

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  
SOUTHERN DISTRICT OF CALIFORNIA**

GLENN EDWIN CLAY

Plaintiff,

vs.

DENISE LANGFORD, LT. SAVALA,  
CARLOS RAMOS, MARK GOMES, M.  
HAWTHORNE, SILVIA GARCIA,

Defendants.

Civil No. 3:12-cv-3074-GPC-RBB

**ORDER GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
AND SUA SPONTE DISMISSING  
COMPLAINT WITH LEAVE TO  
AMEND**

On December 28, 2012, plaintiff Glenn Clay (“Plaintiff”), proceeding pro se, filed a complaint under 42 U.S.C. § 1983, against defendants D. Langford, G. Savala, C. Ramos, M. Gomes, M. Hawthorne, and S. Garcia (“Defendants”). Plaintiff also filed a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). Having reviewed Plaintiff’s Complaint and Motion to Proceed in Forma Pauperis, and for the reasons that follow, the Court **GRANTS** Plaintiff’s Motion to Proceed in Forma Pauperis but, because Plaintiff’s claims are time barred, the Court sua sponte **DISMISSES** Plaintiff’s claims **WITH LEAVE TO AMEND**.

1 **PLAINTIFF’S ALLEGATIONS**

2 Plaintiff filed suit following events he alleges occurred while incarcerated at R.J.  
3 Donovan Correctional Facility (“Donovan”) in San Diego, California. (ECF No. 1 at 5.)  
4 Plaintiff alleges Defendants, correctional officers at Donovan, violated his rights to due  
5 process, conspired against him, committed racial discrimination, violated his freedom of  
6 association, freedom of speech, freedom from cruel and unusual punishment, deprived  
7 him of his rights, violated his right to equal protection, violated federal civil procedure,  
8 committed negligence, and discriminated him. (Id. at 4, 10, 16, 28, 41, 54.) Plaintiff  
9 contends these violations occurred when the Defendants improperly terminated him as  
10 the “Lead Man” forklift operator at the Donovan “Minimum Support Warehouse” and  
11 by refusing to reinstate him. (Id. 4-8.)

12 Plaintiff was employed as a forklift “Lead Man” and worked under the direct  
13 supervision of defendant Lankford. (Id. at 4). Plaintiff argues that before Lankford  
14 became the supervisor of the support warehouse, the previous supervisor advised  
15 Plaintiff that Lankford was looking to terminate Plaintiff at the first opportunity. (Id. at  
16 94.) On March 27, 2007, while lowering a pallet in the warehouse with his forklift,  
17 Plaintiff struck a water pipe which subsequently caused it to break and leak. (Id. at 103,  
18 129.) Plaintiff claims that, following the accident, Lankford prepared a Rules Violation  
19 Report for the destruction of state property pursuant to Section 3011 of the California  
20 Cod of Regulations, due to unsafe operation of equipment. (Id. at 4, 103.) In the Rules  
21 Violation Report, Lankford recommended that Plaintiff be “immediately removed from  
22 his present job assignment.” (Id. at 75.) Having been terminated from his job at the  
23 support warehouse, Plaintiff took another job as a forklift operator in another section of  
24 the warehouse. (Id. at 21.)

25 Plaintiff proceeded to submit an inmate grievance against Lankford on April 3,  
26 2007, for improperly terminating Plaintiff as a forklift operator. (Id. at 69.) The  
27 grievance was denied at the informal level on May 15, 2007. (Id.) Plaintiff contends that  
28 while his grievances were proceeding, he accepted employment in a different section of

1 the support warehouse to maintain his grade as a forklift worker and to gain work  
2 experience. (Id. at 56.)

3 A rules violation hearing commenced on April 19, 2007, before the Senior Hearing  
4 Officer, defendant Savala. (Id. at 75.) This hearing took place while Plaintiff's inmate  
5 grievance against Lankford was still under review. (Id. at 69.) Plaintiff argues he  
6 appeared at the hearing but it was postponed due to witness unavailability. (Id. at 10.)  
7 When the hearing finally occurred, Plaintiff maintains that his witnesses appeared  
8 telephonically and that Savala relayed Plaintiff's questions to the witnesses. (Id.)

