

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAFAEL FERGUSON,
CDCR #V-37116,

Plaintiff,

vs.

M. VILLA, et al.,

Defendants.

Case No.: 3:17-cv-00677-JAH-WVG

ORDER:

- 1) DENYING MOTIONS TO EXTEND TIME AND TO APPOINT COUNSEL [ECF Nos. 13, 15]**
- 2) GRANTING MOTION TO EXPAND AMENDED COMPLAINT [ECF No. 17]**
- 3) DISMISSING ALL IMPERIAL COUNTY DEFENDANTS AND CLAIMS PURSUANT TO 28 U.S.C. § 1915(e)(2) AND § 1915A(b)**
- AND**
- 4) TRANSFERRING REMAINDER OF CIVIL ACTION TO EASTERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 84(b) AND 28 U.S.C. § 1406(a)**

1 **I. Procedural History**

2 RAFAEL FERGUSON (“Plaintiff”), incarcerated at California Correctional
3 Institute (“CCI”) in Tehachapi, California at the time he initiated suit in April 2017, but
4 since transferred to the California Substance Abuse Treatment Facility in Corcoran, see
5 ECF No. 18, is proceeding pro se and in forma pauperis (“IFP”) in this civil rights action,
6 filed pursuant to 42 U.S.C. § 1983. See ECF No. 1.

7 In his original Complaint, Plaintiff claimed almost 70 individual California
8 Department of Corrections and Rehabilitation (“CDCR”) correctional and medical care
9 officials employed at CCI, Kern Valley State Prison (“KVSP”), and Calipatria State
10 Prison (“CAL”), violated his right to be free of cruel and unusual punishments beginning
11 in January 2011, while he was incarcerated at CAL, and after he decided to “drop[] out of
12 the prison gang (Mexican Mafia),” eventually “debriefed” at CCI between May 2013 and
13 January 2015, was transferred to a “transitional housing unit” at KVSP until July 2016,
14 and later was transferred back to the Segregated Housing Unit (“SHU”) at CCI. See ECF
15 No. 1 at 14-47. Plaintiff claimed Defendants at all three prisons retaliated and conspired
16 in a coordinated effort against him by poisoning and/or contaminating his food and water,
17 threatening, harassing him, and denying him medical care for a host of ailments he claims
18 were caused by his treatment after he first “dropped out” at CAL in 2011. Id. Plaintiff
19 sought injunctive relief as well as general and punitive damages, and demanded a jury
20 trial. Id. at 49-51.

21 On July 12, 2017, this Court granted Plaintiff’s motions to proceed leave to IFP and
22 to exceed Local Rule 8.2.a’s page limitations, denied his motion for appointment of
23 counsel, and sua sponte dismissed all claims alleged to have arisen at CAL as untimely
24 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). See ECF No. 5 at 8-11, 14-15. The
25 Court further granted Plaintiff 45 days in which to file an Amended Complaint, but
26 explicitly cautioned that should his Amended Complaint fail to allege any plausible and
27 timely claim for relief against the CAL Defendants, yet also re-allege timely and
28 plausible claims for relief arising at CCI or KVSP against correctional officials employed

1 by those institutions, the Court would sua sponte dismiss all untimely claims alleged
2 relating to CAL without further leave to amend. This Court advised it would transfer the
3 remainder of the case to the Eastern District of California, where venue would then be
4 proper pursuant to 28 U.S.C. §§ 84(b) and 1406(a). *Id.* at 12-15 (citing *Rosati v. Igbinoso*,
5 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro se
6 complaint without leave to amend [pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)] unless ‘it is
7 absolutely clear that the deficiencies of the complaint could not be cured by
8 amendment.’”) (citation omitted); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th
9 Cir. 1993) (noting that a time-barred action may not ordinarily be dismissed at pleading
10 without leave to amend unless “some fact, evident from the face of the complaint,
11 support[s] the conclusion that the plaintiff could not prevail, as a matter of law, on the
12 equitable tolling issue.”)).

13 On September 18, 2017, the Court denied Plaintiff’s request to file a Supplemental
14 Complaint pursuant to FED. R. CIV. P. 15(d), but granted him additional time in which to
15 file an Amended Complaint that addressed the pleading deficiencies noted in the Court’s
16 July 12, 2017 Order. See ECF No. 10.

