UNITED STATI
FOR THE WESTERN D
AT '

Christian Doscher,
Plaintiff

v.
er individual capacity

Defendants

Demand for Jury Trial

C12-5652 RBL

12-CV-05652-CMP

A. Jurisdiction and Venue

This Court has original jurisdiction over Plaintiffs 42 USC § 1983 claims and supplemental jurisdiction over his state law tort claims. See 28 U.S.C. §§ 1331, 1343, 1367(a). Venue lies in the United States District Court for the Western District of because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in 28 U.S.C. § 1391(b)(2).

B. Parties

Plaintiff Christian Doscher is a resident of the State of , living in County.

Defendant is a resident of the State of address unknown.

Defendant County is a municipality within the state of for 42 U.S.C. 1983 purposes.

C. Factual Allegations

1. The Court clerk errors that Plaintiff alleges below are legally indistinguishable from the court clerk errors that supported the 42 USC 1983 cause of action in *Oviatt v. Pearce, 954 F. 2d 1470 r. 1992).*

2. Plaintiff filed a tort claim (4.96) with Defendant County more than 60 days ago concerning the following allegations. However, exhaustion of state tort claim procedures is not required. See Rumbles v. Hill, 182 F.3d 1064, 1070 (9th Cir. 1999) , overruled on other grounds by Booth v. Churner, 532 U.S. 731 (2001).

3. Plaintiff has never been convicted of a felony.

4. None of the following facts have ever been adjudicated in any court of law.

5. None of the following facts have ever been presented to the district court for the western district of The fraudulent alteration of a court order alleged below was not discovered by Plaintiff until December of 2009 and that particular form of the order had nothing to do with any previous lawsuit filed by Doscher.

6. Between September and December of 2009, Plaintiff mailed job applications to a prospective employer in County, answering "no" to the question that asked whether he had "ever" been convicted of a felony.

7. Between December 23 and December 31 of 2009, said prospective employer informed him on the phone that they were rejecting the employment application for dishonesty, stating that they had found in County Superior Court records a felony conviction from 1995 that he dishonestly denied the existence of in the employment application.

8. Between December 23 and December 31 of 2009, Plaintiff went to the Thurston County Superior Court, used the public terminal and found a Court order referring to him as "defendant", and this Order contained the phrases "microfilmed 1995," "corrected copy, felony non-deferred," and "date of conviction 1995".

9. The document is an obvious fraud, as Plaintiff not only was never convicted of a felony, but was not convicted of any crime in 1995, period.

10. Such falsification of a court order is a ministerial error. Court clerks do not have immunity for their ministerial/administrative mistakes. See Mauro v. Kittitas County, 26 Wn. App. 538, 613 P.2d 195 (1980) and Duvall v. County of Kitsap, 260 F.3d 1124, 1134-35 (9th Cir. 2001).

11. Where a false defamatory document was publicly disseminated, this is "stigma-plus" in the eyes of the 9th Circuit. Vanelli v. Reynolds School Dist. No. 7, 667 F. 2d 773 (9th Cir. 1982). Losing an employment opportunity due to a defamatory statement issued by municipal employee acting under color of state law fulfills the "stigma-plus" test. See Johnson v. Barker, 799 F. 2d 1396 (9th Cir. 1986); see also Ulrich v. City and County of San Francisco, 308 F. 3d 968 (9th Cir. 2002), citing Paul v. Davis, 424 U.S. 693, 701, 711, (1976). Where there is a defamatory and false entry in a publicly accessible court records system, the likelihood of losing employment opportunities because of it is sufficient to support "stigma-plus" in the 9th Circuit. Humphries v. County of Los Angeles, 554 F. 3d 1170 (9th Cir. 2009). The source of stigmatizing information need not be an absolute bar to obtaining employment; it is sufficient if the defaming source presents a "tangible burden" to gaining employment: "However, we need not find that an agency will necessarily deny the Humphries a license to satisfy the "plus" test.,, A state can alter a legal right or status without using

the word "must"—the word "may" in conjunction with a rule or custom of "must" can equally deprive a citizen of a liberty interest giving rise to a procedural due process claim." Humphries v. County of Los Angeles, 554 F. 3d 1170 (9th Cir. 2009) at 1188. 1192

12. Plaintiff suffered emotional distress upon hearing this report of his criminal history, since he was never convicted of a felony. The symptoms he experienced were shock, anger, upset, insomnia and depression, the last two of which continue into the present.