9 Defendant Gomes, the warehouse manager, and "Mr. Manning," a Material and  
10 Store Supervisor II in the laundry department, testified on Plaintiff's behalf. (Id. at 11,  
11 75.) Plaintiff asked Gomes, through the hearing officer, if Gomes had ever informed the  
12 inmates and staff in the warehouse about a department policy that workers would not be  
13 fired for accidents if they informed the staff of the accident. (Id. at 11.) Gomes replied,  
14 "No." (Id.) Gomes further testified that he had no knowledge of prior complaints or  
15 incidents involving the Plaintiff operating the forklift unsafely. (Id. at 75-76.) Finally,  
16 Gomes stated that the rules violation did not warrant Clay's termination as a forklift  
17 operator. (Id.)

18 Plaintiff next states that his supervisor, Manning, confirmed he was supervising  
19 Plaintiff at the time of the accident, that it was indeed an accident, and that Manning had  
20 never heard of Plaintiff operating the forklift unsafely. (Id.) Plaintiff maintains that, in  
21 light of the testimony by Manning and Gomes, and in "accordance with progressive  
22 discipline," the senior hearing officer reduced Plaintiff's offense from a CDCR-115  
23 Rules Violation Report to a less-serious CDCR-128A general chrono report. (Id.)  
24 Savala determined that Plaintiff should be reinstated to his former position. (Id. at 5.)  
25 Despite this ruling, Plaintiff argues that Lankford prevented Plaintiff from resuming his  
26 duties as "Lead Man" forklift operator. (Id. at 6.)

27 On June 18, 2007, Lankford submitted a general chrono report requesting that  
28 Plaintiff be removed from his job assignment in the clothing department at the minimum

1 support facility and reassigned elsewhere. (Id. at 100.) Lankford indicated that she filed  
2 the report out of concern for her safety because Clay frequently entered her area since  
3 his reassignment, glared at her, and made inflammatory comments. (Id.) According to  
4 Lankford, Plaintiff’s conduct created a hostile and inappropriate work environment for  
5 her. (Id.) Plaintiff contends that Lankford’s chrono resulted in his “permanent removal  
6 from the support warehouse.” (Id. at 6.) After submitting the chrono, Lankford hired a  
7 Caucasian inmate to accupy Plaintiff’s former position. (Id.) Plaintiff maintains that  
8 Lankford discriminated on the basis of race because she ultimately hired an “all White”  
9 work crew. (Id. at 7.)

10 Plaintiff appealed his grievance to the first formal level of review on June 19,  
11 2007. (Id. at 69.) Plaintiff’s first level response appeal was denied on August 15, 2007,  
12 and, on August 20, 2007, defendant Hawthorne explained that the appeal was denied  
13 because of concerns regarding staff safety. (Id. at 69, 86.) On October 12, 2007,  
14 defendant Garcia denied Plaintiff’s appeal at the second level. (Id. at 103-104.) Garcia  
15 emphasized the monetary loss to the state that was caused by Plaintiff’s accident and his  
16 unsafe operation of the forklift despite prior counseling. (Id.) On December 5, 2007,  
17 Plaintiff’s subsequent appeal to the director’s level of review was screened out and  
18 returned to Plaintiff. (Id. at 120.)

## 19 DISCUSSION

### 20 **I. Motion to Proceed In Forma Pauperis**

21 Plaintiff moves to proceed IFP under 28 U.S.C. § 1915(a). Section 1915(a) allows  
22 a court to authorize a lawsuit’s commencement without payment of the filing fee if the  
23 plaintiff submits an affidavit demonstrating his or her inability to pay the filing fee. 28  
24 U.S.C. § 1915(a). Such affidavit must include a complete statement of the plaintiff’s  
25 assets. Id.

26 Plaintiff has submitted an affidavit in support of his IFP motion indicating that he  
27 is currently unemployed and receives \$234.00 per month from her sister. Plaintiff  
28 declares that he has no checking, savings, IRA, or money market accounts. Plaintiff

1 declares he does not own a vehicle, real estate, stocks, bonds, securities, or other  
2 valuable property. Plaintiff declares he has no dependents nor any outstanding debts.  
3 Plaintiff does not, however, state whether he currently pays rent or not. Based on the  
4 information Plaintiff has provided, this Court concludes Plaintiff has sufficiently  
5 demonstrated he is unable to pay the filing fee. Accordingly, the Court **GRANTS**  
6 Plaintiff’s Motion to Proceed in Forma Pauperis.

