



1 10.) Despite lapse of more than the twenty-one days allowed for response, Plaintiff has not filed  
2 any response to the OSC.

3 **A. Plaintiff's Claims Are Barred by the Statute of Limitations**

4 Upon review of the Complaint, it is apparent that Plaintiff is barred by the statute of  
5 limitations as all of his claims and allegations are based on incidents that occurred in 2011.

6 As stated in the OSC, the applicable statute of limitations begins to run upon accrual of  
7 the plaintiff's claim -- i.e. when he knows or has reason to know of the injury that is the basis of  
8 his action, *Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009), which is normally on the date  
9 of injury, *Ward v. Westinghouse Canada, Inc.*, 32 F.3d 1405, 1407 (9th Cir.1994). Actions under  
10 section 1983 fall under the limitations period from the forum state's statute of limitations for  
11 personal injury torts, *see Wallace v. Kato*, 549 U.S. 384, 387, 127 S.Ct. 1091 (2007), which is  
12 two years in California, *see Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); Cal. Civ.  
13 Proc. Code § 335.1.

14 The two-year statute of limitations period is tolled for two years if the plaintiff is a  
15 prisoner serving a term of less than life which gives such prisoners effectively four years to file a  
16 federal suit. *See* Cal. Civ. Proc. Code § 352.1(a); *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir.  
17 2002) (federal courts borrow the state's California's equitable tolling rules if they are not  
18 inconsistent with federal law). Thus, Plaintiff had four years from the date of the incidents at  
19 issue to file suit.

20 The claims Plaintiff seeks to pursue in this action are barred by the statute of limitations.  
21 His claims allegedly accrued, and the statute of limitations began to run in 2011. (Doc. 1, pg. 4.)  
22 He was entitled to four years (the sum of the time allowed by the usual limitations period and  
23 equitable tolling under section § 352.1) from that time to file suit. He, therefore, had until 2015,  
24 at the latest, to file suit. He did not file this action until March 24, 2016 -- well after the 2015  
25 deadline. Thus, Plaintiff's claims from incidents that occurred in 2011 are barred by the statute of  
26 limitations.

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These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **21 days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 24, 2017

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE