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# IN THE SUPREME COURT OF CALIFORNIA

**LUIS SHALABI**

*Plaintiff and Appellant*

*v.*

**CITY OF FONTANA, et al.**

*Defendants and Respondents.*

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REVIEW OF A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO, CASE NO. E069671
SAN BERNARDINO COUNTY SUP. CT., CASE NO.: CIVDS1314694

## PETITION FOR REVIEW

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## I. ISSUE PRESENTED

Is a court of appeal entitled to disregard a Supreme Court decision, based on the assertion that this Court did not properly consider the relevant authority available to it?

## II. INTRODUCTION

Petitioners are before this Court because a District Court of Appeal has declined to follow the Court's own binding precedent. Unsurprisingly, the legal community and the media have taken notice of this startling development. See, e.g., Roger M. Grace, "Judge Erred in Adhering to California Supreme Court Decision", Metropolitan News (May 24, 2019) ("Div. Two of the Fourth District Court of Appeal has reversed a judgment by a San Bernardino Superior Court judge that was grounded on an 1884 decision of the California Supreme Court, declaring that it is at liberty to disregard that case because the high court justices failed to take into account the relevant statute.")[1]

The cast-aside case in issue is Ganahl v. Soher, 5 P. 80 (1884) which this Court reviewed and reaffirmed in 1993. See, In re Harris, 5 Cal.4th 813, 848, n.18 (1993). Specifically, in 1993 this Court forcefully restated the obvious – i.e., Ganahl ***is*** binding "precedent" (id. at 848, n.18) as it is "a California Supreme Court case." In re Harris, 5 Cal.4th 813, 849 (1993).

[1] Available at http://www.metnews.com/ articles/2019/ shalabi052419.htm.

It would be difficult to conceive of a more critically important principle than the stare decisis issue presented by this case. See, Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 455 (1962) ("Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of stare decisis makes no sense."); California Rule of Court 8.500(b)(1) (Supreme Court review of a court of appeal decision will be ordered "when necessary . . .to settle an important question of law.")

The need for review is heightened and exacerbated by the current split in authority as to whether Ganahl remains good law. Indeed, as set forth in further detail below, the federal courts rightly recognize that Ganahl continues to mean what it says. See, Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998) ("Despite its age, the Ganahl holding is still good law."), citing, In re Harris, 5 Cal.4th 813 (1993). The Court of Appeal's ruling therefore creates an extraordinary situation where an opinion of this Court seemingly has more vitality in the federal courts than it does in California's own judicial system. In any event, the meaning of California law should not depend on whether litigation is filed in state or federal court. Review is necessary for this important reason alone. See, California Rule of Court 8.500(b)(1) (Supreme Court review of a court of

appeal decision will be ordered "when necessary to secure uniformity of decision. . .")

Review is also necessary given the importance of the statute of limitations issues which Ganahl had long settled. "The gravest considerations of public order and security require that the method of computing time be definite and certain." In re Rodriguez, 60 Cal.2d 822, 825 (1964). The Shalabi Court's decision to discard Ganahl's statute of limitations holding throws multiple once clear issues into doubt. Needless to say, this confusion can only be corrected and ended by this Court. See, California Rule of Court 8.500(b)(1) (Supreme Court review of a court of appeal decision will be ordered "when necessary . . .to settle an important question of law.")

## III. BACKGROUND

### A. The Incident

On May 14, 2011, City of Fontana police officers located Plaintiff Luis Shalabi's father after he had stolen two cars. (Volume I, Clerk's Transcript ("CT") page 5.) Rather than submit to arrest, Shalabi's father responded by using one of his stolen vehicles as a deadly weapon against law enforcement. (Id.) The Fontana officers survived this attack. (Id.) Shalabi's father did not. (Id.)

**B. Trial Court Proceedings**

After a period of minority, on December 3, 2013 Shalabi filed this suit. (I CT 1.) Shalabi asserts one cause of action under 42 U.S.C. § 1983 against the City, Officer Vanessa Waggoner, and Officer Jason Perniciaro. (I CT 125, 130, 377-378.)