7 **II. Sua Sponte Review**

8 **A. Legal Standards**

9 **1. 28 U.S.C. § 1915(a)**

10 Notwithstanding the payment of any filing fee or portion thereof, a complaint filed  
11 by any person seeking to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a) is  
12 subject to a mandatory and sua sponte review and dismissal by the court to the extent it  
13 is “frivolous, malicious, failing to state a claim upon which relief may be granted, or  
14 seeking monetary relief from a defendant immune from such relief.” 28 U.S.C. §  
15 1915(e)(2)(B); Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions  
16 of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); Lopez v. Smith, 203 F.3d  
17 1122, 1126-27 (9th Cir. 2000) (en banc). Section 1915 mandates that a court reviewing  
18 a complaint filed pursuant to the in forma pauperis provisions of section 1915 make and  
19 rule on its own motion to dismiss before directing that the complaint be served by the  
20 U.S. Marshal pursuant to Federal Rule of Civil Procedures, Rule 4(c)(2). Lopez, 203  
21 F.3d at 1127.

22 Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint.  
23 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule  
24 12(b)(6) where the complaint lacks a cognizable legal theory. Robertson v. Dean Witter  
25 Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984); see Neitzke v. Williams, 490 U.S.  
26 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a  
27 dispositive issue of law.”). Alternatively, a complaint may be dismissed where it  
28 presents a cognizable legal theory yet fails to plead essential facts under that theory.

1 Robertson, 749 F.2d at 534. While a plaintiff need not give “detailed factual  
2 allegations,” he must plead sufficient facts that, if true, “raise a right to relief above the  
3 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007).

4 To meet the requirements of Rule 12(b)(6), “a complaint must contain sufficient  
5 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
6 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 547).  
7 A claim is facially plausible when the factual allegations permit “the court to draw the  
8 reasonable inference that the defendant is liable for the misconduct alleged.” Id. In  
9 other words, “the non-conclusory ‘factual content,’ and reasonable inferences from that  
10 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss  
11 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). However, the court must  
12 assume the truth of the facts presented and construe all inferences from them in the light  
13 most favorable to the nonmoving party when reviewing a motion to dismiss under  
14 Rule 12(b)(6). Erickson v. Pardus, 551 U.S. 89, 94 (2007).

15 Where a plaintiff appears in propria persona in a civil rights case, the court must  
16 construe the pleadings liberally and afford the plaintiff any benefit of the doubt.  
17 Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 623 (9th Cir. 1988). The rule  
18 of liberal construction is “particularly important in civil rights cases.” Ferdik v.  
19 Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992). In giving liberal interpretation to a pro  
20 se civil rights complaint, courts may not “supply essential elements of claims that were  
21 not initially pled.” Ivey v. Bd. of Regents of the Univ. of Alaska, 673 F.2d 266, 268 (9th  
22 Cir. 1982). “Vague and conclusory allegations of official participation in civil rights  
23 violations are not sufficient to withstand a motion to dismiss.” Id.; see also Jones v.  
24 Cnty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984) (finding conclusory allegations  
25 unsupported by facts insufficient to state a claim under § 1983). “The plaintiff must  
26 allege with at least some degree of particularity overt acts which defendants engaged in  
27 that support the plaintiff’s claim.” Jones, 733 F.2d at 649 (internal quotation omitted).

28 Nevertheless, the court must give a pro se litigant leave to amend his complaint

1 “unless it determines that the pleading could not possibly be cured by the allegation of  
2 other facts.” Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting Doe v.  
3 United States, 58 F.3d 494, 497 (9th Cir. 1995)). Thus, before a pro se civil rights  
4 complaint may be dismissed, the court must provide the plaintiff with a statement of the  
5 complaint’s deficiencies. Karim-Panahi, 839 F.2d at 623-24. But where amendment of  
6 a pro se litigant’s complaint would be futile, denial of leave to amend is appropriate. See  
7 James v. Giles, 221 F.3d 1074, 1077 (9th Cir. 2000).

## 8                   2.     **42 U.S.C. § 1983**

9           To state a claim under 42 U.S.C. § 1983 (“Section 1983”), a plaintiff must allege  
10 facts sufficient to show (1) a person acting “under color of state law” committed the  
11 conduct at issue, and (2) the conduct deprived the plaintiff of some right, privilege, or  
12 immunity protected by the Constitution or laws of the United States. 42 U.S.C.A. §  
13 1983; Shah v. County of Los Angeles, 797 F.2d 743, 746 (9th Cir. 1986).

