UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN F. JAMES, JR.,

Plaintiff,

v.

JACOB TAYLOR, an employee of Oregon DSL,

Defendant.

Case No. 3:24-cv-02012-YY

FINDINGS AND RECOMMENDATIONS

FINDINGS

Pro se plaintiff John F. James, Jr. has filed suit against defendant Jacob Taylor, an employee of the Oregon Department of State Lands, alleging a claim of common law fraud. Order, ECF 21. Defendant has filed a Motion to Dismiss on several grounds, including that plaintiff's claim is barred by the two-year statute of limitations for fraud and he failed to plead that he filed a tort claim notice as required by Oregon law. ECF 25. The motion should be granted and this case should be dismissed with prejudice.

I. Statute of Limitations

Plaintiff's claim of fraud has been summarized by this court as follows:

> Plaintiff's allegations that Defendant stated that Plaintiff needed to get a short-term permit "knowing" it was false and done for personal gain and to stop Plaintiff from getting the salvage work, and that Plaintiff reasonably relied on that statement, attempted to get the permit, and then suffered damages, suffices to allege a common law claim of fraud.

Order 5, ECF 21.

In his Amended Complaint, plaintiff alleges that, on July 19, 2022, he posted a 24-hour notice, pursuant to the "Admiralty and Maritime Laws of Salvage," of his intent to begin salvage operations on two vessels located on the Columbia River. Am. Compl. 3, ECF 9. Plaintiff alleges that "[a]ccording to Admiralty and Maritime Laws of Salvage, the first step in acquiring salvage rights was to report the vessel," and that he followed the "rules of Salvage at the time, which was to contact the necessary agencies, then give a thirty-day notice of intent, followed by a 24-hour notice of intent to begin." *Id.* at 2. Plaintiff alleges that he contacted numerous agencies, including the Department of State Lands, Multnomah County Sheriff's Office, and Coast Guard, and no agency denied access, disputed the claim, or seized the vessels. *Id.* at 2, 5. Plaintiff alleges the "Dept of State Lands was still in the news stating that they didn't have a plan or funding yet" to salvage the vessels, and cites to O.A.R. 250-026-0035, which states that enforcement agencies may not be reimbursed for salvaging vessels weighing more than 200 tons, such as the vessels at issue here. *Id.* at 5, 6.

Plaintiff claims he "had at that point secured our salvage rights" as "Salvor-in-Possession," and "[a]ccording to the Admiralty and Maritime Laws of Salvage, the next step is to being salvage operations," which he did. *Id.* at 3. Shortly thereafter, the Multnomah County River Patrol directed him to leave because defendant Taylor had informed them that plaintiff did not have permission to be there. *Id.* Plaintiff contacted defendant Taylor and claims Taylor falsely told him that he needed a short-term permit, which plaintiff applied for immediately. *Id.* Plaintiff received notice from the Department of State Lands that it would respond to the permit request within 30 days. *Id.* Plaintiff spoke with Justin Russel at the Department of State Lands, who told him that he did not see any reason why plaintiff could not resume salvage operations in

the meantime. Plaintiff went back the vessel on July 20, 2022, and was again told by Multnomah County River Patrol that he had to leave or face arrest. *Id.* Plaintiff decided to wait until he received the permit from the Department of State Lands, but "[d]efendant did not respond to the permit within the 30 days it had to respond." *Id.* On August 30, 2022, the Department of State Lands issued an order that his permit request was denied.[1] *Id.* On that date, plaintiff also noticed a large barge and crane were being set up near the vessels and that the Coast Guard had hired another company to conduct the salvage operation he had started. *Id.*

Plaintiff alleges that defendant Taylor "did purposefully misconstrue the intentions of the Department of State Lands and of the Plaintiff in order to gain status or money through the salvage project, at the same time keeping Plaintiff's intentions quiet from supervisors in his own workplace and from the US Coast Guard, with the purpose of stopping the salvage in progress by [plaintiff] and his crew." *Id*. He alleges that defendant Taylor did not have legal authority to instruct the Sheriff to stop his salvage job on July 19 and 20, 2022. *Id.* at 5. He also claims that "defendant was still asking the legislature for funding to raise the vessels on August 10, 2022," although "we still had salvage rights," and that "[d]efendant did not have the right to use the [vessels] as tools or focal points to get money from the legislature." *Id.*

[1] The order was in fact signed by Christopher Castelli, not defendant Taylor. ECF 9 at 8-11. It indicates that the vessels were trespassing on state-owned submerged lands of the Columbia River. Plaintiff's permit application was denied because he failed to complete it 30 calendar days prior to the proposed use, failed to demonstrate financial status or past business and management practices showing he could complete the project without causing additional environmental damage or hazards to navigation, failed to demonstrate that he could conduct the operation in a way that did not unduly impact the environment, habitat, or other uses in the area, proposed to complete a complicated salvage operation without adequate safeguards to protect the public resources, and failed to obtain written approval from local, state, and federal government agencies indicating that the proposed operation conformed to local, state, and federal laws, as well as land use and zoning ordinances. *Id*. (citing O.A.R. 141-125-0205(3)(b), (5)(a) & (b); OAR 141-125-0110(7)).