The Superior Court bifurcated the matter and held a threshold bench trial regarding statute of limitations issues. (I RT 17-19.) For purposes of trial, the parties stipulated that: (1) Plaintiff's date of birth was December 3, 1993; (2) Plaintiff reached the age of majority on December 3, 2011; and (3) Plaintiff filed his original complaint on December 3, 2013. (II CT 415, 417.)

The trial court found this Court's statute of limitations opinion in Ganahl v. Soher, 5 P. 80 (1884) dispositive. Specifically, the Ganahl Court addressed how to properly calculate the statute of limitations for minor plaintiffs (like Shalabi). Id. After a survey of relevant law, the Ganahl Court found that the statute of limitations begins to run on the day the minor plaintiff attains majority. Id.

Under Ganahl, the trial court rightly found that Shalabi's 18th birthday (December 3, 2011) must be counted against the pertinent two-year statute of limitations, which thereafter expired on December 2, 2013. (I RT 23-24.) As Shalabi's suit was filed one day beyond this deadline (on

December 3, 2013), the trial court properly found that Shalabi's suit was time barred. (I RT 24.) Plaintiff appealed.

**C. The Court of Appeal's Decision**

On May 21, 2019, the Fourth District Court of Appeal, Division 2, issued its published decision in this case. See, Shalabi v. City of Fontana, 35 Cal.App.5th 639, 247 Cal. Rptr. 3d 268, 271 (2019); (see also, Attachment 1.) The Court of Appeal did not dispute that the trial court had correctly applied Ganahl to the statute of limitations issue in this case. Id. at 271 ("Ganahl did explain that [the plaintiff's] birthday started the running of the statute of limitations because [he] had the entirety of his birthday to file the lawsuit.")

Even so, the Court of Appeal declined to simply affirm the trial court's judgment as Ganahl requires. Instead, the Shalabi Court suggested that Ganahl was wrongly decided as it failed to consider a statute (i.e., Code of Civil Procedure § 12) which was in existence at the time the case was decided. Id. at 271; see, Code of Civil Procedure § 12 ("The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.")

From this, the Court of Appeal found that Ganahl was, in its view, of no precedential value:

> Ganahl did explain that [the plaintiff's] birthday started the running of the statute of limitations because [he] had the entirety of his birthday to file the lawsuit. (Id. at p. 416, 5 P. 80.) However, Ganahl did not explain how the court could create an exception to section 12, which requires the first day be excluded when calculating time. Because Ganahl did not cite section 12 or explain how the court could create an exception to a law created by the Legislature, we conclude Ganahl is not binding authority on the issue of how to calculate time under section 12.

Id.

Petitioners sought rehearing on the grounds that: (1) Code of Civil Procedure § 12 was in existence at the time this Court decided Ganahl, (2) the law presumes that the Ganahl court gave all due consideration to Section 12 before it ruled, and (2) stare decisis principles consequently preclude the Court of Appeal from disregarding Ganahl's holding. The Court of Appeal denied the Petition without comment.

## IV. COURTS OF APPEAL ARE BOUND BY THIS COURT'S DECISIONS.

Lower courts have no authority to find that California Supreme Court opinions have been wrongly decided. See, Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 455 (1962). "Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of stare decisis makes no sense." Id. Stated otherwise, "[c]ourts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court." Id.[2] Any departure from this rule "would create chaos in our legal system...." Id. at 456; see, People v. Birks, 19 Cal.4th 108, 116, n. 6 (1998) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of this court."); Bd. of Supervisors v. Local Agency

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[2] Federal courts have spoken at length on this important subject. See, e.g., Agostini v. Felton, 521 U.S. 203, 207 (1997) ("[L]ower courts should . . . leav[e] to th[e] [Supreme] Court the prerogative of overruling its own decisions."). "An argument that [the Supreme Court] got something wrong – even a good argument to that effect – cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then." Kimble v. Marvel Entertainment, LLC, 35 U.S. 2401, 2409 (2015); see, Hart v. Massanari, 266 F.3d 1155. 1170-1171 (9th Cir. 2001) ("[I]f a court must decide an issue governed by a prior opinion that constitutes binding authority, the later court is bound to reach the same result, even if it considers the rule unwise or incorrect. Binding authority must be followed unless and until overruled by a body competent to do so… Judges of the inferior courts may voice their criticisms, but follow it they must.")

