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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE O. ARTEAGA,
Plaintiff,
v.
J. GARCIA, *et al.*,
Defendants.

Case No. 1:22-cv-01292-KES-EPG (PC)

FINDINGS AND RECOMMENDATIONS
TO SEVER UNRELATED CLAIMS

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY (30) DAYS

Plaintiff Jose O. Arteaga is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. The Court will recommend that Plaintiff’s unrelated claims based on events after Plaintiff’s placement in administrative segregation in February 2019 (ECF No. 1 at 14–21) against John Doe Defendants be severed from this action and proceed in a new action.

I. BACKGROUND

Plaintiff filed the complaint commencing this action on October 11, 2022. (ECF No. 1). The Court screened Plaintiff’s complaint and issued Findings and Recommendations, recommending that the case may proceed on the following cognizable claims: 1) Eighth Amendment claims against defendants J. Garcia and A. Fugate for excessive force and 2) Eighth Amendment failure to protect claim against Defendant John Doe #1. (ECF No. 14). The magistrate judge recommended all other claims and defendants be dismissed. (*Id.* at 22).

1 The Findings and Recommendations declined to analyze certain claims that are based on events
2 that occurred after plaintiff was placed in administrative segregation, because the claims are
3 unrelated and cannot be brought in the same suit. (*Id.* at 21).

4 After reviewing Findings and Recommendations, the district judge agreed that the case
5 should proceed on “plaintiff’s Eighth Amendment claims against defendants J. Garcia and
6 Fugate for excessive force and on plaintiff’s Eighth Amendment failure to protect claim against
7 Defendant John Doe #1.” (ECF No. 21 at 3). The district judge also agreed that several other
8 claims should be dismissed. (*Id.*) The district judge, however, declined “to dismiss plaintiff’s
9 unrelated claims arising from events that occurred after his placement in administrative
10 segregation,” and directed the magistrate judge to further consider whether such claims should
11 be severed or dismissed from this case. (*Id.* at 2). Specifically, the district judge stated:

12 In considering misjoined claims, district courts must conduct a
13 prejudice analysis before dismissing the severed claims pursuant to
14 Federal Rule of Civil Procedure 21. *Rush v. Sport Chalet, Inc.*, 779
15 F.3d 973, 975 (9th Cir. 2015) (abuse of discretion to dismiss rather
16 than sever claims against improperly joined parties without evaluating
17 the prejudice to plaintiff of dismissal). The Ninth Circuit has noted that
18 such consideration should include “loss of otherwise timely claims if
19 new suits are blocked by statutes of limitations.” *Rush*, 779 F.3d at 975
20 (citation omitted).

21 If the unrelated, improperly joined claims are otherwise cognizable,
22 severance of those claims may be warranted if the plaintiff would be
23 prejudiced by their dismissal due to the statute of limitations.

24 (*Id.*) The case was then referred back to the undersigned “for further proceedings” and “for
25 further findings and recommendations as to whether those remaining allegations state
26 cognizable claims, and, if so, whether dismissal or severance is appropriate as to any such
27 remaining claims.” (*Id.* at 2–3, 4).

28 Following the district judge’s order, the Court issued a service order with respect to
cognizable Eighth Amendment claims against J. Garcia, A. Fugate, and John Doe #1. (ECF No.
22). The Court now considers whether the remaining unrelated claims should be dismissed or
severed.

1 **II. COMPLAINT ALLEGATIONS REGARDING UNRELATED**
2 **POST-ADMINISTRATIVE-SEGREGATION CLAIMS**

3 The claims in Plaintiff’s complaint that arise from events occurring after Plaintiff’s
4 placement in administrative segregation in February 2019 are subject to dismissal or severance
5 because they are unrelated to the claims proceeding in this case. These claims are based on the
6 following allegations in Plaintiff’s complaint, which the Court previously summarized in its
7 Findings and Recommendations as follows:

8 In another group of claims, Plaintiff alleges that he was left in
9 administrative segregation for a period of about eight months, during
10 which Plaintiff suffered due to constant retaliation by the officers
11 responsible for passing out meals and the staff responsible for
12 providing medical attention. Plaintiff alleges that he was continuously
13 ill from the food provided by custody. Plaintiff would report this to
14 medical staff, but they ignored any 7362 (CDCR medical form)
15 request regarding foodborne illness. Plaintiff developed a rash all over
16 his body and was taken to a dermatologist due to the painful rash and
17 hair loss. Plaintiff also suffered stomach pains, headaches, and
18 intestinal pain in the liver and kidney. Plaintiff alleges that these
19 reactions are caused by chemical contaminants. Plaintiff alleges that
20 medical would act as if Plaintiff was not experiencing these symptoms.
21 Plaintiff’s only effective medicine was to force himself to vomit the
22 food. (*Id.* at 16).

