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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 R.N., et al.,

9 Plaintiffs,

v.

10 MARK S. REDAL, et al.,

11 Defendants.

CASE NO. C16-5059 BHS

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

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13 This matter comes before the Court on Defendants' motion for summary
14 judgment. Dkt. 26. The Court has considered the pleadings filed in support of and in
15 opposition to the motion and the remainder of the file and hereby grants the motion for
16 the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On January 21, 2016, Plaintiffs filed their complaint in this action. Dkt. 1. On
19 February 5, 2016, Plaintiffs filed an amended complaint. Dkt. 3. Plaintiffs asserts claims
20 against Defendants under 42 U.S.C. § 1983 for alleged violations of the Fourteenth
21 Amendment. *Id.* at 12. On February 23, 2016, Defendants answered the amended
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1 | complaint, asserting that Plaintiffs' claims are barred by the applicable statute of
2 | limitations. Dkt. 6. at 7.

3 | On May 11, 2017, Defendants moved for summary judgment on the grounds that
4 | the applicable statute of limitations bars this action. Dkt. 26. On June 12, 2017, Plaintiffs
5 | responded. Dkts. 31, 34. On June 23, 2017, Defendants replied. Dkt. 40.

6 | **II. FACTUAL BACKGROUND**

7 | This case revolves around the repeated rape and frequent sexual abuse suffered by
8 | Plaintiffs as children when Washington Department of Social and Health Services
9 | ("DSHS") placed them in the care of the Kiwanis Vocational Home ("KVH"). The
10 | numerous instances of sexual abuse of Plaintiffs occurred from 1988 through 1991.
11 | Plaintiffs S.C., R.N., and J.W. reached the age of majority at 18 years old in 1991, 1994,
12 | and 1995, respectively. They commenced this action on January 21, 2016.

13 | **III. DISCUSSION**

14 | **A. Summary Judgment Standard**

15 | Summary judgment is proper only if the pleadings, the discovery and disclosure
16 | materials on file, and any affidavits show that there is no genuine issue as to any material
17 | fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
18 | The moving party is entitled to judgment as a matter of law when the nonmoving party
19 | fails to make a sufficient showing on an essential element of a claim in the case on which
20 | the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
21 | (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
22 | could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*

1 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
2 present specific, significant probative evidence, not simply “some metaphysical doubt”).
3 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
4 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
5 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
6 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
7 626, 630 (9th Cir. 1987). The Court must construe any factual issues of controversy in
8 favor of the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

9 **B. Accrual of Plaintiffs’ 42 U.S.C. § 1983 Claims**

10 Defendants move for summary judgment on the basis that Plaintiffs’ claims are
11 barred by the applicable statute of limitations. The statute of limitations period for § 1983
12 actions is “a State’s personal injury statute of limitations.” *Owens v. Okure*, 488 U.S. 235,
13 240–41 (1989). Pursuant to RCW 4.16.080(2), the period of limitations in this case is
14 three years. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002). The
15 parties do not dispute the applicable statute of limitations or applicable tolling period
16 until Plaintiffs reached the age of majority. *See* Dkts. 31, 40. Instead, the parties’
17 arguments on this motion turn exclusively on when Plaintiffs’ claims accrued and the
18 period of limitations began to run. *Id.*

19 While state law determines the length of the limitations period, federal law
20 determines when a claim accrues. *Western Ctr. for Journalism v. Cederquist*, 235 F.3d
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1 1153, 1156 (9th Cir. 2000).¹ Under federal law, a principle known as the “discovery rule”
2 dictates that a cause of action accrues on the date “when the plaintiff knows or has reason
3 to know of the injury which is the basis of the action.” *Lukovsky v. City and Cty. of S.F.*,
4 535 F.3d 1044, 1048 (9th Cir. 2008). As the Supreme Court has noted, “discovery of the
5 injury, not discovery of the other elements of a claim, is what starts the clock.” *Rotella v.*
6 *Wood*, 528 U.S. 549, 555 (2000).

7 Other courts in this district have recognized that, under the discovery rule, “the
8 possibility that a person who has been in a sexually abusive relationship may not realize
9 that he or she is injured until many years after the sexual act occurred.” *J.I. v. United*
10 *States*, No. C06-5674RJB, 2007 WL 983138, at *5 (W.D. Wash. March 26, 2007) (citing
11 *Simmons v. United States*, 805 F.2d 1363, 1368 (9th Cir. 1986); *A.T. v. Everett Sch. Dist.*,
12 C16-1536JLR, 2017 WL 784673, at *3 (W.D. Wash. Feb. 28, 2017). Nonetheless, “a
13 claim does not wait to accrue until a party knows the precise extent of an injury.”
14 *Raddatz v. United States*, 750 F.2d 791, 796 (9th Cir. 1984). Therefore, in ascertaining
15 the accrual of Plaintiffs’ cause of action, the relevant date is when Plaintiffs first learned
16 of any significant injury resulting from Defendants’ allegedly wrongful conduct. *Soliman*
17 *v. Philip Morris Inc.*, 311 F.3d 966, 972 (9th Cir. 2002) (“The relevant date, however, is
18 not when [plaintiff] knew about these particular injuries, but when he should have known
19 of any significant injury from defendants’ wrongful conduct.”) (emphasis in original).