Formation Com., 3 Cal.4th 903, 921 (1992) ("The rule of law commands respect only through the orderly adjudication of controversies, and individuals, institutions and society in general are entitled to expect that the law will be as predictable as possible.").

Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Kimble v. Marvel Entm't, LLC, 135 S. Ct. 2401, 2409 (2015) (citations omitted.) "It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." Id.

"Stare decisis enhances the continuity of legal rules. It calls upon individual Justices to remain cognizant of their membership in an enduring institution with a history that predates them and a future that will extend beyond their tenure." Randy J. Kozel, "Statutory Interpretation, Administrative Deference, and the Law of Stare Decisis", 97 Texas L. Rev., 1125, 1126 (2019). "Whether applied to statutory decisions or other cases, stare decisis draws together Justices across time notwithstanding their disagreements." Id. at 1127.

The Shalabi Court's just-issued opinion in this case represents a startling departure from the foregoing principles. See, Shalabi v. City of Fontana, 35 Cal.App.5th 639, 247 Cal. Rptr. 3d 268 (2019). Indeed, the Court of Appeal's holding all but announces that Ganahl was wrongly

decided, and it declines to follow the decision in its application of California statute of limitations law. Id. In the Shalabi Court's view, this Court's error lies in its failure to properly acknowledge or apply Code of Civil Procedure § 12 – a fact which the Court suggests would have caused Ganahl to be decided differently. Id.

The problem with this analysis is that Code of Civil Procedure § 12 ***was*** part of California law ***at the time*** that the Ganahl court issued its decision. See, Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998) ("Section 12 was enacted in 1872, twelve years before the Ganahl decision."); Mun. Imp. Co. v. Thompson, 201 Cal. 629, 632 (1927) (same).

This Court is therefore ***presumed*** to have been ***aware*** of Section 12 at the time that it decided Ganahl. See, People v. Bryant, Smith & Wheeler, 60 Cal.4th 335, 403 (2014) ("In the absence of evidence to the contrary, we ***presume*** that the court 'knows and applies the correct statutory and case law.'")(emphasis added and citations omitted.); Wilson v. Sunshine Meat & Liquor Co., 34 Cal.3d 554, 563 (1983) ("it is presumed that the court followed the law. … The mere fact that the court did not explicitly refer to [a statute] … does not support the conclusion that it was ignored."); see also, People v. Coddington, 23 Cal.4th 529, 644 (2000) ("we presume. . . that the court knows and applies the correct statutory . . . law. . .")

Neither Plaintiff nor the Court of Appeal has ***ever*** cited ***any*** evidence to overcome this important presumption. Their silence comes with good reason -- there is nothing impactful for them to cite.

It is for this reason that the federal Ninth Circuit deferred to this Court in its own analysis of whether Section 12 impacts the Ganahl holding.[3] See, Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998). As here, the Cabrera plaintiff vigorously asserted that "Ganahl lacks precedential value because it fails to discuss and consider [Code of Civil Procedure] § 12." Id. at 379. The Ninth Circuit rightly rejected this argument in two well-crafted sentences: "…Section 12 was enacted in 1872, twelve years before the Ganahl decision. Once again, absent a subsequent legislative change or an overruling decision, this court is bound by the California Supreme Court's interpretation of California limitation statutes." Id. at 379; see, Matter of Penn Cent. Transp. Co., 553 F.2d 12, 15 (3d Cir. 1977) ("We cannot accept . . .the novel precept that a precedent is

[3] This Court's determination of state law is, of course, binding on the lower federal courts. See, e.g., Oxborrow v. Eikenberry, 877 F.2d 1395, 1399 (9th Cir. 1989) ("The Washington Supreme Court must be recognized as the ultimate expositor of its own state law.") Indeed, state court rulings as regards state law questions are almost always binding on the federal Supreme Court itself. See, Mullaney v. Wilbur, 421 U.S. 684, 691 (1975) ("This Court. . .repeatedly has held that state courts are the ultimate expositors of state law [citations omitted] and that we are bound by their constructions except in extreme circumstances not present here.")

not controlling no matter how clear it is if counsel in a subsequent proceeding can advance a new argument on the point."); Patel v. U.S. Attorney Gen., 917 F.3d 1319, 1324, n.4 (11th Cir. 2019) ("we cannot get around the prior . . . precedent rule just because the prior panel did not consider this argument; there is no exception for that.")[4]

Simply put, the same considerations thought controlling in the foregoing decisions should also control the result here. There has been no "subsequent legislative change or an overruling decision" that would justify a departure from Ganahl's holding. Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998).