17 On October 16, 2017, Plaintiff timely filed his Amended Complaint (“FAC”) (ECF
18 No. 11), together with a Motion for Extension of Time (ECF No. 15), another Motion to
19 Appoint Counsel (ECF No. 13), and a Motion to “Expand” his FAC beyond the page
20 limitations set by S.D. Cal. CivLR 8.2a, and the Court’s previous orders. See ECF No.
21 17.

22 **II. Motion for Extension of Time**

23 Plaintiff filed his current Motion for Extension of Time together with his FAC, but
24 his FAC was timely filed on October 16, 2017 (ECF No. 11). Therefore, his request for
25 an extension of time in which to submit his FAC (ECF No. 15) is unnecessary and
26 **DENIED** as moot.

27 **III. Motion to Appoint Counsel**

28 Plaintiff’s renewed Motion to Appoint Counsel (ECF No. 13), is practically

1 identical to the one this Court denied on July 12, 2017. See ECF No. 5 at 4-5, 14. He
2 simply repeats his previous request that the Court appoint him counsel due to his
3 indigence, his “health complications,” limited knowledge of the law and access to the law
4 library, and his eventual need for assistance in presenting evidence at trial and cross-
5 examining witnesses. See ECF No. 13 at 1.

6 As Plaintiff knows, all documents filed by persons proceeding without trained
7 legal counsel are liberally construed, and “a pro se complaint, however inartfully pleaded,
8 [is] held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v.*
9 *Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)
10 (internal quotations omitted)). Moreover, there is no constitutional right to counsel in a
11 civil case, and none of Plaintiff’s successive pleadings in this matter demand that the
12 Court exercise its limited discretion to request that an attorney represent him pro bono
13 pursuant to 28 U.S.C. § 1915(e)(1) at this stage of the case. See *Lassiter v. Dept. of Social*
14 *Servs.*, 452 U.S. 18, 25 (1981); *Agyeman v. Corr. Corp. of America*, 390 F.3d 1101, 1103
15 (9th Cir. 2004). Only “exceptional circumstances” support such a discretionary
16 appointment. *Terrell v. Brewer*, 935 F.3d 1015, 1017 (9th Cir. 1991); *Palmer v. Valdez*,
17 560 F.3d 965, 970 (9th Cir. 2009). Exceptional circumstances exist only where there is
18 cumulative showing of both a likelihood of success on the merits and a demonstrated
19 inability of the pro se litigant to articulate his claims in light of their legal complexity.
20 *Palmer*, 560 F.3d at 970.

21 As currently pleaded, Plaintiff’s FAC, like his original Complaint, is verbose and
22 convoluted. However, both his pleadings demonstrate that while he may not be formally
23 trained in law, Plaintiff is more than fully capable of legibly articulating the facts and
24 circumstances relevant to his purported Eighth Amendment claims. The basis for
25 Plaintiff’s suit is neither atypical nor legally “complex.” *Agyeman*, 390 F.3d at 1103.

26 Moreover, for the reasons discussed below, Plaintiff still fails to allege facts
27 sufficient to show he is likely to succeed on the merits—especially in relation to the claims
28 re-alleged against CAL officials which, on the face of his pleadings remain barred by the

1 statute of limitations, and for which he offers no basis for equitable tolling. The
2 remainder of his claims are subject to transfer to the Eastern District, and while this Court
3 defers consideration of the sufficiency of all claims alleged to have arisen in Kern County
4 against the remaining named CCI and KVSP Defendants to the Eastern District, nothing
5 in Plaintiff's FAC demonstrates to this Court that the extraordinary circumstances
6 required by 28 U.S.C. § 1915(e)(1) are present at this time. *Id.*; 28 U.S.C. § 1406(a); see
7 also *Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014).

8 For these reasons, the Court **DENIES** Plaintiff's renewed Motion for Appointment
9 of Counsel (ECF No. 13).

10 **IV. Motion to Expand Complaint**

11 As he did in conjunction with his original pleading, and despite two previous
12 Orders compelling his compliance with FED. R. CIV. P. 8(a) and Local Rule 8.2.a, see
13 e.g., ECF Nos. 5 at 15; ECF No. 10 at 7, Plaintiff has filed yet another Motion to
14 "expand" his FAC beyond the pleading format and page limits set by S.D. Cal. CivLR
15 8.2.a, which requires prisoners to use the Court form § 1983 Complaint, and attach no
16 more than 15 additional pages. See ECF No. 17. Plaintiff claims, as he did previously,
17 that he requires more space in which to "provide specific information as to each
18 defendant." *Id.* at 1.