23 Plaintiff stopped consuming a lot of his provided meals and was forced
24 to purchase food from the canteen prison store to stay alive. Plaintiff
25 was not aware of how long he would be housed in administrative
26 segregation. At the time, Plaintiff hoped that the money in his account
27 would not run out. However, when Plaintiff was ordered to pay a court
28 fee in another § 1983 civil case, he was unable to do so. Plaintiff was
cautious to not run out of money while in administrative segregation.
Plaintiff was not able to make the court aware of his situation for fear
of continuing and worsening retaliation. Plaintiff’s complaint was
dismissed without prejudice due to Plaintiff’s inability to pay the filing
fees requested. Thus, Plaintiff was forced to wait for a better time to
file the § 1983 motion. (*Id.* at 17).

Due to the cruel and continuous retaliation against Plaintiff, Plaintiff
was forced to file a petition for a writ of habeas corpus, (*see id.* at 49–
51 (Plaintiff’s Exhibit # 3)), in a desperate attempt to make them stop

1 the abuses, mistreatment, and tampering of Plaintiff's state meals that
2 Plaintiff was constitutionally entitled to. But even this request for
3 justice did not stop the mistreatment. The abuses continued without
4 any regard to prison rules, human, suffering, or the consequences of
5 violating prison policy. Although Plaintiff filed a CDC-602 complaint,
6 it did not work to stop the constant retaliatory practices. (*Id.* at 20).

7 As support for Plaintiff's allegations of meal tampering, Plaintiff
8 attaches the dermatology report that Plaintiff requested after Plaintiff
9 was taken to see a dermatologist due to the rashes and bald spots
10 caused by the reaction Plaintiff's body had to the chemicals that made
11 Plaintiff sick while Plaintiff was in administrative segregation (*See id.*
12 at 4–47 (Plaintiff's Exhibit #2)). Plaintiff also attaches 602 grievance
13 form dated July 30, 2019¹ (*see id.* at 52–65 (Plaintiff's Exhibit #4)),
14 and fifty-nine 7362 CDCR Medical Request Form copies as proof that
15 Plaintiff was constantly requesting medical attention as required by
16 protocol, but without any positive results (*See id.* at 69–154 (Plaintiff's
17 Exhibit #6)). (*Id.* at 21).

18 (ECF No. 14 at 8–9).

19 **III. ANALYSIS**

20 The Ninth Circuit has advised district courts to conduct a prejudice analysis when
21 dismissing—rather than severing—claims or defendants based misjoinder. *Rush v. Sport*
22 *Chalet*, 779 F.3d 973, 975 (9th Cir. 2015). The Ninth Circuit specifically noted that a district
23 court should consider “loss of otherwise timely claims if new suits are blocked by statutes of
24 limitations.” *Rush*, 779 at 975. (quoting *DirectTV, Inc. v. Leto*, 467 F.3d 842, 846–47 (3rd Cir.
25 2006)). This Court has interpreted the Ninth Circuit's mandate in *Rush* to mean that “this Court
26 should avoid dismissal of otherwise potentially meritorious claims outside of the limitations
27 period.” *Griffin v. Gonzales*, No. 1:11-CV-00210-AWI, 2015 WL 1820899, at *2 (E.D. Cal.
28 Apr. 15, 2015) (citing *Rush*, 779 at 975).

¹ Upon further review, the Court determined that this 602 form is dated January 30, 2019, not July 30, 2019. The initial screening mis-read Plaintiff's “1” in the month field as if it were a “7.” (ECF No. 1 at 54). Reviewing subsequent pages (*id.* at 56), however, as well as allegations in the complaint referencing this Exhibit #4 (*id.* at 8), confirms that the form is dated January 30, 2019.

1 While the Court has not conducted an extensive review of these claims, Plaintiff's
2 claims arising from events that occurred after his placement in administrative segregation in
3 February 2019 appear could be meritorious. Plaintiff alleges he had a serious medical need
4 because the meals served to him over the period of eight months were making him sick and that
5 his requests for health services have gone unanswered. Plaintiff also alleges that his food was
6 adulterated in retaliation for Plaintiff engaging in protected conduct, such as filing grievances.
7 Such allegations could state claims for First Amendment retaliation and Eighth Amendment
8 deliberate indifference to serious medical needs.

9 Turning to whether such claims could be barred by the statute of limitations if they were
10 dismissed, rather than severed, the Court notes that no statute of limitations is set out in 42
11 U.S.C. § 1983. Instead, California's two-year statute of limitations on personal injury claims
12 applies. Cal. Code Civ. Proc. § 335.1; *Butler v. Nat'l Cmty. Renaissance of California*, 766
13 F.3d 1191, 1198 (9th Cir. 2014). Under federal law, a civil rights claim like this accrues when
14 plaintiff knows or has reason to know of the injury giving rise to the claim. *Olsen v. Idaho State*
15 *Bd. Of Med.*, 363 F.3d 916, 926 (9th Cir. 2004).

