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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 DAVID NATHANIEL ROBERTS,

12 Plaintiff,

13 v.

14 KERN VALLEY STATE PRISON,
15 et al.,

16 Defendants.

1:22-cv-01505-GSA-PC

**ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED AS BARRED BY
STATUTE OF LIMITATIONS
(ECF No. 1.)**

THIRTY-DAY DEADLINE TO RESPOND

17
18 **I. BACKGROUND**

19 David Nathaniel Roberts (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On September 12, 2022,
21 Plaintiff filed the Complaint commencing this action at the Sacramento Division of the United
22 States District Court for the Eastern District of California. (ECF No. 1.) On November 21, 2022,
23 the case was transferred to the Fresno Division. (ECF No. 12.) The Complaint is now before the
24 court for screening. 28 U.S.C. § 1915.

25 **II. SCREENING REQUIREMENT**

26 The court is required to screen complaints brought by prisoners seeking relief against a
27 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
28 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
3 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
4 dismiss the case at any time if the court determines that the action or appeal fails to state a claim
5 upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 A complaint is required to contain “a short and plain statement of the claim showing that
7 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
9 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
10 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
11 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
12 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state
13 a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim
14 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
15 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal
16 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this
17 plausibility standard. Id.

18 **III. SUMMARY OF PLAINTIFF’S COMPLAINT**

19 Plaintiff is presently incarcerated at the California Health Care Facility in Stockton,
20 California. The events at issue in the Complaint allegedly occurred at Kern Valley State Prison
21 (KVSP) in Delano, California, when Plaintiff was incarcerated there in the custody of the
22 California Department of Corrections and Rehabilitation. Plaintiff names as defendants KVSP,
23 Kern County, Warden Henderson, and Correctional Officer Franco (collectively “Defendants”).

24 Plaintiff alleges that on July 28, 2018, he was beaten up in handcuffs by Correctional
25 Officer Franco and other officers, and suffered broken ribs, broken teeth, busted mouth, swollen
26 nose, bruised forehead with cuts, fractured jaw, swollen cheekbone, and bruises all over his chest
27 and body. Plaintiff also alleges that he was not given a 7219 medical evaluation, treated for his
28 injuries by a nurse, or taken to a doctor.

1 **IV. STATUTE OF LIMITATIONS**

2 In federal court, federal law determines when a claim accrues, and “under federal law, a
3 claim accrues ‘when the plaintiff knows or has reason to know of the injury which is the basis of
4 the action.’” Lukovsky v. City and County of San Francisco, 535 F.3d 1044, 1048 (9th Cir.
5 2008) (quoting Two Rivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999); Fink v. Shedler, 192
6 F.3d 911, 914 (9th Cir. 1999)). In the absence of a specific statute of limitations, federal courts
7 should apply the forum state’s statute of limitations for personal injury actions. Lukovsky, 535
8 F.3d at 1048; Jones v. Blanas, 393 F.3d 918, 927 (2004); Fink, 192 F.3d at 914. California’s
9 two-year statute of limitations for personal injury actions applies to 42 U.S.C. § 1983 claims.
10 See Jones, 393 F.3d at 927. California’s statute of limitations for personal injury actions requires
11 that the claim be filed within two years. Cal. Code Civ. Proc., § 335.1.

12 In actions where the federal court borrows the state statute of limitations, the court should
13 also borrow all applicable provisions for tolling the limitations period found in state law. See
14 Hardin v. Straub, 490 U.S. 536, 539, 109 S.Ct. 1998, 2000 (1989). Pursuant to California Code
15 of Civil Procedure, § 352.1, a two-year limit on tolling is imposed on prisoners. Section 352.1
16 provides, in pertinent part, as follows:

17 (a) If a person entitled to bring an action, . . . is, at the time the
18 cause of action accrued, imprisoned on a criminal charge, or in
19 execution under the sentence of a criminal court for a term less
20 than for life, the time of that disability is not a part of the time
limited for the commencement of the action, not to exceed two
years.

21 Cal. Code Civ. Proc., § 352.1. In addition, under the Prison Litigation Reform Act, an applicable
22 statute of limitations must be tolled while a prisoner completes the mandatory exhaustion
23 process. Civil Rights of Institutionalized Persons Act, § 7(a), 42 U.S.C.A. § 1997e(a).

24 Although the statute of limitations is an affirmative defense that normally may not be
25 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma pauperis*
26 complaint where the defense is complete and obvious from the face of the pleadings or the court’s
27 own records. Franklin v. Murphy, 745 F.2d 1221, 1228-1230 (9th Cir. 1984). See Levald, Inc.

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1 v. City of Palm Desert, 988 F.2d 680, 686-87 (9th Cir. 1993). That is the case here – the defense
2 appears complete and obvious from the face of the complaint.

3 Plaintiff alleges that on July 28, 2018, he was beaten and injured by Defendant
4 Correctional Officer Franco and other officers at KVSP. Based on these allegations, it appears
5 that the statute of limitations for Plaintiff’s injuries began to run on or about July 28, 2022.
6 Plaintiff did not file this lawsuit until more than four years later, on September 12, 2022. Even
7 allowing for tolling of the limitations period while Plaintiff exhausted his remedies, it appears
8 that Plaintiff may not have filed this lawsuit before the statute of limitations expired. Therefore,
9 the court finds that on the face of the Complaint, Plaintiff’s claims against Defendants are barred
10 by the statute of limitations.

11 Plaintiff shall be granted thirty days to respond to this order.

12 **V. CONCLUSION AND ORDER**

13 The court finds that on the face of Plaintiff’s Complaint for this action, his claims may be
14 barred by the applicable statute of limitations. Therefore, the court shall issue an order for
15 Plaintiff to show cause why this case should not be dismissed as barred by the statute of
16 limitations.

17 **ORDER TO SHOW CAUSE**

18 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 19 1. Within thirty days from the date of service of this order, Plaintiff is
20 required to file a response in writing, showing why this case should not be
21 dismissed as barred by the statute of limitations; and
22 2. Failure to comply with this order may result in the dismissal of this case.

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24 **IT IS SO ORDERED.**

25 Dated: **November 28, 2022**

26 **/s/ Gary S. Austin**
27 UNITED STATES MAGISTRATE JUDGE
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