

1 As previously stated, on August 4, 2016, Defendants filed a motion to dismiss the complaint as
2 barred by the statute of limitations. (ECF No. 17.) Plaintiff filed an opposition on August 18, 2016,
3 and Defendants filed a reply on September 2, 2016. (ECF Nos. 19, 21.) Accordingly, the motion to
4 dismiss is deemed submitted for review without oral argument. Local Rule 230(l).

5 **II.**

6 **LEGAL STANDARD**

7 A motion to dismiss brought pursuant to Rule 12(b)(6) tests the legal sufficiency of a claim,
8 and dismissal is proper if there is a lack of a cognizable legal theory or the absence of sufficient facts
9 alleged under a cognizable legal theory. Conservation Force v. Salazar, 646 F.3d 1240, 1241-42 (9th
10 Cir. 2011) (quotation marks and citations omitted). In resolving a 12(b)(6) motion, a court's review is
11 generally limited to the operative pleading. Daniels-Hall v. National Educ. Ass'n, 629 F.3d 992, 998
12 (9th Cir. 2010); Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007); Schneider v. California Dept. of
13 Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

14 To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
15 true, to state a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing
16 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)) (quotation marks omitted); Conservation
17 Force, 646 F.3d at 1242; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The Court
18 must accept the factual allegations as true and draw all reasonable inferences in favor of the non-
19 moving party, Daniels-Hall, 629 F.3d at 998; Sanders, 504 F.3d at 910; Morales v. City of Los
20 Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000), and in this Circuit, pro se litigants are entitled to have
21 their pleadings liberally construed and to have any doubt resolved in their favor, Wilhelm v. Rotman,
22 680 F.3d 1113, 1121 (9th Cir. 2012); Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012); Silva v.
23 Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

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1 **III.**

2 **DISCUSSION**

3 **A. Summary of Plaintiff's Second Amended Complaint**

4 Plaintiff is presently confined at the Fresno County Jail. However, the incidents described in
5 the complaint occurred while Plaintiff was a patient (civil detainee) at Coalinga State Hospital, a
6 facility of the State of California's Department of State Hospitals.

7 On January 16, 2009, Defendant Cosby and several other officers used excessive force on
8 Plaintiff despite the fact that Plaintiff was not involved in a fight involving two other individuals.
9 Plaintiff contends specifically that Psych Tech Ryan Homel stated loudly that Plaintiff was not
10 involved, he just had eye surgery. Despite this, Defendant Cosby and fourteen other officers pulled
11 Plaintiff to the ground in a choke hold. Defendant Cosby deliberately put his knee in Plaintiff's spine
12 as Plaintiff was already on the ground. Plaintiff felt the pop crusting of his spine. Psych Tech Ryan
13 was calling for the officers to stop, but Defendant Cosby put both his hands around his head and neck.

14 Plaintiff claims on this same date, Defendant S. Valley, Psych Tech, failed to protect and
15 intervene during the assault of Plaintiff by Defendant Cosby. Plaintiff contends that Defendant Valley
16 stood in the medication room and witnessed the assault by Defendant Cosby and the other officers.

17 **B. Statute of Limitations**

18 Federal law determines when a claim accrues, and "[u]nder federal law, a claim accrues when
19 the plaintiff knows or should know of the injury that is the basis of the cause of action." Douglas v.
20 Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009) (citation omitted); Maldonado v. Harris, 370 F.3d 945,
21 955 (9th Cir. 2004); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999). Because section 1983
22 contains no specific statute of limitations, federal courts should apply the forum state's statute of
23 limitations for personal injury actions. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004);
24 Maldonado, 370 F.3d at 954; Fink, 192 F.3d at 914. California's statute of limitations for personal
25 injury actions was extended to two years effective January 1, 2003. Cal. Civ. Proc. Code § 335.1;
26 Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954-55.