16 In some circumstances, statutory and equitable tolling may preserve a claim that is
17 otherwise barred by the statute of limitations by extending or suspending the accrual of the
18 limitations period. *Jones v. Blanas*, 393 F.3d 918, 928 (9th Cir. 2004). In determining whether
19 a civil rights claim is time-barred, federal courts apply the forum state's tolling provisions to
20 the extent they are not inconsistent with federal law. *See Azer v. Connell*, 306 F.3d 930, 936
21 (9th Cir. 2002); *Griffin*, 2015 WL 1820899, at *2.

22 Under California law, Plaintiff may be entitled to two years of statutory tolling if
23 Plaintiff is serving a criminal sentence for a term less than life. California Code of Civil
24 Procedure § 352.1(a) provides: "If a person entitled to bring an action, mentioned in Chapter 3
25 (commencing with Section 335), is, at the time the cause of action accrued, imprisoned on a
26 criminal charge, or in execution under the sentence of a criminal court for a term less than for
27 life, the time of that disability is not a part of the time limited for the commencement of the
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1 action, not to exceed two years.” Here, it appears that Plaintiff may be entitled to two additional
2 years of tolling under California Code of Civil Procedure § 352.1(a).²

3 Further, the Judicial Council of California promulgated emergency rules in response to
4 the COVID-19 pandemic. *See* Judicial Council of Cal., Emergency Rules Related to COVID-
5 19.4 Under Emergency Rule 9, “[n]otwithstanding any other law, the statutes of limitations and
6 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until
7 October 1, 2020.” *Id.* That rule provides additional 178 days or about six months of tolling.
8 Federal courts have applied Emergency Rule 9 to § 1983 actions in federal court. *See, e.g.,*
9 *Porter v. Yuba City Police Officers Hansen*, No. 2:20-CV-01554-KJM-DB, 2022 WL 1460124,
10 at *2 (E.D. Cal. May 9, 2022); *Pumphrey v. Battles*, No. 21-CV-09005-JSC, 2023 WL
11 1769185, at *5 (N.D. Cal. Feb. 3, 2023).

12 Plaintiff may also be entitled to equitable tolling for exhaustion of administrative
13 remedies. Equitable tolling “operates independently of the literal wording of the Code of Civil
14 Procedure to suspend or extend a statute of limitations as necessary to ensure fundamental
15 practicality and fairness.” *Jones*, 393 F.3d at 928 (quoting *Lantzy v. Centex Homes*, 31 Cal. 4th
16 363, 370 (2003)) (internal quotation marks omitted). “Where exhaustion of an administrative
17 remedy is mandatory prior to filing suit, equitable tolling is automatic: ‘It has long been settled
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19 ² Federal Rule of Evidence 201 permits a court to take judicial notice of any facts not subject to
20 reasonable dispute and which may be “accurately and readily determined from sources whose accuracy
21 cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Materials from a proceeding in another
22 tribunal are appropriate for judicial notice. *United States ex rel. Robinson Rancheria Citizens Council v.*
Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (court may take notice of proceedings in other courts, if
proceedings directly relate to matters at issue).

23 The court takes judicial notice of the order filed in Plaintiff’s habeas case, *Arteaga v. Clark*, No.
24 CV 08-0599-DDP (RC), 2009 WL 1041499, at *1 (C.D. Cal. Apr. 17, 2009), stating that Plaintiff “was
25 sentenced . . . to life with the possibility of parole, and on the enhancements to 25 years to life.” Both
26 prisoners serving 25 years-to-life and life-with-the-possibility-of-parole sentences are entitled to two
27 years of statutory tolling. *Mwasi v. Romero*, No. 2:21-CV-06467, 2023 WL 8143939, at *8 (C.D. Cal.
28 Oct. 23, 2023), *report and recommendation adopted*, 2023 WL 9001277 (C.D. Cal. Dec. 27, 2023)
 (“Plaintiff serving a 25 years-to-life sentence . . . is entitled to two years of statutory tolling.”); *Mitchell*
v. Baeza, No. 1:20-CV-00857-KES-HBK (PC), 2024 WL 4819416, at *5 (E.D. Cal. Nov. 18, 2024)
 (“[P]risoners serving life sentences with the possibility of parole should receive the benefit of
§ 352.1(a).”) (citing *Brooks v. Mercy Hosp.*, 1 Cal. App. 5th 1, 6–7 (2016)).