Plaintiff alleges that before the other company began salvaging the vessels, his trash dump, boat, equipment, and tools were taken. *Id.* Plaintiff seeks damages against defendant Taylor of $175,753.22 for the scrap value of the vessels and $25,000 in loss of his equipment and boat for a total of $200,753.22. *Id.* at 6.

The statute of limitations for a fraud action is two years, subject to a discovery rule. *Spirit Partners, LP v. Stoel Rives LLP*, 212 Or. App. 295, 307 (2007) (citing O.R.S. 12.110(1)); *see also Gaston v. Parsons*, 318 Or. 247, 256 (1994) (holding that under the discovery rule, "the statute of limitations begins to run when the plaintiff knows or in the exercise of reasonable care should have known facts which would make a reasonable person aware of a substantial possibility that each of the three elements (harm, causation, and tortious conduct) exists"). Plaintiff filed his complaint on December 3, 2024, outside of the two-year statute of limitations, indicating his fraud claim is time-barred.

In response, plaintiff points to allegations in the Amended Complaint that defendant lied to the legislature in a June 2023 "Annual Report stating that they had zero applications denied" and argues he had two years from that date to file suit. Resp. 8, ECF 28; Am. Compl. 5, ECF 9. Plaintiff attached an excerpt from the Department of State Lands ARM Program, FY 23 Annual Report to his Amended Complaint. ECF 9 at 12. Plaintiff claims this is "proof that the defendant was hiding the fact that plaintiff was already there on the vessel to be salvaged, and did have salvor-in-possession rights, legally, as of July 10, 2022, in that same report to the legislature, defendant claimed they had denied zero (0) permits." Resp. 1, ECF 28. Otherwise stated, plaintiff claims the fact that defendant Taylor "never let anyone know that he stopped someone from a 'salvage job in progress'" is "proof that we had salvage rights." Am. Compl. 4, ECF 9.

While the June 2023 report may be further "proof" of Taylor's intentions, as plaintiff himself characterizes it, plaintiff knew of the facts underlying his fraud claim as of August 30, 2022. The Amended Complaint alleges that plaintiff had a right to salvage the vessels under "Admiralty and Salvage Laws," he complied with the notice requirements, and "no agency seized the vessels as of July 19, 2022." Am. Compl. 2–3, 5, ECF 9. Plaintiff claims this made him the "Salvor-in-Possession," and defendant Taylor "did not have the legal authority to have the Sheriff stop our salvage job on July 19th and July 20th, 2022." *Id.* at 5. He further claims that Taylor "had us waiting on a permit we didn't need" and delayed processing the permit for longer than 30 days while he arranged for the vessels to be salvaged by another company, resulting in damages to plaintiff for salvage value of the vessels and the cost of his stolen equipment and boat. *Id.*; *see* Order 5, ECF 21 (describing plaintiff's fraud claim). Thus, plaintiff knew of all of the facts supporting his fraud claim as of August 30, 2022, when his permit was denied and he saw another company salvaging the vessels. However, plaintiff did not file his complaint until more than two years later. Therefore, his claim is time-barred.[2]

The fact that plaintiff filed a qui tam action, *James v. Taylor, et al.*, 3:24-cv-01388-AR, on August 21, 2024, does not alter the outcome. In that case, plaintiff was ordered to file an amended complaint, which he failed to do, and the action was dismissed without prejudice on October 15, 2024. Plaintiff does not specifically ask for equitable tolling, but claims that he "had

[2] Plaintiff asserts that the order denying his permit was "too late because the statute for them to contact us had already passed on August 19, 2022, the date on which it was due," making the order "null and void." Resp. 6, ECF 28. He further asks, "If the defendant was supposed to contact the plaintiff by August 19, 2022 and yet there was no contact between the plaintiff and the defendant, until the letter illegally placed in our mailbox on August 30, 2022, wouldn't that make this time barred too?" *Id.* at 4.

Whether defendant Taylor delayed processing plaintiff's permit goes to the underlying facts in support of plaintiff's fraud claim. It does not pertain to the question of whether plaintiff filed his complaint within the statute of limitations under the circumstances presented here.

to figure out what type of suit that we were to file" and "that suit is this same suit." Resp. 6, ECF 28.