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21 ¹ Plaintiffs base their argument on “Washington discovery rule law in the realm of sexual abuse.” See Dkt.
22 34 at 34. However, “[a] consistent accrual principle for § 1983 claims reflects [the Supreme Court]’s direction that such claims are distinct from and unaffected by the manner in which a state chooses to shape a state law cause of action.” *Bonneau v. Centennial Sch. Dist. No. 28J*, 666 F.3d 577, 581 (9th Cir. 2012) (citing *Wilson v. Garcia*, 471 U.S. 261 (1985)).

1 While Defendants bear the initial burden in showing that the events on which Plaintiffs’
2 claims are based fall outside of the period of limitations, “Plaintiffs have the burden of
3 proof at trial to establish that they are entitled to the benefit of the discovery rule.”
4 *O’Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139, 1150 (9th Cir. 2002).

5 **1. Knowledge of Injury**

6 Plaintiffs argue that they are entitled to the benefit of the discovery rule because
7 they “did not realize that the cause of [their] psychological problems as [adults] was the
8 sexual abuse . . . until 2014 or later, when they each experienced a significant triggering
9 event.” Dkt. 31 at 33. R.N. has stated that he first discovered a causal relationship
10 between his childhood sexual abuse and his psychological injuries while reading a 2013
11 news article and while receiving therapy in January to February of 2014. Dkt. 32-1 at 4.
12 J.W. has testified that he first discovered a causal relationship between his abuse and his
13 psychological injuries in November of 2014 when, during an interview for application to
14 a Prison’s Sex Offender Treatment Program, he “began reflecting on [him]self and
15 started seeing connections between [his] victimization and [his] suffering.” *Id.* at 49. S.C.
16 has testified that he first discovered a causal relationship between his abuse and his
17 psychological injuries in October of 2014 when reading literature on Post Traumatic
18 Stress Disorder that was provided to him by his prison cellmate. *Id.* at 86.

19 Plaintiffs’ testimony is supported, at least somewhat, by the psychological
20 evaluations conducted by Dr. Randall Green, Ph.D. Regarding R.N., Doctor Green noted
21 that his mental health records from 1993 through 2013 made no mention of sexual abuse
22 and “the first and most specific mention of [R.N.] disclosing he had been repeatedly

1 sexually assault when under the supervision and care of DSHS” occurred on January 24,
2 2014. Dkt. 32-1 at 38. The next week, R.N.’s counselor at the Department of Corrections
3 diagnosed him with numerous psychological disorders that could have resulted from the
4 trauma. *Id.* at 38–39. Dr. Green states his opinion that “[w]hile [R.N.] knew he hated the
5 experiences . . . he began resorting to mood altering through drugs, dissociation/amnesia,
6 and/or ‘not thinking’ about his assaults, as much as he could manage.” *Id.* at 42.

7 Regarding J.W., Dr. Green’s evaluation indicates that J.W. was already aware of
8 his sexual abuse by 2013 when he entered the custody of the Department of Corrections.
9 Dkt. 32-1 at 70. However, Dr. Green also indicates that J.W. “had still not spoken to
10 another human being about what he represents happened to him that changed him in deep
11 ways back then” until speaking with a prison therapist in 2015. *Id.* at 76. Dr. Green
12 concludes that “J.W. did not allow himself to mentally face the reported victimization
13 experiences . . . until the beginnings of that [sic] happened in 2015.” *Id.* at 77.

14 Finally, regarding S.C., Dr. Green notes that S.C. had previously disclosed to a
15 therapist that “bad things happened” when he was in foster care; but Dr. Green also notes
16 that S.C.’s assertion that, despite acknowledging bad things had happened to him, the
17 details of the sexual abuse “had ‘never crossed [his] mind.’” Dkt. 32-1 at 109. Dr. Green
18 also relates S.C.’s statements that, after R.N. happened to be incarcerated in an adjacent
19 cell, “all the memories of what happened to us came back while talking to my (cell block)
20 neighbor . . . a kid I’d actually seen be raped by [the same predator], R.N.” *Id.* Dr. Green
21 concludes that “it is my opinion that S.C. did not begin to ‘connect the dots’ or draw a
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1 connection between [his abuse] and the injuries related to the traumatic experiences he
2 reports . . . ” until his contact with R.N. in 2013. *Id.* at 118.