19 Because the Court has denied Plaintiff's requests to appoint counsel, his FAC was
20 submitted on the Court's form Complaint, he continues to name more than 70 individual
21 correctional officials as parties, and has attached 10 pages of exhibits to his pleading,
22 which now comprises a total of 43 pages, the Court will exercise its discretion once more
23 and **GRANTS** Plaintiff's Motion to Expand his FAC (ECF No. 17), which it now
24 subjects to mandatory sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and
25 § 1915A.

26 **V. Screening of Amended Complaint**

27 As Plaintiff is now well aware, the Prison Litigation Reform Act ("PLRA")
28 requires review of all complaints filed by persons proceeding IFP, as well as those filed

1 by persons, like Plaintiff, who are “incarcerated or detained in any facility [and] accused
2 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
3 conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C.
4 § 1915(h). Under the PLRA, the Court must sua sponte dismiss complaints, or any
5 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek
6 damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A;
7 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes*
8 *v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

9 A. Standard of Review

10 “The purpose of § 1915[] is ‘to ensure that the targets of frivolous or malicious
11 suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920
12 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681
13 (7th Cir. 2012)). “The standard for determining whether a plaintiff has failed to state a
14 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the
15 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v.*
16 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012); accord *Wilhelm v. Rotman*, 680 F.3d 1113,
17 1121 (9th Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the
18 familiar standard applied in the context of failure to state a claim under Federal Rule of
19 Civil Procedure 12(b)(6)”).

20 Every complaint must contain “a short and plain statement of the claim showing
21 that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations
22 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
23 by mere conclusory statements, do not suffice.” *Iqbal v. Ashcroft*, 556 U.S. 662, 678
24 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “When there
25 are well-pleaded factual allegations, a court should assume their veracity, and then
26 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679.
27 “Determining whether a complaint states a plausible claim for relief [is] . . . a context-
28 specific task that requires the reviewing court to draw on its judicial experience and

1 common sense.” Id. The “mere possibility of misconduct” falls short of meeting this
2 plausibility standard. Id.; see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th
3 Cir. 2009).

4 While a plaintiff’s factual allegations are taken as true, courts “are not required to
5 indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th
6 Cir. 2009) (internal quotation marks and citation omitted). Indeed, while courts “have an
7 obligation where the petitioner is pro se, particularly in civil rights cases, to construe the
8 pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliker*,
9 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1
10 (9th Cir. 1985)), it may not “supply essential elements of claims that were not initially
11 pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir.
12 1982). Even before *Iqbal*, “[v]ague and conclusory allegations of official participation in
13 civil rights violations” were not “sufficient to withstand a motion to dismiss.” Id.

14 B. Allegations in Amended Complaint

15 As to all Defendants alleged to reside in Imperial County and to be employed at
16 CAL when Plaintiff was incarcerated there from 2011 and until his transfer to CCI in
17 May 2013,¹ Plaintiff’s FAC re-alleges the same facts as he did in his original Complaint.

18
19
20 ¹ The CAL Defendants previously named in Plaintiff’s Complaint are as follows: Villa,
21 Janda, Trujillo, Groth, Duarte, Castillo, Whitman, Lizaraga, Hatfield, Perez, Ortiz,
22 Hurtado, Ramos, Reyes, Flores, Lopez, Jane Doe, and Alvarez. See ECF No. 1 at 2-5. All
23 those parties were dismissed with leave to amend on July 12, 2017. See ECF No. 5 at 14.
24 Plaintiff’s FAC renames all these Imperial County residents, and adds one additional CAL
25 official, C. Espitia, an inmate Appeals Coordinator also alleged to reside in Imperial
26 County. See ECF No. 11 at 10. Plaintiff claims only that Espitia violated his “right to the
27 appeal process” by failing to process his CDC “602’s” and a “22 Form” in 9/11/12, and for
28 “refusing to accept [his] 602s on 3/10/16 and 9/11/16.” See id. at 10, 16, 25. As for Espitia’s
alleged wrongdoing in 2012, Plaintiff’s claims are untimely and must be dismissed for
failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A for the same reasons
his claims as to the other previously named CAL Defendants must be dismissed. As for
Plaintiff’s additional claim that Espitia again violated his rights in 2016 by “refusing to
accept” his 9/11/12 “original 22 form,” id. at 30, Plaintiff fails to state a claim for other