The Ninth Circuit found that equitable tolling did not apply under similar circumstances in *O'Donnell v. Vencor Inc.*, 466 F.3d 1104 (9th Cir. 2006). There, the plaintiff timely filed her first complaint, alleging Title VII and Age Discrimination in Employment Act claims, within 90 days after the EEOC issued her a right-to-sue letter, *id.* at 1108-09, and her case was dismissed without prejudice for failure to prosecute. *Id.* at 1110. The plaintiff later filed a second complaint realleging her Title VII and EDEA claims, and the Ninth Circuit upheld the district court's decision that equitable tolling did not apply to those claims, which were time-barred because they were filed more than ninety days after the EEOC issued her right-to-sue letter. *Id.* at 1111. The Ninth Circuit further found that the plaintiff's "second complaint does not 'relate back' to her first complaint because her second complaint was not an 'amendment' to her first complaint, but rather a separate filing." *O'Donnell*, 466 F.3d at 1111 (citing Fed. R. Civ. P. 15(c)(2)).

Many other courts have held that the "prescriptive period is not tolled by filing a complaint that is subsequently dismissed without prejudice." *Chico–Velez v. Roche Prods., Inc.,* 139 F.3d 56, 59 (1st Cir. 1998) (citing cases from seven other circuits); *Minnette v. Time Warner,* 997 F.2d 1023, 1027 (2d Cir. 1993) ("In instances where a complaint is timely filed and later dismissed, the timely filing of the complaint does not 'toll' or suspend the 90–day limitations period."); *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000) ("[I]f the suit is dismissed without prejudice, meaning that it can be refiled, then the tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, without interruption by that filing."). "In such cases, dismissal of the original suit, even though labeled as without prejudice, nevertheless may sound

the death knell for the plaintiff's underlying cause of action if the sheer passage of time precludes the prosecution of a new action." *Chico-Velez*, 139 F.3d at 59.

Even assuming arguendo that equitable tolling could be applied for the period during which the qui tam case was pending, plaintiff's claim is still time-barred. Plaintiff filed his qui tam case on August 21, 2024, and it was dismissed on October 15, 2024. Plaintiff had nine remaining days to file his second complaint after his qui tam case was dismissed, yet he did not file this case until 49 days later, on December 3, 2024.

II. Tort Claim Notice

Defendant Taylor also argues that plaintiff failed to plead that he filed a timely tort claim notice. The State of Oregon authorizes civil suit against the state, its agencies, officers, and employees through the Oregon Tort Claims Act ("OTCA"). *See* O.R.S. 30.260 *et seq.* The OTCA requires that potential plaintiffs file a tort claim notice within 180 days of the accrual of the cause of action. O.R.S. 30.275(2).

Plaintiff has failed to allege that he filed a tort claim notice within 180 days after his claim accrued, regardless of whether that happened on August 30, 2022, or June of 2023. The court may give a plaintiff the opportunity to amend the complaint where the tort claim notice was insufficiently pleaded. *See*, *e.g. Watson v. Urbigkeit*, No. 6:19-CV-00239-AA, 2021 WL 4448918, at *2 (D. Or. Sept. 28, 2021) (granting leave to amend so the plaintiff could more clearly plead that his tort claim notice was timely). Here, however, plaintiff provides no indication that he ever filed a tort claim notice; instead, he asserts only that "an appeal would have served no purpose except to waste time because Tidewater was already there beginning salvage on August 30, 2022, before that letter was illegally placed into the plaintiff's mailbox." Resp. 6, ECF 28. The court is not required to give leave to amend where amendment would be

futile, which it would be here. *Deveraturda v. Globe Aviation Sec. Servs.*, 454 F.3d 1043, 1050 (9th Cir. 2006) (holding leave to amend is properly denied where amendment would be futile). "Failure to give timely notice . . . is fatal to a plaintiff's tort claim against a public body." *Rose v. Patton*, No. 2:19-CV-01195-SB, 2021 WL 933850, at *8 (D. Or. Mar. 11, 2021), *aff'd,* No. 21-35240, 2022 WL 16945893 (9th Cir. Nov. 15, 2022) (quoting *Denucci v. Henningsen*, 248 Or. App. 59, 66 (2012)). Therefore, dismissal is required on this basis as well.

III. Defendant Taylor's Other Arguments

Because dismissal of this case is warranted for failure to file this action within the statute of limitations and failure to file a timely tort claim notice, it is unnecessary to reach defendant Taylor's other arguments.

RECOMMENDATIONS

Defendant Taylor's Motion to Dismiss (ECF 25) should be granted and this case should be dismissed with prejudice.

SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due Friday, July 25, 2025. If no objections are filed, then the Findings and Recommendations will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendations will go under advisement.

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NOTICE

These Findings and Recommendations are not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any Notice of Appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of a judgment.

DATED July 7, 2025.

/s/ Youlee Yim You
Youlee Yim You
United States Magistrate Judge