3 Dr. Green’s evaluations, coupled with Plaintiffs’ testimony, create uncertainty
4 regarding whether Plaintiffs have only recently begun to “face” or recognize that the
5 trauma of their childhood abuse had resulted in the severe psychological injuries of which
6 they now complain. *See* Dkt. 32-1 at 42 (R.N.’s delayed “connection” between his
7 childhood abuse and his own subsequent abusive behaviors “is consistent with a survivor
8 who compartmentalized his abuse and . . . effectively learns to ‘not think’ or develop a
9 form of amnesia about the experiences.”); *id.* at 77 (“J.W. did not allow himself to
10 mentally face the reported victimization experiences . . . until the beginnings of that [sic]
11 happened in 2015.”); *id.* at 119 (“[I]t is only since 2013 that S.C. has begun to face, rather
12 than avoid, thinking about [his abuse] and its impact on him.”).

13 However, whether Plaintiffs have only recently recognized that their childhood
14 abuse caused them severe psychological trauma is not the question before the Court.
15 Instead, the relevant issue is when Plaintiffs reasonably should have known that their
16 state-ordered placement in the custody of their abuser resulted in a compensable violation
17 of their asserted substantive due process right to bodily integrity. *See Plumeau v. Sch.*
18 *Dist. No. 40 Cty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997) (“Although this court has
19 never explicitly stated that this liberty interest includes the right to be free from sexual
20 abuse by [state] employees, a [child]’s liberty interest in bodily integrity logically
21 encompasses such freedom.”). This is because the Fourteenth Amendment violation
22 asserted by Plaintiffs encompasses not only the narrow psychological trauma of which

1 they now complain, but rather the entire range of damages stemming from the alleged
2 deprivation of their liberty interest to be free from sexual abuse. The accrual of a § 1983
3 claim is not severable to the various specific damages (such as the latent psychological
4 trauma that Plaintiffs rely upon for asserting the application of the discovery rule) that
5 result from a single constitutional deprivation. As stated by the Supreme Court in regards
6 to a § 1983 claim:

7 [T]he tort cause of action accrues, and the statute of limitations commences
8 to run, when the wrongful act or omission results in damages. The cause of
9 action accrues even though the full extent of the injury is not then known or
10 predictable. Were it otherwise, the statute would begin to run only after a
11 plaintiff became satisfied that he had been harmed enough, placing the
12 supposed statute of repose in the sole hands of the party seeking relief.

13 *Wallace v. Kato*, 549 U.S. 384, 391 (2007) (internal quotation and citations omitted).

14 Plaintiffs cite to *Simmons v. United States*, 805 F.2d 1363 (9th Cir. 1986), for the
15 proposition that, in lawsuits involving sexual abuse, it is ““particularly inappropriate to
16 determine as a matter of law what the plaintiff should have known’ . . . where the injury
17 and the cause of the injury are ‘complicated.’” Dkt. 34 at 31 (quoting *Simmons*, 805 F.2d
18 at 1368). However, Plaintiffs’ reliance on *Simmons* in this case is improper. In *Simmons*,
19 the Ninth Circuit determined that the well-documented phenomenon of transference
20 prevented a therapy patient from recognizing that she had suffered injury due to an
21 exploitative sexual relationship with her therapist that had seemed consensual. *Simmons*,
22 805 F.2d at 1368. The cause of action in *Simmons* was “psychiatric malpractice” under
the Federal Tort Claims Act, which allowed the court to determine that questions
regarding when the plaintiff first discovered her emotional injuries created a genuine

1 issue of fact as to whether transference had prevented the plaintiff from recognizing that
2 she had suffered any abuse that would give rise to her cause of action. *Id.* at 1367–68. *See*
3 *also Mansfield v. Watson*, 990 F.2d 1258 (9th Cir. 1993) (stating that in *Simmons*
4 “plaintiff did not know she had been abused until diagnosis”) (emphasis added).