To the contrary, this Court reaffirmed Ganahl's vitality through In re Harris, 5 Cal.4th 813, 848, n.18 (1993). There, this Court forcefully reaffirmed the obvious – i.e., Ganahl ***is*** binding "precedent" (id. at 848, n.18) as it is "a California Supreme Court case." In re Harris, 5 Cal.4th 813, 849 (1993); see, Cabrera v. City of Huntington Park, 159 F.3d 374,

[4] The Court of Appeal's opinion cites People v. Barragan, 32 Cal.4th 236, 243 (2004) for the general proposition that "[c]ases are not authority for propositions not considered…." But this general proposition has no applicability where, as here, the specific "proposition" in issue is a ***purely legal*** point, like the meaning and applicability of extant statutory law. See, People v. Bryant, Smith & Wheeler, 60 Cal.4th 335, 403 (2014) ("In the absence of evidence to the contrary, we presume that the court 'knows and applies the correct ***statutory*** . . . law.'")(emphasis added and citations omitted.) As Section 12 was in existence at the time Ganahl was decided, here the law ***presumes*** that the Ganahl Court ***did*** give all due consideration to the statute in rendering its decision. The Court of Appeal's puzzling conclusion to the contrary is error.

379 (9th Cir. 1998)("Despite its age, the Ganahl holding is still good law."), citing, In re Harris, 5 Cal.4th 813 (1993).[5]0

Tellingly, the Ganahl holding and rationale have also never been disturbed by the Legislature. The statute of limitations at issue in Ganahl -- Code of Civil Procedure § 328 -- has been revisited and amended by several generations of legislators, including in 1903, 1994, and 2014. The "Legislature is presumed to know of existing case law" -- including Ganahl. People v. Superior Court (Lavi), 4 Cal.4th 1164, 1179 n. 9 (1993). The Legislature's failure to alter Ganahl's holding through amendment to the tolling statute is, of course, "indicative of legislative approval of [its] interpretation" of pertinent statute of limitations law. Id.; see, id. at 1184 ("The Legislature is presumed to have known of these previous decisions [regarding a statute's meaning] , and its failure to address their holdings in subsequent amendments [to the statute in issue] is tantamount to acquiescence in those decisions.")

In short, the Shalabi Court's opinion has the practical effect of nullifying an extant Supreme Court decision. Needless to say, this

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[5] Even in situations where a higher court ***has*** arguably discounted its earlier precedent, the only proper practice is to leave it to the higher court to squarely state its actual intent. See, Agostini v. Felton, 521 U.S. 203, 207 (1997) ("The Court neither acknowledges nor holds that other courts should ***ever*** conclude that its more recent cases have, by implication, overruled an earlier precedent. Rather, lower courts should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.")(emphasis added.)

represents an extraordinary departure from long-settled stare decisis principles. See, Dammann v. Golden Gate Bridge, Highway & Transportation Dist., 212 Cal.App.4th 335, 350 (2012) (noting that "we have no authority to abolish" Supreme Court authority.)(citations omitted.); Compton v. City of Santee, 12 Cal.App.4th 591, 599, n. 5 (1993) ("Of course, a lower court cannot 'abolish' Supreme Court rulings.") citing, Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 455 (1962). Review is necessary to correct the Court of Appeal's errant view of stare decisis principles. See, California Rule of Court 8.500(b)(1) (Supreme Court review of a court of appeal decision will be ordered "when necessary . . .to settle an important question of law.")

## V. FEDERAL AND STATE COURTS ARE NOW SPLIT ON THE MEANING OF CALIFORNIA STATUTE OF LIMITATIONS LAW.

The statute of limitations is tolled for claims that accrue when a plaintiff is a minor; minority is deemed a "disability" for limitations purposes. E.g., Code Civ. Proc., §§ 328, 352. As noted above, however, state and federal courts are now split regarding the viability of Ganahl, and regarding how to calculate the timeliness of a minor plaintiff's lawsuit.

