only proper
27 defendant in an FTCA action. As previously noted, Plaintiff does not dispute that her Fifth Cause of
28 Action is governed by the FTCA. Rather, she seeks leave to amend the complaint in order to reassert
her claim as against the United States. The proposed amendment would not remedy Plaintiff's failure to
file within two years of her claim's accrual as discussed above. Having dismissed Plaintiff's Fifth
Cause of Action for failing to comply with the FTCA's statute of limitations, the Court denies Plaintiff's
request for leave to amend her complaint as moot.

1 under section 13981. Plaintiff makes no response to the United States' argument regarding her Sixth
2 Cause of Action.


3 Having reviewed *United States v. Morrison*, the Court agrees with the United States. In
4 *Morrison*, the civil remedy provision of the VAWA was found unconstitutional. Accordingly, Plain-
5 tiff's Sixth Claim for Relief is dismissed with prejudice.

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7 **CONCLUSION**
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9 Based on the foregoing, the Court GRANTS the United States' Motion to Dismiss. (Doc. No. 5.)
10 Accordingly, it is ORDERED that Plaintiff's first, second, third, fifth, and sixth causes of action be, and
11 hereby are, DISMISSED WITH PREJUDICE, as any further amendment at this point would be futile..

12 IT IS SO ORDERED.

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14 DATED: July 13, 2011

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17 Hon. Anthony J. Battaglia
18 U.S. District Judge
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