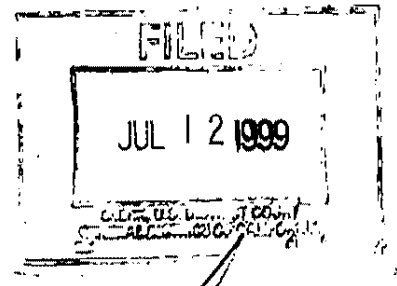
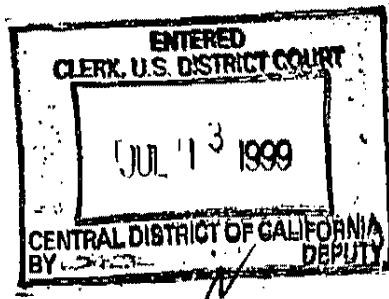


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VALERIE ANN STREIT, et al.,
Plaintiffs,
v.
COUNTY OF LOS ANGELES, et al.,
Defendants.

No. CV-98-9575 WJR (Ex)
ORDER DENYING DEFENDANT
ESTATE OF SHERMAN BLOCK'S
MOTION TO DISMISS

This matter comes before the Court on Defendant Estate of Sherman Block's Motion to Dismiss. As a preliminary matter, Defendant Estate of Sherman Block ("Defendant Estate") argues that Plaintiffs' Opposition was not timely filed, and therefore the Motion should be decided on Defendant Estate's moving papers alone. Substantively, Defendant Estate asserts (1) that Plaintiffs' claims are barred by the statute of limitations, and (2) that any ruling against it would be merely an advisory opinion.

The Court has fully considered the briefs and authorities pertaining to this matter, and the Court finds the Motion appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7.11. Therefore, the Court rules as follows:

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1 **I. Timeliness of Plaintiffs' Opposition**

2 Local Rule 7.6 states that opposing papers are to be filed no
3 later than fourteen days before the scheduled hearing of the motion.
4 Defendant Estate argues that because Plaintiffs' papers were filed
5 one day late, they should be rejected and the Motion should be
6 decided on Defendant Estate's moving papers alone.

7 However, Plaintiffs' one-day late filing appears to be an
8 isolated incident. Plaintiffs have not demonstrated a pattern or
9 practice of violating local rules. Accordingly, the Court in
10 exercising its sound discretion over the matter finds it appropriate
11 to consider Plaintiffs' Opposition.

12
13 **II. Statute of Limitations**

14 Defendant Estate argues that Plaintiffs' actions are barred
15 because they were not filed within California's one year statute of
16 limitations for claims under 42 U.S.C. § 1983. Defendant Estate
17 relies on Del Percio v. Thornsley, 877 F.2d 785, 786 (9th Cir.
18 1989), to support this argument. In Del Percio, the court held that
19 California's one year personal injury statute of limitations, as
20 outlined in California Code of Civil Procedure § 340(3), applies to
21 actions brought in California pursuant to 42 U.S.C. § 1983. Id. at
22 786. However, since it is a state statute of limitations that
23 applies to § 1983 causes of action, the Court must consider any
24 state statutes that toll or extend the applicable statute of
25 limitations. See Johnson v. Railway Express Agency, 421 U.S. 454,
26 464 (1975) (stating that because statutes of limitations are
27 interrelated with provisions and questions of application, courts
28 should consider both the state statute and any state exceptions when

1 applying state statutes of limitations to federal cases).

2 Under California law, there are instances where the general
3 statute of limitations does not apply. For example, the California
4 Code of Civil Procedure provides:

5 (a) If a person against whom an action may be brought on a
6 liability of the person, whether arising in contract, tort, or
7 otherwise, and whether accrued or not accrued, *dies before the*
8 *expiration of the applicable limitations period, and the cause*
of action survives, an action may be commenced within one year
after the date of death, and the limitations period that would
have been applicable does not apply.

9 Cal. Civ. Proc. Code § 366.2 (emphasis added).

10 In the case at bar, the Plaintiffs' causes of action commenced
11 in December of 1997 and April and May of 1998.¹ Defendant Estate
12 was named as a Defendant on May 12, 1999, over one year later.
13 However, Sheriff Block died November 1, 1998. Therefore, under
14 § 366.2, the statute of limitations for Plaintiffs' causes action
15 against Block would not run from the date of the commencement of the
16 causes of action, but from the date of Block's death. Accordingly,
17 Plaintiffs had one year from the date of his death to file the
18 action. Because Plaintiffs filed their claims within the one year
19 statute of limitations as set forth in § 366.2, the Court rejects
20 Defendant Estate's argument that Plaintiffs' claims are time barred.

21
22 **III. Advisory Opinion**

23 Defendant Estate argues that Plaintiffs' claims are barred by
24 the "cases and controversies" requirement of Article III of the U.S.
25 Constitution. Specifically, Defendant Estate argues that since no
26 additional damages could be obtained from its presence in the suit,

27
28 ¹Plaintiffs Streit, Santillana, and Roerich, were released from
custody on May 6, 1998, December 8, 1997, April 19, 1998 respectively.

1 any judgment against it would be merely advisory. Defendant Estate
2 relies on Sanchez v. City of Riverside, 596 F. Supp. 193 (C.D. Cal.
3 1984), in asserting this proposition.

4 However, Sanchez is not on point. Sanchez was a bifurcated
5 trial where claims against the police officers proceeded before
6 claims against the City. In Sanchez, the plaintiff alleged no
7 separate wrong against the City that was not alleged against an
8 officer. Id. at 194-195. When the case against the officers was
9 completed, and judgment rendered in favor of the plaintiff, the City
10 acknowledged its obligation to pay compensatory damages awarded to
11 the plaintiff because it was the officers' employer. Therefore,
12 since the plaintiff was fully compensated and could receive no other
13 damages, the court found there was no reason to continue litigation
14 against the City. Moreover, the court found that any judgment
15 against the City would result in an advisory opinion. Id. at 195.

16 The City in Sanchez is not analogous to Defendant Estate in the
17 instant case. Unlike the allegations in Sanchez, the actions
18 alleged against Defendant Estate are separate from those of Block's
19 employees. Defendant Estate is being sued for Block's personal
20 actions. Accordingly, Defendant Estate cannot be excused from
21 defending allegations regarding Block's personal actions, regardless
22 of who may ultimately pay damages.

23 In addition, Defendant Estate's argument--that Plaintiffs will
24 be fully compensated without Defendant Estate as a party--is faulty.
25 The City in Sanchez was dismissed after it was evident that the
26 plaintiff was fully compensated by the judgment in the first part of
27 the bifurcated trial. Id. at 195. Here, Plaintiffs have yet to be
28 compensated. Further, because compensatory damages may be available

1 against Defendant Estate for Sheriff Block's personal actions,
2 Plaintiffs may not be fully compensated without Defendant Estate as
3 a party.²

4 Thus, the Court rejects Defendant Estate's argument that
5 proceeding with the claims against Defendant Estate would result in
6 an improper advisory opinion and would waste judicial resources.

7 Accordingly, the Court DENIES Defendant Estate's Motion to
8 Dismiss.

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11 IT IS SO ORDERED.

12 Dated: July 12, 1999

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WILLIAM J. REA
16 United States District Judge
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27 ² Since compensatory damages may be available against Defendant
28 Estate, the Court at this time need not address the parties' arguments
over whether punitive damages are recoverable against Defendant Estate.