On one hand, California's federal Court of Appeals has held that Ganahl remains good law and that the day after a "disability" ceases (e.g., an 18th birthday) is counted as part of the limitations period. See, Cabrera

v. City of Huntington Park, 159 F.3d 374 (9th Cir. 1998). On the other hand, one of California's own state courts of appeal has rejected Ganahl by holding that the clock actually starts running ***two*** days after a "disability" ceases (i.e., the day after an 18th birthday). See, Shalabi v. City of Fontana, 35 Cal.App.5th 639, 247 Cal. Rptr. 3d 268 (2019).

Only this Court can resolve this confusion. And the issue is important. "The gravest considerations of public order and security require that the method of computing time be definite and certain." In re Rodriguez, 60 Cal.2d 822, 825 (1964); see, California Rule of Court 8.500(b)(1) (Supreme Court review of a court of appeal decision will be ordered "when necessary . . .to settle an important question of law.") Moreover, state and federal courts should be governed by a uniform explication of California law, and the timeliness of causes of action in California should not vary from courthouse to courthouse. Needless to say, one of this Court's most important functions is to resolve splits of this type. See, California Rule of Court 8.500(b)(1) (Supreme Court review of a court of appeal decision will be ordered "when necessary to secure uniformity of decision. . .")

## VI. CONCLUSION

It has been more than fifty years since this Court's seminal stare decisis opinion in Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450

(1962). It is, however, once again necessary to emphasize the binding effect of this Court's precedential decisions.

For this reason, and for all the foregoing reasons, Petitioners respectfully request that this Court grant review of Shalabi v. City of Fontana, 35 Cal.App.5th 639, 247 Cal. Rptr. 3d 268 (2019), follow Ganahl's extant reading of California tolling statutes, and direct the Court of Appeal to affirm the trial court's finding that Shalabi's suit is time barred.

DATED: July 1, 2019

Respectfully submitted,

**LYNBERG & WATKINS**
A Professional Corporation

By: /s/ S. FRANK HARRELL
**S. FRANK HARRELL**
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Attorneys for Respondents, CITY OF FONTANA, VANESSA WAGGONER, and JASON PERNICIARO

## CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,302 words as counted by the Microsoft Office Word 2016 version word-processing program used to generate this brief.

DATED: July 1, 2019

Respectfully submitted,
**LYNBERG & WATKINS**
A Professional Corporation

By: /s/ S. FRANK HARRELL
**S. FRANK HARRELL**
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## PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1100 Town & Country Road, Suite 1450, Orange, California 92868, (714) 937-1010.

On July 1, 2019, I mailed the foregoing document described as **PETITION FOR REVIEW** on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

| | |
|---|---|
| JESSE ORTIZ III<br>Jesse Ortiz Law<br>980 9th St., Ste. 340<br>Sacramento, CA 95814<br>jesse@jesseortizlaw.com<br>Counsel For Plaintiff LUIS SHALABI<br>(1 copy) | Clerk of the Court, Dept. S32<br>Hon. Wilfred J. Schneider Jr.<br>SAN BERNARDINO COURTHOUSE<br>247 W. Third Street<br>San Bernardino, CA 92415<br>Trial Judge<br>(1 copy) |
| Fourth District Court of Appeal<br>3389 Twelfth Street<br>Riverside, CA 92501<br>(1 Copy) | |

I placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelopes with postage fully prepaid.

On July 1, 2019, I also electronically served the foregoing document described as **PETITION FOR REVIEW** on the following by transmitting a true electronic copy thereof as follows:

| | |
|---|---|
| Supreme Court<br>350 McAllister St.<br>San Francisco, CA 94102<br>**Via TrueFiling**<br>(1 copy) | |

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2019, at Orange, California.

/s/ Debra Miranda
**DEBRA MIRANDA**

S256665
Filed 5/21/19

**CERTIFIED FOR PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

| | |
|---|---|
| LUIS ALEXANDRO SHALABI,<br>Plaintiff and Appellant,<br>v.<br>CITY OF FONTANA et al.,<br>Defendants and Respondents. | E069671<br>(Super.Ct.No. CIVDS1314694)<br>OPINION |

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Reversed.