14           Section 1983 does not explicitly contain a statute of limitations. Wallace v. Kato,  
15 549 U.S. 384, 387 (2007). Federal courts typically apply the personal injury limitation  
16 period and applicable tolling statutes of the state in which they sit. Hardin v. Straub, 490  
17 U.S. 536, 539 (1989); Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009).  
18 Nonetheless, “the accrual date of a § 1983 cause of action is a question of federal law  
19 that is not resolved by reference to state law.” Wallace, 549 U.S. at 388. “Under federal  
20 law, a claim accrues when the plaintiff knows or should know of the injury that is the  
21 basis of the cause of action.” Douglas, 567 F.3d at 1109 (citing Johnson v. California,  
22 207 F.3d 650, 653 (9th Cir. 2000)). This occurs “when the plaintiff has ‘a complete and  
23 present cause of action.’” Wallace, 549 U.S. at 388 (quoting Bay Area Laundry & Dry  
24 Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192, 201 (1997)).

25           Where a plaintiff “alleges a number of discrete acts . . . , each of which allegedly  
26 violated [the plaintiff’s] constitutional rights[,]” claims based on acts that occurred  
27 beyond the statute of limitations period are time-barred. Carpinteria Valley Farms, Ltd.  
28 v. County of Santa Barbara, 344 F.3d 822, 829 (9th Cir. 2003) (affirming dismissal of

1 plaintiff's time-barred claims that were related to his timely-filed claims in a § 1983  
2 action); see also Rivas v. Cal. Franchise Tax Bd., 619 F. Supp. 2d 994, 1002 (E.D. Cal.  
3 2008) (refusing to apply continuing violation theory because defendants' discrete acts  
4 during an ongoing investigation gave rise to independent, actionable claims). A plaintiff  
5 may use the time-barred acts, however, "as evidence to establish motive and to put his  
6 timely-filed claims in context." Carpinteria Valley Farms, 344 F.3d at 829; Rivas, 619  
7 F. Supp. 2d at 1002. This principle applies to alleged acts of racial discrimination "even  
8 when they are related to acts alleged in timely filed charges. Each discrete  
9 discriminatory act starts a new clock for filing charges alleging that act." AMTRAK v.  
10 Morgan, 536 U.S. 101, 113 (2002).

### 11 3. Statute of Limitations

12 In California, the statute of limitations for personal injury claims is two years,  
13 which can be tolled for up to two years during a prisoner's incarceration. Cal. Code Civ.  
14 Proc. §§ 335.1, 352.1(a). The Ninth Circuit has held that "actual, uninterrupted  
15 incarceration is the touchstone' for applying California's tolling provision for the  
16 disability of imprisonment." Jones v. Blanas, 393 F.3d 918, 928 (9th Cir. 2004) (quoting  
17 Elliott v. City of Union City, 25 F.3d 800, 803 (9th Cir. 1994)); see also King v. Fresno  
18 Police Officers, 2008 U.S. Dist. LEXIS 27035, at \*10 (E.D. Cal. Mar. 26, 2008)  
19 (concluding plaintiff was not entitled to tolling because he was not continuously  
20 incarcerated for the entire two-year period after the accrual of his cause of action). "It  
21 is the defendant's burden to prove that plaintiff filed his claims after the expiration of the  
22 statute of limitations, but it is the plaintiff's burden to show he is entitled to equitable  
23 tolling." Sumahit v. Parker, 2009 U.S. Dist. LEXIS 78973, at \*5-6 (E.D. Cal. Sept. 3,  
24 2009) (discussing the defendant's burden in the section 352.1 context).

### 25 B. Analysis

#### 26 1. Lankford

27 Plaintiff alleges Lankford violated his rights to due process, freedom of  
28 association, free speech, freedom from cruel and unusual punishment, equal protection,



1 and federal civil procedure. (Dkt. No. 1 at 4.) Plaintiff further states Lankford  
2 committed the following: conspiracy, racial discrimination, deprivation of rights,  
3 negligence, and discrimination. (Id.) Plaintiff insists that Lankford engaged in racial  
4 discrimination by causing Plaintiff’s termination and by hiring a Caucasian inmate to  
5 replace him to create an “all White” workforce. (Id. at 7.) Plaintiff also asserts  
6 Lankford’s general chrono was submitted in retaliation for Plaintiff’s grievance against  
7 her. (Id. at 6.) Plaintiff further alleges Lankford’s chrono was racially motivated. (Id.)