13. Because § 1983 contains no specific statute of limitations, federal courts should borrow state statutes of limitations for personal injury actions in § 1983 suits. See Wallace v. Kato, 549 U.S. 384, 127 S. Ct. 1091, 1094 (2007).

14. The statute of limitation in for 42 USC 1983 and personal injury claims is three years, Douchette v. Bethel Sch. Dist. No. 403, 117 805, 812, 818 P.2d 1362 (1991, citing Rose v. Rinaldi, 654 F.2d 546, 547 (9th Cir.1981)); Bagley v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991). Because Plaintiff discovered the defamatory falsified court order in December of 2009, (factual allegation # 8, supra) and this suit has been filed before December 2012, the claim is, by operation of the discovery rule, timely filed within the three year statute of limitations applicable to 1983 actions.

15. This fraudulent alteration of a court order also violated state law. State law, says where a court clerk corrects an order, they must send the corrected version to the law enforcement agency which had earlier received a copy of the defective original. Although a nearly identical order had been sent by County to State Patrol in 1990 (for which Plaintiff does not seek damages), there is no evidence that County sent the 1995 "corrected" form of the court order, as alleged above, to State Patrol. It is only this alleged 1995 "corrected" form of this 1990 order that Plaintiff now seeks damages.

16. Defe has declared herself personally liable for errors in court documents created by court clerks:

> Accuracy and efficiency are critical in the Clerk's office, as even the slightest error or omission in indexing, posting, filing, preparation of writs or disbursements of funds affects the life or property of members of the public and make the Clerk personally liable for damages and subject to monetary fines.

17. In the Ninth Circuit "a claim of municipal liability under [§] 1983 is sufficient to withstand a motion to dismiss 'even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice.'" Karim-Panahi v. L.A. Police Dep't., 839 F.2d 621, 624 (9th Cir. 1988) (quoting Shah v. County of Los Angeles, 797 F.2d 743, 747 (9th Cir. 1986)).

18. Defendant 's conduct in approving of this fraudulent court order conformed to official policy, custom or practice.

19. Defendant is the highest ranking County Superior Court Clerk. County officials can be held liable under § 1983 if they act as "lawmakers or ... those whose edicts or acts may fairly be said to represent official policy." Berry v. Baca, 379 F. 3d 764 (9th Cir. 2004) quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694(1978). Ms says on her own website that she determines official policy for clerks:

> As the administrator of a county department, the Clerk has the responsibility to establish office policies, budgets, and procedures in accordance with the established guidelines and policies of the Board of County Commissioners.

20. Plaintiff cannot presently identify the specific County employee who actually created the falsified court order mentioned above, but that does not relieve the County of liability. The 9th Circuit consistently rejects the argument that an affidavit should be struck merely because plaintiff cannot identify all tortfeasors with specificity: See, e.g., *US v. Shummway, 199 F.3d 1093 (9th Cir. 1999; SEC v. Phan, 500 F.3d 895 (9th Cir. 2007); Dominguez-Curry v. Nevada Transportation Dept., 424 F.3d 1027 (9th Cir. 2005) at 1036; Rodriguez v. Airborne Express, 265 F.3d 890 (9th Cir. 2001); Blair v. City of Pomona, 223 F.3d 1074 (9th Cir. 2000); Murphy v. INS, 54 F.3d 605 (9th Cir. 1995).*

   "Moreover, even if not actionable in and of themselves, untimely claims serve as relevant background evidence to put timely claims in context." Anderson v. Reno, 190 F. 3d 930 (9th Cir. 1999), citing United Air Lines, Inc. v. Evans, 431 U.S. 553 (1977).

