

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Jamal Damon Hendrix,
5 Plaintiff

6 v.

7 Elizabeth Neighbors, et al.,
8 Defendants

2:13-cv-01527-JAD-CWH

**Order Granting Motion for Judgment on
the Pleadings, Denying as Moot Other
Pending Motions, and Closing Case**

[ECF Nos. 109, 110, 111, 112, 113, 114, 117]

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10 Pro se plaintiff Jamal Hendrix sues 12 defendants under 42 U.S.C. § 1983 in this civil-
11 rights case that arose out of three incidents that occurred in 2010 and 2011 while Hendrix was
12 detained at the Clark County Detention Center (CCDC) and the Lakes Crossings Center.¹ The
13 only defendants who have been properly served—Rebecca Kelly, Darren O’Barr, and Lyle
14 Rohan—filed a motion for judgment on the pleadings against Hendrix, arguing that his claims
15 are time barred.² Hendrix has not responded to the defendants’ motion, and his time to do so
16 expired more than a month ago. But Hendrix has filed three motions to effectuate service on the
17 defendants who have not yet been properly served,³ a motion to conduct discovery,⁴ and a request
18 for a courtesy copy of the civil docket sheet in this case.⁵

19 To fully appreciate the status and scope of these proceedings, Magistrate Judge Hoffman
20 ordered the parties to file a status report: (1) apprising the court of the defendants who have not
21 yet been served; (2) providing, if available, new or updated contact information for the unserved
22 defendants; and (3) if relevant, informing the court which third-parties Hendrix will subpoena to
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25 ¹ ECF No. 83.

26 ² ECF No. 113.

27 ³ ECF Nos. 109, 110, 111.

28 ⁴ ECF No. 112.

⁵ ECF No. 114.

1 obtain the contact information for the unserved defendants.⁶ Defendants Kelly, O’Barr, and
2 Rohan responded to Magistrate Judge Hoffman’s questions.⁷ Hendrix responded by objecting to
3 Judge Hoffman’s order and requesting a copy of the civil docket sheet in this case.⁸

4 My analysis begins and ends with the defendants’ unopposed motion for judgment on the
5 pleadings. Although Hendrix did not oppose that motion, he does allege in his amended
6 complaint that his original complaint was filed “late” because he was incompetent from 2009
7 until June 10, 2011.⁹ I interpret that allegation as invoking either statutory or equitable tolling
8 principles to delay the statute of limitations that is applicable to Hendrix’s claims from expiring.
9 But even when taking the incompetency allegations in Hendrix’s amended complaint as true and
10 tolling the statute of limitations during this alleged incompetency, I find that his claims were
11 filed fatally late. Accordingly, I grant the defendants’ motion for judgment on the pleadings.
12 And because it is clear from the face of Hendrix’s amended complaint that **all** of his claims in
13 this case (against any defendant, served or yet unserved) are untimely and must be dismissed on
14 that basis, I deny as moot the host of motions that Hendrix has filed: an objection to Magistrate
15 Judge Hoffman’s order to file a status report,¹⁰ three motions to effectuate service on those
16 defendants who have not yet been properly served,¹¹ a motion to conduct discovery,¹² and two
17 requests for a copy of the civil docket sheet in this case,¹³ and I instruct the Clerk of Court to
18 close this case.

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20 ⁶ ECF No. 115.

21 ⁷ ECF No. 116.

22 ⁸ ECF No. 117.

23 ⁹ ECF No. 83 at 11, ¶ 26.

24 ¹⁰ *Id.*

25 ¹¹ ECF Nos. 109, 110, 111.

26 ¹² ECF No. 112.

27 ¹³ ECF Nos. 114, 117.

1 **Discussion**

2 **A. Judgment on the pleadings standard**

3 “A judgment on the pleadings is properly granted when, taking all the allegations in the
4 non-moving party’s pleadings as true, the moving party is entitled to judgment as a matter of
5 law.”¹⁴ The moving party bears the burden of establishing that, “on the face of the pleadings[,]”
6 no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of
7 law.”¹⁵ A claim can be dismissed under FRCP 12(c) as time barred only when “the running of
8 the statute [of limitations] is apparent on the face of the complaint.”¹⁶

9 **B. It is apparent on the face of Hendrix’s amended complaint that his claims are**
10 **untimely.**

11 “Section 1983 does not contain its own statute of limitations.”¹⁷ Federal courts therefore
12 “apply the forum state’s statute of limitations for personal injury actions, along with the forum
13 state’s law regarding tolling, including equitable tolling, except to the extent any of these laws is
14 inconsistent with federal law.”¹⁸ The statute of limitations for filing a personal injury action in
15 Nevada is two years.¹⁹ Federal law supplies the rule for determining when a civil-rights claim
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20 ¹⁴ *U.S. v. Teng Jiao Zhou*, 815 F.3d 639, 642 (9th Cir. 2016) (quoting *Fajardo v. Cty. of L.A.*, 179
21 F.3d 698, 699 (9th Cir. 1999)).

22 ¹⁵ *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

23 ¹⁶ *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006) (quoting *Jablon v. Dean*
24 *Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)).

25 ¹⁷ *Butler v. Nat. Comm. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014).

26 ¹⁸ *Id.* (quoting *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007) (internal
27 quotations and quoted reference omitted).

28 ¹⁹ NEV. REV. STAT. § 11.190(4)(e).

1 accrues.²⁰ “Under federal law, a claim accrues when the plaintiff knows or has reason to know of
2 the injury which is the basis of the action.”²¹

3 Hendrix alleges that his civil rights were violated on three occasions: (1) on June 19,
4 2010, at the CCDC when correctional officers and sergeants allowed another inmate to attack
5 him and then unnecessarily restrained him and injured him in the process; (2) on June 13, 2011,
6 when the Clark County Citizen Review Board dismissed Hendrix’s pre-June 19, 2010, complaint
7 alleging inmate abuse at the CCDC; and (3) on July 2, 2010, when Hendrix was denied medical
8 treatment for injuries that he sustained in the June 19, 2010, incident.²² Hendrix did not file suit
9 until August 22, 2013.²³

10 Hendrix alleges in his amended complaint that he did not timely pursue his § 1983 claims
11 that arose from these incidents because he was incompetent from the time in 2009 that his
12 attorney in an unrelated criminal case in state court “filed a Motion for Competency Evaluation”
13 until the state-court judge found him to be competent to stand trial in that case on June 10,
14 2011.²⁴ Hendrix alleges that all of his “grievances were denied at all subsequent levels by the
15 [CCDC] officials[,]”²⁵ but he raises no material issue of fact in his amended complaint that the
16 limitations period should be tolled beyond the 2009 to June 10, 2011, time period when he
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19 ²⁰ *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999) (citing *Elliott v. City of Union City*, 25
20 F.3d 800, 801–02 (9th Cir. 1994)).

21 ²¹ *Id.* (citing *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996)).

22 ²² ECF No. 83 at 6–12, ¶¶ 15–27.

23 ²³ ECF No. 1.

24 ²⁴ ECF No. 83 at 11, ¶ 26. The defendants devote a portion of their motion to addressing
25 Hendrix’s allegation that he filed his complaint late because he gained knowledge of how to file
26 a civil-rights claim only after being able to work with the prison law clerks. *See* ECF No. 113 at
27 4:8–11 (citing ECF No. 9 at 9). But Hendrix did not restate that allegation in his amended
complaint, *see generally* ECF No. 83, so I do not consider it.

28 ²⁵ *Id.* at 25, ¶ 53.