1 in this and other jurisdictions that whenever the exhaustion of administrative remedies is a
2 prerequisite to the initiation of a civil action, the running of the limitations period is tolled
3 during the time consumed by the administrative proceeding.” *McDonald v. Antelope Valley*
4 *Cnty. Coll. Dist.*, 45 Cal. 4th 88, 101 (2008) (quoting *Elkins v. Derby*, 12 Cal. 3d 410, 414
5 (1974)); *see also Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005) (“[T]he applicable statute
6 of limitations must be tolled while a prisoner completes the mandatory exhaustion process.”).

7 However, a party cannot deduct the time consumed by the pendency of an action if it
8 was later dismissed without prejudice. *Griffin*, 2015 WL 1820899, at *3 (citing *Thomas v.*
9 *Gilliland*, 95 Cal. App. 4th 427, 433, 115 Cal. Rptr. 2d 520 (2002)). When an action is
10 dismissed without prejudice, courts restore the applicable statute of limitations “as if no action
11 had been brought.” *Id.* (quoting *Wood v. Elling Corp.*, 572 P.2d 755 (Cal. 1977)).

12 Here, Plaintiff’s remaining claims stem from events that occurred between February and
13 October of 2019. Plaintiff does not allege specific facts regarding equitable tolling. However,
14 even if Plaintiff were entitled to an additional six months of equitable tolling for exhaustion of
15 administrative remedies, in addition to 4 years and 178 days of statutory tolling, the statute of
16 limitations on Plaintiff’s claims would have run on October of 2024. Thus, without deciding
17 the issue, it is possible that dismissal without prejudice may result in Plaintiff’s claims being
18 barred by the applicable statute of limitations.

19 The Ninth Circuit’s direction in *Rush* instructs that this Court should avoid dismissal of
20 otherwise potentially meritorious claims outside of the limitations period. *See Rush*, 779 F.3d at
21 975; *Griffin*, 2015 WL 1820899, at *3. In addition, Rule 21 of the Federal Rules of Civil
22 Procedure provides that “[a]ny claim against a party may be severed and proceeded with
23 separately.” Fed. R. Civ. P. 21. Courts have broad discretion regarding severance. *See Coleman*
24 *v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000); *Maddox v. County of Sacramento*,
25 No. 2:06-cv-0072-GEB-EFB, 2006 WL 3201078, *2 (E.D. Cal. Nov. 6, 2006).

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1 Therefore, while the Court has not conducted a full screening of the claims arising from
2 events that occurred after Plaintiff's placement in administrative segregation in February 2019,
3 given the date of the incidents and potential statute of limitations issues, the Court recommends
4 that these claims be severed to proceed in a separate action, rather than dismissed without
5 prejudice as previously recommended.

6 **IV. CONCLUSION AND ORDER**

7 Accordingly, **IT IS RECOMMENDED that:**

- 8 1. Plaintiff's claims based on events after Plaintiff's placement in administrative
9 segregation in February 2019 (ECF No. 1 at 14–21) against John Doe Defendants be
10 severed from this action and proceed in a new action.
- 11 2. The Clerk of the Court be directed to:
- 12 a. Open a separate civil action for Plaintiff Jose Arteaga against John Doe
13 Defendants;
- 14 b. Assign the new action to the District Judge and Magistrate Judge to whom
15 the instant case is assigned and make appropriate adjustment in the
16 assignment of civil cases to compensate for such assignment;
- 17 c. File and docket, with the same effective dates as in this action, a copy of
18 Plaintiff's complaint dated October 11, 2022 (ECF No. 1); Findings and
19 Recommendations (ECF No. 14); Order Adopting in Part Findings and
20 Recommendations (ECF No. 21); and this order in the new action;
- 21 d. Send Plaintiff copies of these documents bearing the new case number;
- 22 e. Issue and send to Plaintiff New Case Documents;
- 23 f. Send Plaintiff an application to proceed *in forma pauperis*;
- 24 3. Plaintiff be ordered to pay a \$405.00 filing fee or complete and submit an
25 application to proceed *in forma pauperis* bearing the new case number within 30
26 days of this order;
- 27 4. Plaintiff be advised that failure to comply with this order may result in the dismissal
28 of Plaintiff's new case.

1 These Findings and Recommendations will be submitted to the United States District
2 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1). Within
3 thirty days after being served with a copy of these Findings and Recommendations, any party
4 may file written objections with the Court and serve a copy on all parties. Such a document
5 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any
6 reply to the objections shall be served and filed within 30 days after service of the objections.
7 Further, any objections shall be limited to no more than 15 pages, including exhibits.

8 The parties are advised that failure to file objections within the specified time may
9 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
10 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

13 Dated: January 29, 2025

14 /s/ Eric P. Gray
15 UNITED STATES MAGISTRATE JUDGE
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