21. The 9th Circuit specifically allows a federal plaintiff to pursue the same claims simultaneously in state court:

> <u>If the federal plaintiff and the adverse party are simultaneously litigating the same or a similar dispute in state court, the federal suit may proceed under the long-standing rule permitting parallel state and federal litigation</u>. See, e.g., Atl. Coast Line, 398 U.S. at 295, 90 S.Ct. 1739 ("[T]he state and federal courts had concurrent jurisdiction in this case," and the parties could "simultaneously pursu[e] claims in both courts.")... We have never held that when there are simultaneous suits in state and federal court, in which related or "inextricably intertwined" claims are being litigated, the federal suit must be dismissed under Rooker-Feldman. Indeed, we could not so hold without violating the rule that permits simultaneous state and federal suits involving not only inextricably intertwined, but even identical, claims. <u>The Supreme Court has repeatedly stated that simultaneous state and federal litigation of overlapping, and even identical, issues is an important feature of our federal system</u>, see, e.g., Parsons Steel, 474 U.S. at 524-25, 106 S.Ct. 768; Doran v. Salem Inn, 422 U.S. at 928, 95 S.Ct. 2561; Atl. Coast Line, 398 U.S. at 295, 90 S.Ct. 1739, and we will not interpret the Rooker-Feldman doctrine to destroy that feature.
>
> Noel v. Hall, 341 F. 3d 1148 (9th Cir. 2003)

D. Federal Cause of Action

42 U.S.C. 1983. This falsified court order was created by a County employee acting under color of state law , correcting a court record, 10.97.045, must sent same to State Patrol), and its public dissemination blocked Plaintiff from gaining employment ('stigma-plus', Humphries v. County of Los Angeles, supra) and caused Plaintiff to endure emotional distress as well as causing stigma-plus. The 9th Circuit says Court clerk errors in court documents, which cause harm, support this cause of action. See *Oviatt v. Pearce, 954 F. 2d 1470 (9th Cir. 1992).*

E. State Causes of action

Intentional tort

Fraud (actual and constructive)

Defamation, LaMon v. Butler, 722 P. 2d 1373, . 654 (1986).

Defamation ('Stigma-plus'), *Humphries v. County of Los Angeles, 554 F. 3d 1170 (9th Cir. 2009)*

False Light, Corey v. 2 (2010).

F. Prayer for Relief:

Plaintiff demands a trial by jury on all issues so triable. Plaintiff further demands $750,000 in actual damages and $50,000 in punitive damages (Defendant subject to punitive damages via individual capacity even though County, a municipality, isn't) for a total of $800,000 in damages, not including reasonable costs and attorney fees.

Punitive damages are available *even when the plaintiff is unable to show compensable injury.* See Smith v. Wade, 461 U.S. 30, 55 n.21 (1983) ; Mendez v. County of San Bernardino, 540 F.3d 1109, 1120 (9th Cir. 2008); Davis v. Mason County, 927 F.2d 1473, 1485 (9th Cir. 1991) , overruled on other grounds by Davis v. City of San Francisco, 976 F.2d 1536 (9th Cir. 1992) , vacated in part on other grounds by 984 F.2d 345 (9th Cir. 1993).

Presumed damages are appropriate when there is a great likelihood of injury coupled with great difficulty in proving damages." Trevino v. Gates, 99 F.3d 911, 921 (9th Cir. 1996) (citing Carey v. Piphus, 435 U.S. 247, 263 (1978)).

I, Christian Doscher, hereby certify under penalty of perjury that the facts contained in this Complaint are true and accurate to the best of my knowledge.

7-18-12

Christian Doscher Date