Ortiz Law Group, Nolan Berggren and Jesse S. Ortiz for Plaintiff and Appellant.

Lynberg & Watkins, S. Frank Harrell, Pancy Lin and Ruben Escobedo III for Defendants and Respondents.

In a third amended complaint (TAC), plaintiff and appellant Luis Alexandro Shalabi sued defendants and respondents Fontana City Police Officer Jason Perniciaro

and others for a deprivation of civil rights (42 U.S.C. § 1983).[1] The trial court dismissed Shalabi's lawsuit due to the lawsuit being barred by the statute of limitations. Shalabi contends the trial court erred by dismissing his lawsuit. We reverse the judgment.

## FACTUAL AND PROCEDURAL HISTORY

In the TAC, Shalabi alleged that on May 14, 2011, Perniciaro wrongfully shot and killed Muhanad Shalabi, who was Shalabi's father. Shalabi filed his original complaint on December 3, 2013.

Shalabi and Perniciaro agreed to a bench trial on the bifurcated issue of Perniciaro's statute of limitations defense. The parties stipulated to the following facts: (1) "[Shalabi's] date of birth is December 3, 1993;" (2) "[Shalabi] reached the age of majority on December 3, 2011;" and (3) "[Shalabi] filed his original complaint in this suit on December 3, 2013."

The trial court concluded Shalabi's lawsuit had to be filed by December 2, 2013, to be within the two-year statute of limitations. The trial court dismissed Shalabi's lawsuit due to it being filed one day beyond the statute of limitations.

## DISCUSSION

### A. CONTENTION

Shalabi contends the trial court erred by finding his lawsuit to be time-barred.

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[1] We take judicial notice of the trial court's register of actions in this matter (*Shalabi v. City of Fontana et al.* (Super. Ct. San Bernardino County, case No. CIVDS1314694). (Evid. Code, § 452, subd. (d).)

We apply the de novo standard of review to this statute of limitations issue. (*Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340.) Shalabi's lawsuit concerned an alleged deprivation of his civil rights. (42 U.S.C. § 1983; hereinafter, § 1983.) A federal civil rights cause of action is subject to the forum state's statute of limitations for personal injury claims. (*Wallace v. Kato* (2007) 549 U.S. 384, 387 (*Wallace*).) In California, the statute of limitations for a personal injury claim is two years.[2] (Code Civ. Proc., § 335.1.)[3] While state law sets the statute of limitations, "the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law." (*Wallace*, at p. 388; see also *Javor v. Taggart* (2002) 98 Cal.App.4th 795, 803.)

"Aspects of § 1983 which are not governed by reference to state law are governed by federal rules conforming in general to common-law tort principles. [Citations.] Under those principles, it is 'the standard rule that [accrual occurs] when the plaintiff has "a complete and present cause of action," ' [citation], that is, when 'the plaintiff can file suit and obtain relief.' " (*Wallace*, *supra*, at p. 388.) In other words, " 'the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages.' " (*Id.* at p. 391.)

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[2] A section 1983 cause of action is not subject to the statute of limitations set forth in the Tort Claims Act (Gov. Code, § 945.6). (*Williams v. Horvath* (1976) 16 Cal.3d 834, 842.)

[3] All subsequent statutory references will be to the Code of Civil Procedure unless otherwise indicated.

State law controls the tolling of the statute of limitations for a section 1983 cause of action. (*Wallace*, *supra*, 549 U.S. at p. 394; *City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1300.) In California, when a minor is injured, the statute of limitations is tolled until the minor reaches the age of 18 years old. (§ 352, subd. (a).) In sum, if a minor has a section 1983 cause of action, then the statute of limitations begins running on the minor's 18th birthday because that is the day the plaintiff can file suit and obtain relief. (*Wallace*, at p. 388 ["when 'the plaintiff can file suit and obtain relief' "].)

The issue before us is whether the two-year statute of limitations ran from
(A) December 3, 2011, through December 3, 2013 (the anniversary method); or
(B) December 3, 2011, through December 2, 2013 (the calendar method). (See *U.S. v. Hurst* (10th Cir. 2003) 322 F.3d 1256, 1259-1260 [discussing the anniversary and calendar methods of calculation].)

