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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY COOPER,

Plaintiff,

v.

K. JONES,

Defendant.

No. 2:14-cv-0453 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 17, 2015, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Defendant has filed objections to the findings and recommendations; plaintiff has filed a reply.

Defendant’s objections focus on whether plaintiff or defendant has the burden of pleading and proving that the provisions of California Code of Civil Procedure § 352.1 apply to extend by two years the statutory two-year limitation period for bringing the Eighth Amendment claim raised in this action. Defendant asserts the burden is on plaintiff to plead and prove that at the time his claim accrued he was serving a sentence of “less than life” in prison, and that plaintiff

1 failed to meet this burden. In reply, plaintiff asserts that he is serving a sentence of twenty-five
2 years to life in prison and he attaches as an exhibit a portion of a certified transcript from
3 proceedings in Fresno County Superior Court during which a sentence of twenty-five years to life
4 is imposed on the defendant in those proceedings, who is referred to once as Mr. Cooper in the
5 transcript excerpt filed by plaintiff. The court need not resolve the merits of defendant's
6 objections at this time. Plaintiff's evidence is sufficient to give rise to a reasonable inference that
7 he has since 1980 been incarcerated on a sentence of twenty-five years to life in prison. If he was
8 in fact serving a sentence of twenty-five years to life in prison when his cause of action accrued,
9 he is entitled to the statutory tolling provided by § 352.1. *See Martinez v. Gomez*, 137 F.3d 1124,
10 1126 (9th Cir. 1998). Good cause appearing, the court will convert this portion of defendant's
11 motion to a motion for summary judgment, consider the evidence tendered by plaintiff in reply to
12 defendant's objections, and grant defendant a period of ten days in which to respond to plaintiff's
13 reply and the evidence contained therein. *See Anderson v. Angelone*, 86 F.3d 932, 934 (9th Cir.
14 1996). Thereafter, the matter will be submitted.

15 In accordance with the above, IT IS HEREBY ORDERED that defendant is granted ten
16 days from the date of this order in which to file and serve a response to plaintiff's reply and the
17 evidence attached thereto, ECF No. 28.

18 DATED: February 4, 2016

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21 UNITED STATES DISTRICT JUDGE
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