27 In actions where the federal court borrows the state statute of limitations, courts should also
28 borrow all applicable provisions for tolling the limitations period found in state law. Jones, 393 F.3d

1 at 927. California’s equitable tolling statute applies to both prisoners and civil detainees. Id. Section
2 352.1 of the California Code of Civil procedure allows for the tolling of the statute of limitations
3 during a period of “disability” while the plaintiff is in state prison, and the tolling may not exceed two
4 years. Accordingly, the statute of limitations in this case would be tolled for no more than two years.
5 Moreno v. Thomas, 490 F.Supp.2d 1055, 1061 (C.D. Cal. 2007). For purposes of the tolling
6 provision, “the term ‘insane’ has been defined as a condition of mental derangement which renders the
7 sufferer incapable of caring for his property or transacting business, or understanding the nature or
8 effects of his acts.” Hsu v. Mt. Zion Hospital, 259 Cal.App.2d 562, 571 (1968).

9 Here, Plaintiff’s complaint raises allegations under 42 U.S.C. § 1983 that Defendants’ violated
10 his Fourteenth Amendment rights by failing to protect him from excessive and, with regard to
11 Defendant Cosby, subjecting him to the use of excessive force. Plaintiff alleges that the events giving
12 rise to his claim took place on January 16, 2009. (ECF No. 8, at 8.) However, as previously
13 mentioned, Plaintiff’s complaint was originally filed on May 12, 2014, in case number 1:14-cv-00706
14 (prior to severance of moving defendants in this action). (ECF No. 1.)

15 As Plaintiff’s complaint was filed on May 12, 2014, and the allegations in the complaint
16 accrued on January 16, 2009, Plaintiff’s complaint filed approximately 5 years and 4 months
17 thereafter, is barred by the applicable statute of limitations, even as extended by California’s equitable
18 tolling statute.

19 In opposition, Plaintiff contends that in 2011 through 2014, he was declared incompetent
20 and/or undergoing incompetency proceedings in the Fresno County Superior Court which entitles him
21 to equitable tolling. (Opp’n at 5-6; ECF No. 19.) Plaintiff is incorrect. Plaintiff’s “insanity” and/or
22 “incompetency” must exist at the time the claim accrues to toll the limitations period. Cal. Code Civ.
23 Proc. § 357 (“Disability must exist when right of action accrued. No person can avail himself of a
24 disability, unless it existed when his right of action accrued”). Thus, once the cause of action has
25 accrued and the statute of limitations has begun to run, no later disability can suspend it. Larsson v.
26 Cedars of Lebanon Hosp., 97 Cal.App.2d 704, 707 (1950); see also Singer v. Paul Revere Life Ins.
27 Co., No. CV 14-08700 MMM (MRWx), 2015 WL 3970284, at *4 (C.D. Cal.); Calloway v. Scribner,
28 No. 1:11-cv-00803 DLB PC, 2014 WL 6819872, at *3 (E.D. Cal.). Here, Plaintiff’s cause of action

1 clearly accrued on January 16, 2009, the date he was subjected to the alleged excessive force by
2 Defendant Cosby for which Defendant Valley failed to intervene. Plaintiff's alleged
3 incompetency/insanity proceedings occurred two years after his claims against Defendants Cosby and
4 Valley accrued. Therefore, Plaintiff's alleged incompetency/insanity did not toll the limitations
5 period, and Defendants' motion to dismiss the action as barred by the statute of limitations should be
6 granted.

7 **IV.**

8 **RECOMMENDATIONS**

9 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 10 1. Defendants' motion to dismiss the action as barred by the statute of limitations be
11 granted; and
12 2. The instant action be dismissed.

13 These Findings and Recommendation will be submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
15 being served with these Findings and Recommendations, the parties may file written objections with
16 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
17 Recommendations." The parties are advised that failure to file objections within the specified time
18 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
19 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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21 IT IS SO ORDERED.

22 Dated: January 13, 2017



23 UNITED STATES MAGISTRATE JUDGE