

1 response and the evidence contained therein. ECF No. 29 at 2. On February 16, 2016, defendant
2 filed a response, ECF No. 30, and on February 29, 2016, plaintiff filed a reply to defendant's
3 response, ECF No. 31.

4 In the response, defendant concedes the fact relevant to disposition of the motion for
5 summary judgment: plaintiff is serving a life sentence with the possibility of parole.¹ ECF No.
6 30 at 1. Therefore he is entitled to the two year tolling provision of California Code of Civil
7 Procedure § 352.1(a). *See Martinez v. Gomez*, 137 F.3d 1124, 1126 (9th Cir. 1998).

8 Defendant contends that the fact that plaintiff was able to file a state court action within
9 one year of the incident giving rise to this lawsuit precludes application of § 352.1(a) in this case.
10 Defendant argues this fact demonstrates plaintiff was not "legally disabled from filing a lawsuit
11 within the two-year statute of limitation period." ECF No. 30 at 1. He argues that "allowing an
12 inmate the benefit of a tolling statute predicated on a legal disability, when as a matter of clear
13 fact he is not so disabled, is not the intention of the statute." ECF No. 30 at 3.

14 Defendant's argument is, as he concedes, not supported by any existing case law. It also
15 ignores the history and the language of § 352.1(a), and betrays a misunderstanding of the relevant
16 "disability." Prior to January 1, 1995, California Code of Civil Procedure § 352(a) provided in
17 relevant part:

18 If a person entitled to bring an action, mentioned in Chapter 3 of
19 this title, be, at the time the cause of action accrued, ... Imprisoned
20 on a criminal charge, or in execution under the sentence of a
21 criminal court for a term less than for life; the time of such
disability is not part of the time limited for the commencement of
the action.

22 Cal. Code Civ. Proc. § 352(a) (West 1982). Section 352(a) operated to toll statutes of limitations
23 for California prisoners serving terms less than life for the entire period of their incarceration.

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27 ¹ Plaintiff's evidence suggests his sentence is twenty-five years to life in prison. *See* ECF No. 29
28 at 2.

1 *See Grasso v. McDonough Power Equipment, Inc.*, 264 Cal.App.2d 597 (1968). Effective
2 January 1, 1995, that statute was replaced by § 352.1(a). Section 352.1(a) provides:

3 (a) If a person entitled to bring an action, mentioned in Chapter 3
4 (commencing with Section 335), is, at the time the cause of
5 action accrued, imprisoned on a criminal charge, or in execution
6 under the sentence of a criminal court for a term less than for
7 life, the time of that disability is not a part of the time limited
8 for the commencement of the action, not to exceed two years.

9 Cal. Code Civ. P. § 352.1(a). The language of § 352.1(a) is identical to the earlier statute, except
10 that it limits the tolling available under its provisions to a period “not to exceed two years.” *Id.*
11 The only change wrought by the 1995 amendment was to shorten to two years the statutory
12 tolling available for imprisonment. For purposes of both former § 352(a) and current § 352.1(a),
13 “continuous custody is the relevant disability.” *Elliott v. City of Union City*, 25 F.3d 800, 803
14 (9th Cir. 1994). The statute does not, as defendant contends, require proof that imprisonment
15 actually impeded access to the courts in order for it to apply, nor does the fact that an inmate was
16 able to access the courts render § 352.1(a) inapplicable.

17 The questions that control application of § 352.1(a) are: (1) when the cause of action
18 accrued, was the plaintiff “imprisoned on a criminal charge” or serving a prison sentence of “less
19 than life”; and (2) was the plaintiff continuously in custody for two years following accrual of the
20 claim. Where, as here, the answer to both of those questions is yes, the plaintiff is entitled to
21 statutory tolling of the limitations period under § 352.1(a) for two years.

22 For the reasons set forth in this order and the magistrate judge’s findings and
23 recommendations, plaintiff had four years from February 4, 2011 in which to file this action. The
24 action was filed on or about February 2, 2014, *see Houston v. Lack*, 487 U.S. 266 (1988), and is
25 therefore timely. This part of defendant’s motion, converted to a motion for summary judgment,
26 will be denied.

27 Neither party objects to the magistrate judge’s findings and recommendations concerning
28 defendant’s motion to dismiss this action under *Younger v. Harris*, 401 U.S. 37 (1971). After
review, that part of the findings and recommendations will be adopted in full.

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In accordance with the above, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 17, 2015 are adopted in part;
2. Defendant's March 2, 2015 motion to dismiss is converted to a motion for summary judgment insofar as defendant seeks dismissal of this action as barred by the statute of limitations and, so converted, is denied;
3. Defendant's March 2, 2015 motion to dismiss this action under *Younger v. Harris*, 410 U.S. 37 (1971) is denied with prejudice;
4. Defendant is granted thirty (30) days from the date of this order in which to file and serve a fully-briefed motion to stay this action under *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 818 (1976); and
5. This matter is referred back to the magistrate judge for handling of further pretrial matters.

DATED: March 3, 2016.


UNITED STATES DISTRICT JUDGE