8 Plaintiff’s alleges his removal from the support warehouse resulted from the  
9 forklift accident which occurred on March 27, 2007. (Id. at 4, 103). Sometime after the  
10 Rule Violation Hearing that took place on April 20, 2007 – where Savala decided that  
11 Plaintiff should be reinstated as “Lead Man” forklift operator but before Lankford  
12 submitted a general chrono report against Plaintiff on June 18, 2007 – Lankford refused  
13 to reinstate Plaintiff as “Lead Man” forklift operator. (Id. at 7.)

14 The allegations in Count 1 have all arisen as a result of the above events, the last  
15 event occurring on June 18, 2007. It is unclear when Plaintiff was released from prison.  
16 It is also unclear whether the two-year tolling provisions applies. Jones, 393 F.3d at 927  
17 (holding that tolling based on imprisonment does not apply to a civil detainee).  
18 Nonetheless, because Plaintiff filed his complaint on December 28, 2012, even if tolling  
19 applies, more than four years would have passed after any of the events that gave rise to  
20 Plaintiff’s allegations. Plaintiff’s claims are thus time-barred. This Court therefore  
21 **DISMISSES** Plaintiff’s claims in Count One to the extent that they originated from  
22 events occurring on December 28, 2008, or before that date.

## 23 2. Savala

24 Plaintiff claims Savala violated his rights to due process, freedom of association,  
25 free speech, freedom from cruel and unusual punishment, equal protection, and federal  
26 civil procedure. (Dkt. No. 1 at 10.) Plaintiff further asserts that Savala committed the  
27 following: conspiracy, racial discrimination, deprivation of rights, negligence, and  
28 discrimination. (Id.) Plaintiff alleges that, on April 19, 2007, Savala unnecessarily

1 postponed the rules violation hearing, failed to stop the hearing at the required intervals,  
2 and prevented Plaintiff from interviewing witnesses in person. (Id. at 10-14.)

3 Because Plaintiff filed his complaint on December 28, 2012, more than four years  
4 after any of the events that gave rise to Plaintiff's allegations occurred, Plaintiff's claims  
5 are time-barred from any relief. This Court therefore **DISMISSES** Plaintiff's claims in  
6 Count Two to the extent that they originated from events occurring on December 28,  
7 2008, or before that date.

### 8 3. Ramos

9 Plaintiff alleges Ramos violated his rights to due process, freedom from cruel and  
10 unusual punishment, equal protection, and federal civil procedure. (Id. at 16.) Plaintiff  
11 further states that Ramos committed the following: conspiracy, racial discrimination,  
12 deprivation of rights, and negligence. (Id.) Plaintiff alleges Ramos is responsible for  
13 such transgressions because he failed to use his authority to reinstate Plaintiff to his job  
14 in the warehouse. (Id.).

15 Plaintiff attempts to establish Ramos' liability by arguing that Ramos supported  
16 his subordinate, Lankford, during Plaintiff's initial removal on March 27, 2007, and  
17 failed to reinstate him after the disciplinary hearing on April 20, 2007. (Id.) The  
18 allegations in Count Three have all arisen as a result of the above events, the last event  
19 occurring on April 20, 2007. Because Plaintiff filed his complaint on December 28,  
20 2012, more than four years after any of the events that gave rise to Plaintiff's allegations  
21 occurred, Plaintiff's claims are time-barred from any relief. This Court therefore  
22 **DISMISSES** Plaintiff's claims in Count Three to the extent that they originated from  
23 events occurring on December 28, 2008, or before that date.