1 Specifically, Plaintiff claims to have participated in two separate interviews at
2 CAL with Defendant Villa and Defendants Trujillo, Groth, and Duarte, who were
3 Institutional Gang Investigators (“IGIs”) in January 2011, related to a weapon found in
4 his cell. During these interviews, Plaintiff claims to have provided to Villa, Trujillo,
5 Groth, and Duarte “information regarding ASU gang activity,” and to have identified the
6 prison staff members whom he thought had “introduced [contraband] into the institution.”
7 See FAC, ECF No. 11 at 11-12. Plaintiff claims he was informed that “everything [he]
8 told [Villa] would be kept confidential,” *id.* at 11, that he would be removed from the
9 general population, “was going to a far better place,” would be transferred “ASAP” if he
10 cooperated, and that “by the time [he] was done debriefing² the knife charge would go
11 away.” *Id.* at 12.

12 Plaintiff was placed in the SHU as the result of having “dropped out” of the
13 Mexican Mafia, but he was not transferred out of CAL until May 2013, despite his
14 having made several repeated requests to Defendants Duarte, Janda, Whitman, and Groth
15 for an emergency transfer due to safety concerns he had for himself and his family. *Id.* at
16 12-14. During that time, Plaintiff claims to have been pressured to give CAL’s IGI

17
18

19 reasons. Prisoners have no stand-alone due process rights related to the administrative
20 grievance process. See *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988); see also *Ramirez*
21 *v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest
22 entitling inmates to a specific grievance process). “Because there is no right to any
23 particular grievance process, it is impossible for due process to have been violated by
24 ignoring or failing to properly process grievances.” *Haynie v. Voong*, No.
25 116CV01561AWIBAMPC, 2017 WL 5625892, at *4 (E.D. Cal. Nov. 22, 2017).

26
27
28 ² “Debriefing” is “the process by which a gang coordinator/investigator determines whether
an inmate/parolee (subject) has dropped out of a gang. A subject shall be debriefed only
upon his or her request, although staff may ask a subject if he or she wants to debrief.
Debriefing shall entail a two-step process that includes an interview phase and an
observation phase.” *In re Sampson*, 197 Cal. App. 4th 1234, 1239 n.5 (June 30, 2011);
Osegueda v. Stanislaus Cty. Pub. Safety Ctr., No. 1:16-CV-1218-LJO-BAM, 2017 WL
1348943, at *3 (E.D. Cal. Apr. 11, 2017).

1 members his “autobiography” so that they could start his debriefing process, but Plaintiff
2 lost confidence that his cooperation would remain confidential and consistently refused to
3 do so. Id. at 14.

4 Plaintiff claims that as a result of his refusals, he was subject to various “plots” and
5 efforts to retaliate against and psychologically intimidate him in the CAL SHU, including
6 the poisoning of his food and the contamination of his water, at the hands of CAL
7 Defendants Lizaraga, Castillo, Hatfield, Reyes, Ramos, Perez, Ortiz, Hurtado, Flores,
8 Lopez, and Alvarez.³ Id. 14-17. After Plaintiff “got notice that the D.A. had picked up the
9 knife charge,” he “took the charge to knife under the guise of [a] deal,” in March
10 2013,⁴ and was then transferred to CCI two months later in May 2013, where he
11 eventually debriefed. He claims “the retaliation continued” due to his having “dropped
12 out” and “informed” on “corrupted staff” while at CAL. Id. at 19.⁵

13 C. Statute of Limitations – CAL Defendants and Claims

14 As noted above, this Court dismissed Plaintiff’s original Complaint because while
15 venue properly lies in the Southern District of California as to Plaintiff’s claims against
16

17
18 ³ Plaintiff also includes an unidentified “female Sgt for 2nd watch” in the group of CAL
19 SHU officers who are alleged to have harassed, poisoned, and intimidated him, whom the
20 Court assumes to be the sole remaining CAL official otherwise identified only as “Jane
21 Doe.” See ECF No. 11 at 4, 19.

