

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 TOMMY MARKS,
10 Plaintiff,
11 v.

No. 2:15-cv-00095-SAB

**ORDER RE: PENDING
MOTIONS; CLOSING FILE**

12 STATE OF WASHINGTON, and JAY
13 INSLEE; JOHN CHEEMAN; PATTY
14 MURRAY; KATH M. RODGERS;
15 ROSAUERS SUPERMARKETS; DAVID
16 A. CONDON; BEN STUCKART; JOLE
17 MCCLAIN; LONNIE TOFSRUD,
18 Defendants.
19

20 Sometime in March, 2015, Plaintiff filed pro se a Complaint in the Spokane
21 County Superior Court. Defendant removed the action on April 7, 2015. ECF No.
22 1.

23 In his Complaint, Plaintiff named the State of Washington as the Defendant,
24 but listed other individuals in the caption of the Complaint, along with Rosauers
25 Supermarkets. Plaintiff alleges that Defendants violated his civil rights, committed
26 assault, battery, slander, libel, reckless endangerment, harassment, intimidation,
27 negligence, gross negligence, abuse of authority/child abuse, and interference with
28 parent and child custodial authority, reckless infliction of emotional distress,

ORDER RE: PENDING MOTIONS; CLOSING FILE ~ 1

1 tortious conduct, and outrageous conduct.

2 The factual allegations can be summarized as follows:

3 1. Plaintiff's father was harassed by a state trooper. The state trooper
4 terrorized, stalked, and harassed Plaintiff's family for 21 years
5 because of the lawsuit that Jimmy Marks filed against the City of
6 Spokane.

7 2. Plaintiff was harassed by employees of the Washington State
8 Patrol and by employees of the Spokane Valley Sheriffs. As a result,
9 he moved to the west side and changed his name.

10 3. He continued to be harassed when living in Tacoma, and he and
11 his family were victims of harassment from the Fircrest Police
12 Department in Fircrest, Washington.

13 4. He was a victim of an attempted murder that took place in Fircrest,
14 Washington, but the police would not protect his family.

15 (ECF No. 1, Attach. 1.)

16 Defendant John Cheeman filed a Motion to Dismiss, ECF No. 3; the
17 Washington State Defendants filed a Motion for Summary Judgment, ECF No. 6;
18 Defendants David Condon, Ben Stuckart, Lonnie Tofsrud filed a Motion to
19 Dismiss, ECF No 18; and Rosauers Supermarket, Inc. filed a Motion to Dismiss,
20 ECF No. 36. Plaintiff has not filed a timely response to any of the motions, even
21 though the Court set out a briefing schedule and continued the hearing on the
22 pending motions to give Plaintiff adequate time to file a response. ECF No. 26.

23 **1. Defendant John Cheeman's Motion to Dismiss, ECF No. 3**

24 The Court grants Defendant John Cheeman's Motion to Dismiss. Plaintiff
25 has failed to state a claim upon which relief can be granted. In reviewing the
26 Complaint, it is clear that Plaintiff has not asserted any alleged conduct by
27 Defendant. Also, it appears that any cause of action against Defendant would be
28 barred by the statute of limitations.

1 **2. Washington State Defendants’ Motion for Summary Judgment,**
2 **ECF No. 6**

3 The Court grants the Washington State Defendant’s Motion for Summary
4 Judgment. There are no genuine issues of material fact and Defendants are entitled
5 to judgment as a matter of law. Plaintiff’s Complaint fails to state a claim upon
6 which relief can be granted, and Plaintiff fails to plead facts necessary to support
7 his claims. Also, it appears the Court lacks subject matter jurisdiction over
8 Plaintiff’s state law claims because he failed to file a statutory tort claim with the
9 State of Washington prior to commencing this action.

10 **3. City of Spokane Defendants’ Motion to Dismiss, ECF No. 18**

11 The Court grants the City of Spokane Defendants’ Motion to Dismiss, ECF
12 No. 18. The allegations in Plaintiff’s Complaints do not mention Defendants
13 Condon, Stuckart, or Tofsrud by name, and his claims lie well outside the
14 applicable statute of limitations. Also, Plaintiff failed to file a notice of his
15 Washington state claims as required under Wash. Rev Code § 4.92.100.

16 **4. Defendant Rosauers Supermarket’s Motion to Dismiss, ECF No. 36**

17 The Court grants Defendant Rosauers Supermarket’s Motion to Dismiss.
18 Plaintiff failed to properly serve Rosauers and more that 120 days have passed
19 since he filed the Complaint. Moreover, Plaintiff failed to plead any factual
20 content in which plausible relief could be afforded as to Rosauers. Plaintiff’s
21 Complaint only mentions Rosauers in the caption, and it is otherwise completely
22 absent of any references to Rosauers. It fails to explain how Rosauers is liable for
23 any of the wrongful conduct alleged in the Complaint, and fails to present any
24 discernible link between Rosauers and the alleged claims. No reasonable inference
25 can be drawn from the plead facts that Rosauers is liable for the alleged
26 misconduct. Additionally, it appears that the applicable statute of limitations has
27 expired.

28 ///

1 **5. Remaining Defendants and Claims**

2 The Court dismisses any remaining claims asserted against Defendants,
3 Patty Murray, Kath [sic] M. Rodgers, and Jole McClain. While these Defendants
4 are named in the caption, Plaintiff has not provided any factual basis for his claims
5 nor has he any alleged conduct by these Defendants.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Defendant John Cheeman's Motion to Dismiss, ECF No. 3, is
8 **GRANTED.**

9 2. The Washington State Defendants' Motion for Summary Judgment,
10 ECF No. 6, is **GRANTED.**

11 3. The City of Spokane Defendants' Motion to Dismiss, ECF No. 18, is
12 **GRANTED.**

13 4. Defendant Rosauers' Motion to Dismiss, ECF No. 36, is **GRANTED.**

14 5. Plaintiff's Motion for the State and Rosauers Supermarket and all Who
15 Have Been Subpoenaed to Provide All Evidence, ECF No. 32, is **DENIED**, as
16 moot.

17 6. All remaining motions are **denied**, as moot.

18 7. The above-captioned Complaint is **dismissed** with prejudice.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
20 file this Order, provide copies to Plaintiff and counsel, and close the file.

21 **DATED** this 20th day of August, 2015.



25
26

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

27 Stanley A. Bastian
28 United States District Judge