5 In this case, there is no dispute that the Plaintiffs were aware, well in advance of
6 2013, of their childhood abuse. In 1991, after his placement with the Juvenile
7 Rehabilitation Administration, J.W. “cooperated with his counselors . . . and provided his
8 history, including the offensive sexual abuse at KVH.” Dkt. 27-2 at 117. J.W. was still
9 clearly aware of his sexual abuse prior to 2013 when he entered the custody of the
10 Department of Corrections. Dkt. 32-1 at 70. Likewise, S.C. knew of physical abuse he
11 had suffered at KVH at least as early as 2008, as revealed by a psychological evaluation
12 at that time. *Id.* at 108–09. Both S.C. and his mother also acknowledged in a 2008 online
13 blog post that S.C. and his brother “had been abused [at KVH] while under DSHS care.”
14 Dkt. 27-2 at 76. Similarly, R.N. had complained at numerous times in the early 1990s of
15 the abuse he had suffered between 1989 and 1990. *Id.* at 34–35. Importantly, none of
16 Plaintiffs claim that they have suffered from repressed memories or that they were ever
17 actually unaware that they had were abused at KVH. Instead, they contend that “there
18 are, at the very least, fact issues regarding whether Plaintiffs knew or should have known
19 more than three years before they filed suit *that their psychological problems as adults*
20 *were caused by sexual abuse as children.*” Dkt. 34 at 33. While this is true, this does not
21 establish a genuine dispute of fact regarding whether or not Plaintiffs were ever unaware
22 they had been sexually and otherwise physically abused at KVH. Accordingly, the Court

1 must conclude that Plaintiffs have failed to carry their burden in establishing a genuine
2 question on whether they only recently learned of their injuries stemming from placement
3 at KVH.

4 **2. Knowledge of State Actor Causation**

5 The Court also finds that there is no genuine dispute of fact that Plaintiffs knew or
6 should have known of state actors' involvement in causing their abuse. Citing *T.R. v. Boy*
7 *Scouts of Am.*, 344 Or. 282, 297–98 (2008), Plaintiffs argue that they lacked knowledge
8 of state actors acting deliberately indifferent towards their sexual abuse “until [recently]
9 after retaining counsel, filing suit, and investigating the matter.” Dkt. 34 at 34. The Court
10 rejects this argument. Plaintiffs cannot overcome the fact that they knew or reasonably
11 should have known that they were subject to a state program when they were placed at
12 KVH and subjected to sexual abuse. This information alone is sufficient to cause any
13 reasonable person to consult with an attorney and inquire into the state’s potential
14 liability. *See Rosales v. United States*, 824 F.2d 799, 804 (9th Cir. 1987) (“[T]he ‘should
15 have reasonably known’ standard . . . looks not to the likelihood that a plaintiff would in
16 fact have discovered the cause of his injury if he had only inquired, but instead focuses
17 on whether the plaintiff could reasonably have been expected to make the inquiry in the
18 first place.”). Armed with such knowledge, Plaintiffs easily could have protected
19 themselves “by seeking advice in the . . . legal community.” *U. S. v. Kubrick*, 444 U.S.
20 111, 123 (1979). “To excuse [them] from promptly doing so by postponing the accrual of
21 [their] claim[s] would undermine the purpose of the limitations statute, which is to
22 require the reasonably diligent presentation of tort claims against the Government.” *Id.*

1 **C. Conclusion**

2 The Court concludes that Plaintiffs' § 1983 claims are barred by the statute of
3 limitations. Plaintiffs rightly point out that actions based on sexual abuse present unique
4 and difficult circumstances that make applying a limitations period particularly difficult.
5 To quote their briefing, "the sexual abuse of a minor by a trusted authority figure wreaks
6 profound emotional and psychological turmoil in the child to the extent that bringing suit
7 at the time of sexual abuse is, as a practical matter, an impossibility." Dkt. 31 at 26.
8 However, this is a policy concern that must be addressed by lawmakers in regards to
9 causes of action that are predicated specifically on intentional sexual abuse. As
10 recognized by Plaintiffs, "[i]t is the increasing recognition of this phenomena that has so
11 many state legislatures enacting extended statutes of limitations to make more clear and
12 equitable the time for bringing suit by a child abuse survivor." *Id.* at 27. *See also* RCW
13 4.16.340 (providing a special rule of accrual statute for "claims or causes of action based
14 on intentional conduct brought by any person for recovery of damages for injury suffered
15 as a result of childhood sexual abuse. . . ."). This concern does not change the fact that
16 Plaintiffs have long been aware of a significant violation of their right to bodily integrity
17 resulting from state actors having placed them in their abuser's home. Under existing
18 federal law governing claim accrual, this knowledge was sufficient to start the limitations
19 period on their § 1983 claims and Plaintiffs have failed to establish a triable issue of fact
20 as to whether the discovery rule applies.

1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendant's motion for summary
3 judgment (Dkt. 26) is **GRANTED**. The Clerk shall enter judgment for Defendants and
4 close this case.

5 Dated this 7th day of August, 2017.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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