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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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LAMBERT G. CHAMBERS,

No. C 09-1382 RS (PR)

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Plaintiff,

ORDER OF DISMISSAL

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v.

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J. DANE, et al.,

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Defendants.

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This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. Defendants move to dismiss the complaint on grounds that it is barred by the statute of limitations. For the reasons stated herein, defendants' motion is GRANTED, and the action DISMISSED.

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Plaintiff, who is serving a sentence of life without the possibility of parole for first degree murder,¹ alleges that defendants Dane and Campos, correctional officers at Salinas Valley State Prison, violated his Eighth Amendment rights by inciting other inmates to commit violence on plaintiff. Plaintiff alleges that the injuries occurred on August 4, 2005. (Pl.'s Opp. to MTD at 1.) Plaintiff filed the instant federal civil rights action on March 30,

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¹ Defs.' Mot. to Dismiss ("MTD"), Req. for Judicial Notice, Ex. A.)

1 2009.

2 Section 1983 takes its limitations period from the forum state’s statute of limitations
3 for personal injury torts, *see Wilson v. Garcia*, 471 U.S. 261, 276 (1985), which, in
4 California, is two years, *see Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). This
5 two-year statute of limitations period is tolled for two years if the plaintiff is a prisoner
6 serving a term of less than life thus giving such prisoners effectively four years to file a
7 federal suit. *See Cal. Civ. Proc. Code § 352.1(a)*. A prisoner-plaintiff, such as the one in the
8 instant matter, who is serving a sentence of life without the possibility of parole, however, is
9 not entitled to the two-year tolling period. *Ross v. Olivarez*, 88 Fed.Appx. 233 (9th Cir.
10 2004). Accordingly, the filing deadline for his federal action was August 4, 2007. Plaintiff
11 did not file the action until March 30, 2009, well past the filing deadline. Thus, plaintiff’s
12 action is barred by the statute of limitations, and must be dismissed.

13 Plaintiff asserts, however, that he is entitled to equitable tolling because he was
14 pursuing his claims in state court diligently. There are two doctrines which may apply to
15 extend the limitations period on equitable grounds — equitable tolling and equitable
16 estoppel. *Zolotarev v. San Francisco*, 535 F.3d 1044, 1051 (9th Cir. 2008). Equitable tolling
17 focuses on “whether there was excusable delay by the plaintiff: if a reasonable plaintiff
18 would not have known of the existence of a possible claim within the limitations period, then
19 equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff
20 can gather what information he needs.” *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir.
21 2002). “Equitable estoppel, on the other hand, focuses primarily on actions taken by the
22 defendant to prevent a plaintiff from filing suit, sometimes referred to as ‘fraudulent
23 concealment.’” *Zolotarev*, 535 F.3d at 1051 (citing *Johnson*, 314 F.3d at 414). Plaintiff has
24 not shown that he is entitled to equitable tolling or equitable estoppel. As to equitable
25 tolling, the record shows that plaintiff knew of the existence of his claim well before the
26 statute of limitations expired. As to equitable estoppel, there is nothing in the record to
27 indicate that defendants prevented plaintiff from filing suit.

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Based on the foregoing, defendants' motion to dismiss (Docket No. 34) is GRANTED, and the action is hereby DISMISSED. Plaintiff's application for a preliminary injunction (Docket No. 26), and his motion to calendar a hearing for such motion (Docket No. 33), are DENIED as moot. The Clerk shall enter judgment in favor of defendants, terminate the pending motions, and close the file. This order terminates Docket Nos. 26, 33, and 34.

IT IS SO ORDERED.

DATED: November 22, 2010


RICHARD SEEBORG
United States District Judge