### 24 4. Gomes

25 Plaintiff alleges Gomes violated his rights to due process, freedom of association,  
26 free speech, freedom from cruel and unusual punishment, equal protection, and federal  
27 civil procedure. (Id. at 28.) Plaintiff further states that Gomes committed the following:  
28 conspiracy, racial discrimination, negligence, and discrimination. (Id.) Plaintiff bases

1 these allegations on the theory that Gomes should have overruled his subordinates and  
2 reinstated Plaintiff to his position as “Lead Man” forklift operator at the support  
3 warehouse. (Id. at 30.) Plaintiff also maintains that Gomes lied while testifying at  
4 Plaintiff’s disciplinary hearing. (Id. at 32.) Additionally, Plaintiff urges an investigation  
5 into the prison policy which allegedly enables a staff member to displace an inmate from  
6 his job assignment by submitting a chrono alleging safety concerns because it constitutes  
7 racial discrimination. (Id. at 35.)

8 The allegations in Count Four have all arisen as a result of the above events, the  
9 last event occurring on June 18, 2007, when Lankford submitted the general chrono  
10 report. Because Plaintiff filed his complaint on December 28, 2012, more than four  
11 years after any of the events that gave rise to Plaintiff’s allegations occurred, Plaintiff’s  
12 claims are time-barred from any relief. This Court therefore **DISMISSES** Plaintiff’s  
13 claims in Count Four to the extent that they originated from events occurring on  
14 December 28, 2008, or before that date.

## 15 5. Hawthorne

16 Plaintiff alleges Hawthorne violated his rights to due process, freedom of  
17 association, free speech, freedom from cruel and unusual punishment, equal protection,  
18 and federal civil procedure. (Id. at 41.) Plaintiff further states that Hawthorne  
19 committed the following: conspiracy, negligence, and discrimination. (Id.) Plaintiff  
20 bases these allegations on Hawthorne’s failure to exercise her supervisory authority.  
21 (Id.) In addition, Plaintiff contends that Hawthorne should have conducted the interview  
22 with Plaintiff in person rather than telephonically, as not doing so constituted a violation  
23 of his due process. (Id. at 42.) Plaintiff further contends that Hawthorne should have  
24 been aware of the racial discrimination occurring among staff within Donovan. (Id. at  
25 45-46.)

26 Because Plaintiff filed his complaint on December 28, 2012, more than four years  
27 after any of the events that gave rise to Plaintiff’s allegations occurred, Plaintiff’s claims  
28 are time-barred from any relief. This Court therefore **DISMISSES** Plaintiff’s claims in

1 Count Five to the extent that they originated from events occurring on December 28,  
2 2008, or before that date.

3 **6. Garcia**

4 Plaintiff alleges Garcia violated his rights to due process, freedom of association,  
5 free speech, freedom from cruel and unusual punishment, equal protection, and federal  
6 civil procedure. (Id. at 54.) Plaintiff further states that Garcia committed the following:  
7 conspiracy, racial discrimination, deprivation of rights, negligence, and discrimination.  
8 (Id.) Plaintiff argues Garcia was aware that his subordinates' acts were motivated by a  
9 discriminatory intent, and is thus responsible for any and all of the transgressions that  
10 they committed under his supervision. (Id.)

11 Because Plaintiff filed his complaint on December 28, 2012, more than four years  
12 after any of the events that gave rise to Plaintiff's allegations occurred, Plaintiff's claims  
13 are time-barred from any relief. This Court therefore **DISMISSES** Plaintiff's claims in  
14 Count Six to the extent that they originated from events occurring on December 28,  
15 2008, or before that date.

16 **CONCLUSION**

17 Having concluded Plaintiff's claims are time barred, the Court finds it unnecessary  
18 to address the specifics of each and every claim.<sup>1</sup> Accordingly, **IT IS HEREBY**  
19 **ORDERED** that:

- 20 1. Plaintiff's Motion to Proceed in Forma Pauperis is **GRANTED**;
- 21 2. All of Plaintiff's claims are **DISMISSED**;
- 22 3. Plaintiff is granted leave to file an amended complaint to address the statute

23 ///

24 ///

---

27 <sup>1</sup> The Court notes this is the second time Plaintiff has filed these claims. Plaintiff's prior  
28 complaint was dismissed and Plaintiff was granted leave to amend his prior complaint. Plaintiff failed  
to do so within the time prescribed, which resulted in the dismissal of the prior case. See Clay v.  
Lankford, 2012 WL 947805 (S.D. Cal. March 20, 2012).

1 of limitations issues noted herein and must file any such an amended complaint on or  
2 before **April 26, 2013**.

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

DATED: March 13, 2013

  
HON. GONZALO P. CURIEL  
United States District Judge