22 ⁴ In conjunction with the 2-year knife “deal,” Plaintiff admits he was already serving an
23 “LWOP” term, “so any years didn’t really affect [his] sentence.” ECF No. 11 at 18.

24 ⁵ Because the remainder of Plaintiff’s allegations relate only to incidents arising at CCI
25 and KVSP, and against Defendants alleged to reside in Kern and Sacramento County, see
26 ECF No. 11 at 2, 3, 5-10, 19-26, and because this Court finds all claims alleged to have
27 been committed by Imperial County residents and to have arisen at CAL are time-barred,
28 it defers the mandatory review and screening required of Plaintiff’s remaining allegations
pursuant to 28 U.S.C. § 1915(e) and § 1915A and as to the CDCR, CCI, and KVSP
Defendants, to the Eastern District of California, which is now the only the proper venue.
See 28 U.S.C. §§ 84(b), 1391(b).

1 CAL correctional officials Villa, Trujillo, Groth, Duarte, Castillo, Janda, Whitman,
2 Lizaraga, Hatfield, Perez, Ortiz, Hurtado, Ramos, Reyes, Flores, Lopez, Doe, and
3 Alvarez, all of whom are alleged to reside in Imperial County, where CAL is located,
4 they were nevertheless subject to sua sponte dismissal for failing to state a claim pursuant
5 to 28 U.S.C. § 1915(e)(2) and § 1915A(b)(1) because they are time-barred. See ECF No.
6 5 at 8-11, 14. See also 28 U.S.C. § 84(d); § 1391(b); *Atl. Marine Const. Co. Inc. v. U.S.*
7 *District Court for the Western District of Texas*, 134 S. Ct. 568, 578-79 (2013).

8 “A claim may be dismissed [for failing to state a claim] on the ground that it is
9 barred by the applicable statute of limitations only when ‘the running of the statute is
10 apparent on the face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at*
11 *Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*,
12 465 F.3d 992, 997 (9th Cir. 2006)). Because “[a] complaint cannot be dismissed unless it
13 appears beyond doubt that the plaintiff can prove no set of facts that would establish the
14 timeliness of the claim,” the Court granted Plaintiff an opportunity to file an Amended
15 Complaint which alleged facts to suggest his entitlement to either statutory and/or
16 equitable tolling. See ECF No. 5 at 9-11 (quoting *Supermail Cargo, Inc. v. U.S.*, 68 F.3d
17 1204, 1206 (9th Cir. 1995); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th
18 Cir. 1993)); see also *Hinton v. Pacific Enterprises*, 5 F.3d 391, 395 (9th Cir. 1993) (“The
19 burden of alleging facts which would give rise to tolling falls upon the plaintiff.”).

20 Plaintiff’s FAC alleges no facts to plausibly show that he is entitled either to
21 statutory or equitable tolling as permitted by California law. In fact, both his original
22 Complaint and his FAC contain virtually the identical statement of facts describing his
23 decision to “drop out” of the Mexican Mafia, the information he provided in confidence
24 to CAL’s IGI’s beginning in January 2011, the CAL Defendants’ roles during the
25 investigations that followed, his placement in the SHU, CAL officials’ efforts to further
26 encourage and/or intimidate him into providing them with an “autobiography” as part of
27 the debriefing process, Plaintiff’s repeated requests for a transfer, and the alleged “plot”
28 to poison his food and water up the time he was transferred to CCI in May 2013.

1 Compare ECF No. 1 at 14-24, with ECF No. 11 at 11-19.

2 As noted in the Court's July 12, 2017 Order, because section 1983 contains no
3 specific statute of limitation, federal courts apply the forum state's statute of limitations
4 for personal injury actions. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004);
5 *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); *Fink v. Shedler*, 192 F.3d 911,
6 914 (9th Cir. 1999). Before 2003, California's statute of limitations was one year. *Jones*,
7 393 F.3d at 927. Effective January 1, 2003, the limitations period was extended to two
8 years. *Id.* (citing Cal. Civ. Proc. Code § 335.1).

