1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 GUILLERMO GARCIA, Case No.: 1:19-cv-00184-DAD-SAB (PC) 12 Plaintiff, ORDER VACATING ORDER TO **SHOW CAUSE** 13 v. (ECF Nos. 38, 51) 14 M. BALDWIN, et.al., 15 Defendants. 16 17 18 Plaintiff Guillermo Garcia is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 19 1983. 20 On February 18, 2020, the Court issued a second screening order directing Plaintiff to show 21 cause why certain claims were not barred by the statute of limitations. (ECF No. 38.) 22 Currently before the Court is Plaintiff's response to the Court's second screening order, filed 23 on August 24, 2020. (ECF No. 51.) 24 Although the statute of limitations is an affirmative defense that normally may not be raised by 25 the Court sua sponte, it may be grounds for sua sponte dismissal of an in forma pauperis complaint 26 where the defense is complete and obvious from the face of the pleadings or the court's own records. 27 Franklin v. Murphy, 745 F.2d 1221, 1228-1230 (9th Cir. 1984); see also Levald, Inc. v. City of Palm

Desert, 988 F.2d 680, 686-87 (9th Cir. 1993). Here, the Court issued its order to show cause based on

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a finding that the statute of limitations defense appeared complete and obvious from the face of Plaintiff's first amended complaint. Plaintiff now argues that his retaliation and cruel and unusual punishment claims are not barred by the statute of limitations based on various different factors, including the filing of a state court action and equitable tolling. (ECF No. 51.) The determination of the statute of limitations and entitlement to equitable tolling is not obvious from the face of the first amended complaints, and the documents attached to Plaintiff's request for judicial notice. (ECF No. 52.) Therefore, the Court will vacate the order to show cause.

Based on the foregoing, it is HEREBY ORDERED that:

- 1. The Court's February 18, 2020 order to show cause is VACATED; and
- 2. The Court will further screen Plaintiff's first amended complaint in due course.

IT IS SO ORDERED.

Dated: September 9, 2020

UNITED STATES MAGISTRATE JUDGE