

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

2015 DEC 11 PM 2:45

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY SW  
DEPUTY

TROY DANIEL THOELE #1784662,  
Plaintiff,

-vs-

Case No. A-15-CA-997-SS

GREG ABBOTT, MARGIE JOHNSON, ROSS  
BEHRENS, and KEN PAXTON,  
Defendants.

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ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiff Troy Daniel Thoele (Thoele's) Complaint [#1], the Report and Recommendation of United States Magistrate Judge Andrew W. Austin [#5], and Thoele's Objections [#9].

All matters in this case were referred to United States Magistrate Judge Andrew W. Austin for report and recommendation pursuant to 28 U.S.C. § 636(b) and Rule 1(f) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Thoele is entitled to de novo review of the portions of the Magistrate Judge's report to which he filed specific objections. 28 U.S.C. § 636(b)(1). All other review is for plain error. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc). Nevertheless, this Court has reviewed the entire file de novo, and agrees with the Magistrate Judge's recommendation.

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## **Background**

This case involves an alleged violation of the Federal Stored Communications Act. *See* 18 U.S.C. §§ 2701–2712. At the time of filing his complaint on November 2, 2015, Thoele was incarcerated in the Huntsville Unit of the Texas Department of Criminal Justice. Thoele had previously been convicted of almost fifty counts of possession of child pornography and sentenced to ten years in prison for each count.

Thoele sues Greg Abbott, Margie Johnson, Ross Behrens, and Ken Paxton, specifically alleging Johnson and Behrens violated the Stored Communications Act and various state laws while working for the Texas Attorney General’s Office. He further alleges Greg Abbott established an official policy or unofficial custom at the Attorney General’s Office of using the Travis County grand jury to issue fraudulent subpoenas to circumvent the requirements of the Stored Communications Act and various state laws.

Thoele seeks a declaratory judgment that his rights have been violated and an injunction ordering Attorney General Ken Paxton to eliminate the policy or custom of using fraudulent subpoenas to illegally obtain subscriber billing information.

## **Analysis**

The Court dismisses Thoele’s complaint for two reasons: (1) his claims under the Stored Communications Act are time-barred, and (2) the Court declines to exercise supplemental jurisdiction over the remaining state law claims.

### **I. Statute of Limitations**

Under the Stored Communications Act, “[a] civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a

reasonable opportunity to discover the violation.” 18 U.S.C. § 2707(f). Thoele committed the offenses on June 8, 2011. He was convicted and sentenced on April 12, 2012. The Court agrees with the Magistrate Judge that Thoele would have had a reasonable opportunity to discover a potential violation of the Stored Communications Act no later than the date of his conviction. However, Thoele did not file his complaint until October 30, 2015, well after the two-year statute of limitations expired. As a result, Thoele’s claims under the Stored Communications Act are time-barred.

## **II. Supplemental Jurisdiction**

In addition to his Stored Communications Act claims, Thoele also asserts various state law claims. A district court may decline to exercise supplemental jurisdiction over a state claim where the claim raises novel or complex issues of state law, where the state claim predominates over the federal claims, where all federal claims have been dismissed, or where there are other compelling reasons to decline jurisdiction. 28 U.S.C. § 1367(c). Because the Court dismisses Thoele’s federal claims as time-barred, the Court declines to exercise supplemental jurisdiction over the remaining state law claims.

### **Conclusion**

Accordingly,

IT IS ORDERED that Plaintiff Troy Daniel Thoele’s Objections [#9] are OVERRULED;

IT IS FURTHER ORDERED that the Report and Recommendation of United States Magistrate Judge Andrew W. Austin [#5] is ACCEPTED;

IT IS FINALLY ORDERED that Plaintiff Troy Daniel Thoele’s Complaint [#1] is DISMISSED WITH PREJUDICE as time-barred.

SIGNED this the 11<sup>th</sup> day of December 2015.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE