

1 indifference” defendants as a first amended complaint in this action, which is supposed to only be
2 challenging the acts and omissions of the “custody” defendants. (Id. at 1.) However, the Court
3 has screened Plaintiff’s original complaint and finds that Plaintiff’s original complaint is
4 substantially similar to the complaint filed on August 26, 2019 and construed as a first amended
5 complaint by the Magistrate Judge. Further, the Court finds that, like the complaint filed on
6 August 26, 2019, it is apparent from the face of Plaintiff’s complaint and properly judicially
7 noticed documents that Plaintiff’s claim against Defendant Najera is barred by *res judicata* and
8 that Plaintiff’s claims against all of the remaining defendants named in Plaintiff’s original
9 complaint are barred by the statute of limitations. Therefore, even assuming the Magistrate Judge
10 inappropriately construed Plaintiff’s August 26, 2019 complaint as a first amended complaint in
11 this action, the error is harmless. Consequently, Plaintiff’s first objection is overruled.

12 Second, Plaintiff argues that, while he agrees that a summary judgment dismissal is
13 considered a decision on the merits for *res judicata* purposes, sovereign immunity does not cover
14 Defendant Najera’s decision to ignore Plaintiff’s safety within the Fresno County Jail. (ECF No.
15 14, at 2-4.) However, the undersigned agrees with the Magistrate Judge’s determination that
16 Plaintiff’s claims against Defendant Najera are barred by *res judicata* because Plaintiff’s prior
17 action, Miller v. Najera, Case No. 12-cv-01288-LJO (E.D. Cal.) (“Miller I”), involved the same
18 claim or cause of action as the current action; Miller I reached a final judgment on the merits of
19 Plaintiff’s claims against Defendant Najera; and Miller I and the current action involve parties,
20 namely Plaintiff and Defendant Najera, who are in privity with each other. Therefore, Plaintiff’s
21 second objection is overruled.

22 Third, Plaintiff argues that his claims against all of the remaining defendants are not
23 barred by the statute of limitations because, in the January 15, 2019 order denying Plaintiff’s
24 motion for reconsideration in Miller I, Chief District Judge O’Neill stated that: “It is well
25 established “that the applicable statute of limitations must be tolled while a prisoner completes
26 the mandatory exhaustion process.”” Miller I, ECF No. 95, at 2 n. 1. However, while it is
27 generally true that a statute of limitations is tolled while a prisoner completes the mandatory
28 exhaustion process, completion of the exhaustion process after the applicable statute of

1 limitations has already expired does not revive the statute of limitations and has no tolling effect.
2 See Forman v. Chicago Title Ins. Co., 32 Cal. App. 4th 998, 1006 (1995) (“Tolling can only
3 suspend the running of a statute [of limitations] that still has time to run; it cannot revive a statute
4 which has already run out.”). The undersigned agrees with the Magistrate Judge’s determination
5 that the statute of limitations applicable to Plaintiff’s § 1983, § 1985(3), and Bivens federal
6 claims and Plaintiff’s California state law claims expired no later than March 7, 2015. Therefore,
7 since Plaintiff admitted in the July 30, 2019 letter attached to his original complaint that he did
8 not initiate the administrative remedy process at the Fresno County Jail until around October 25,
9 2018, Plaintiff’s initiation of the mandatory exhaustion process does not toll the statute of
10 limitations applicable to his federal and state law claims because the statute of limitations had
11 expired more than three years before Plaintiff began the exhaustion process. (ECF No. 1, at 24.)
12 Consequently, Plaintiff’s third objection is overruled.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
14 *de novo* review of the case. Having carefully reviewed the entire file, including Plaintiff’s
15 objections, the Court finds that the Magistrate Judge’s findings and recommendation are
16 supported by the record and by proper analysis.

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. The findings and recommendations issued on February 12, 2020, (ECF No. 11),
19 are ADOPTED in full;
- 20 2. This action is DISMISSED, with prejudice, due to Plaintiff’s failure to state a
21 claim upon which relief may be granted; and
- 22 3. The Clerk of the Court is directed to CLOSE this case.

23 IT IS SO ORDERED.

24 Dated: December 4, 2020

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26 SENIOR DISTRICT JUDGE
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