The California statute for calculating the last day of the statute of limitations provides, "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." (§ 12.)

Shalabi's 18th birthday was the triggering event because that was the first day he could file his lawsuit. (*Wallace*, *supra*, 549 U.S. at p. 388 ["when 'the plaintiff can file suit and obtain relief' "].) Shalabi's 18th birthday was on December 3, 2011. Accordingly, we exclude December 3, 2011. (§ 12.)

We then count two years, starting with December 4, 2011. (§ 12.) Two calendar years takes us to December 3, 2013. The law requires that we include the last day as being within the statute of limitations. (§ 12.) Accordingly, the last day for Shalabi to file his complaint was December 3, 2013. Shalabi filed his complaint on December 3, 2013. Therefore, Shalabi's complaint was timely.

Section 12 sets forth a method of calculation that ultimately results in the anniversary method of calculating the final date for the statute of limitations. In sum, the final date for Shalabi to file his complaint was December 3, 2013. Shalabi met that deadline. Therefore, we will reverse the judgment.

The trial court, in finding Shalabi's lawsuit to be untimely, relied upon *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415 (*Ganahl*), in which the California Supreme Court applied the calendar method. Respondents also rely on *Ganahl* in explaining why the trial court did not err.

In *Ganahl*, Henry Gordon Ganahl (Gordon) claimed title to land that had been owned by Henry Ganahl, who died intestate on May 12, 1855. Gordon asserted he was an heir of Henry Ganahl. Gordon was born on April 11, 1855. At the time of the *Ganahl* case, males reached the age of majority at 21 years old. The Supreme Court wrote that Gordon attained the age of majority at "the first minute" of April 11, 1876. Thus, at that point, Gordon "was entitled to commence an action for the recovery of whatever interest he had in the land within the period of five years thereafter." The high court explained, "In computing the period of five years we must include the eleventh day of April, 1876, because, as the plaintiff in question attained his majority the first

minute of that day, he had the whole of the day in which to sue; and computing that as the first day of the five years, the whole period of five years expired with the tenth day of April, 1881, and the action not having been commenced until the eleventh of April, 1881, was barred." (*Ganahl*, *supra*, 2 Cal.Unrep. at pp. 415-416.)

*Ganahl* failed to cite section 12. (*Ganahl*, *supra*, 2 Cal.Unrep. at pp. 415-416.) *Ganahl* failed to explain why it applied the calendar method, despite the statutory requirement for application of the anniversary method. *Ganahl* did explain that Gordon's birthday started the running of the statute of limitations because Gordon had the entirety of his birthday to file the lawsuit. (*Id.* at p. 416.) However, *Ganahl* did not explain how the court could create an exception to section 12, which requires the first day be excluded when calculating time. Because *Ganahl* did not cite section 12 or explain how the court could create an exception to a law created by the Legislature, we conclude *Ganahl* is not binding authority on the issue of how to calculate time under section 12. (*People v. Barragan* (2004) 32 Cal.4th 236, 243 [" '[C]ases are not authority for propositions not considered' "].)

Respondents assert that because the statute of limitations was tolled until Shalabi's 18th birthday, the clock started running the day that Shalabi turned 18. In other words, the standard rule for excluding the first day (§ 12) does not apply when the statute of limitations is tolled for a minor awaiting his/her 18th birthday.

Section 12 reflects the first day is excluded when calculating time. Respondents have not directed this court to a statute reflecting the Legislature created an exception to section 12 that would include the first day when calculating time after the statute of

limitations has been tolled while awaiting the plaintiff's 18th birthday. Because section 12 reflects the first day is to be excluded when calculating time, we cannot conclude that the clock started running on Shalabi's 18th birthday. If the Legislature prefers to include a plaintiff's birthday when calculating time in cases in which the statute of limitations has been tolled awaiting the plaintiff's 18th birthday, then the Legislature—not this court—must create that exception. (*Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1265 [" 'Courts may not read into a statute an exception not incorporated therein by the Legislature' "]; *Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148, 161 ["Courts are not authorized to create exceptions to a statute"].)

**DISPOSITION**

The judgment is reversed. Appellant Luis Alexandro Shalabi is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

CERTIFIED FOR PUBLICATION

MILLER
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.