

AUG 19 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL KEATING-TRAYNOR, on
behalf of himself and all others similarly
situated,

Plaintiff - Appellant,

v.

AC SQUARE; et al.,

Defendants - Appellees.

No. 08-17069

D.C. No. 3:08-cv-02907-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Daniel Keating-Traynor appeals from the district court's order dismissing

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his Fair Labor Standards Act (“FLSA”) action seeking overtime compensation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007). We affirm.

The district court properly dismissed the action as barred by the applicable statute of limitations because Keating-Traynor filed the action more than three years after his FLSA claim accrued in May 2005. *See* 29 U.S.C. § 255(a) (setting forth a three-year limitations period for an alleged willful violation of the FLSA); *Biggs v. Wilson*, 1 F.3d 1537, 1540 (9th Cir. 1993) (explaining that the statute of limitations for an FLSA claim accrues “the day the employee’s paycheck is normally issued, but isn’t”).

Because Keating-Traynor cannot state a claim for violation of the FLSA, the district court properly dismissed the civil conspiracy claim. *See Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 208 (9th Cir. 1991) (holding that because the underlying cause of action was barred by the applicable statute of limitations, “the civil conspiracy claim also must fail”).

AFFIRMED.