9 Unlike the length of the limitations period, however, "the accrual date of a § 1983
10 cause of action is a question of federal law that is not resolved by reference to state law."
11 *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *Hardin v. Straub*, 490 U.S. 536, 543-44
12 (1989) (federal law governs when a § 1983 cause of action accrues). "Under the
13 traditional rule of accrual ... the tort cause of action accrues, and the statute of limitation
14 begins to run, when the wrongful act or omission results in damages." *Wallace*, 549 U.S.
15 at 391. Put another way, "[u]nder federal law, a claim accrues when the plaintiff knows
16 or has reason to know of the injury which is the basis of the action." *Maldonado*, 370
17 F.3d at 955; *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).

18 As alleged in both his original and amended Complaints, the "wrongful acts"
19 alleged to have been taken against Plaintiff at CAL occurred between January 2011 and
20 May 2013, after he first elected to drop out of the Mexican Mafia, cooperate with CAL
21 gang investigators, and was placed in CAL's SHU based on his initial willingness to
22 debrief. *Wallace*, 549 U.S. at 391; see also *Maldonado*, 370 F.3d at 955; *Jones*, 393 F.3d
23 at 927. Plaintiff therefore first knew, or had reason to know, of the injury giving rise to
24 his Eighth Amendment cruel and unusual punishment claims as soon as he admits he
25 "realize[d] these IGI[s] had betrayed [him]" on January 22, 2011, by "leaking"
26 confidential information he had provided to Sgt. Villa on January 18, 2011, and which he
27 further alleges placed him and his family at risk. See ECF No. 11 at 11, 12.

28 Plaintiff contends he was assured "no information would be leaked," a "knife

1 charge” would be dismissed, and he “would be getting [a] transfer ... to debrief ASAP,”
2 as early as January 22, 2011. See ECF No. 11 at 11-12. Plaintiff claims, however, that he
3 was not transferred to CCI until May 2013, *id.* at 19, and that he remained in CAL’s
4 SHU, and had multiple requests for an “emergency transfer” denied unless he indicated
5 he was willing to “start [his] debriefing” and submit his “autobiography.” *Id.* at 12-18.
6 During this time at CAL, Plaintiff claims he was subject to a “hostile, unsafe and
7 unfriendly environment created by corrupted C/Os,” and was deprived of a “TV, radio,
8 cellie or protection from C/Os,” who “threat[ened] and poison[ed] [him] for over two and
9 [a] half years.” ECF No. 11 at 13.⁶

10 Based on these allegations, the Court continues to conclude that Plaintiff had
11 “reason to know” of his injuries at CAL as early as January 22, 2011, more than six years
12 ago, or as late as May 2013, almost four years ago. However, he waited to file suit until
13 April 3, 2017. Even assuming the wrongful conduct was continuous up to and including
14 May 2013, Plaintiff still filed suit well after the two-year limitations period applicable to
15 his Eighth Amendment claims against the CAL Defendants elapsed. See *Maldonado*, 370
16 F.3d at 955. Therefore, all claims arising at CAL are time-barred, unless Plaintiff has
17 further alleged facts to show he is entitled to either statutory or equitably tolling. See
18 *Hinton*, 5 F.3d at 395.

19 The law of the forum state also governs tolling. *Wallace*, 549 U.S. at 394 (citing
20 *Hardin*, 490 U.S. at 538-39); *Jones*, 393 F.3d at 927 (where the federal court borrows the
21

22
23 ⁶ Plaintiff’s remaining claims against CAL Defendants Castillo, Janda, Whitman, Lizaraga,
24 Hatfield, Perez, Ortiz, Hurtado, Ramos, Reyes, Flores, Lopez, Doe, and Alvarez, all
25 involve these Defendants’ alleged “intimidation tactics” and harassment beginning in
26 January 2011, designed to both retaliate against Plaintiff for being an informant, and to
27 pressure him into giving the gang investigators his “autobiography” and to “start
28 debriefing.” See ECF No. 11 at 13-19. Specifically, Plaintiff continues to claim these CAL
officials engaged a concerted effort to lie to him, spike his food, contaminate his water,
taunt and psychologically torture him beginning in 2011, and persisting up until his transfer
to CCI in May 2013. *Id.*

1 state statute of limitation, the federal court also borrows all applicable provisions for
2 tolling the limitations period found in state law). Under California law, the statute of
3 limitations for prisoners serving less than a life sentence is tolled for an additional two
4 years. CAL. CIV. PROC. CODE § 352.1(a); *Johnson v. California*, 207 F.3d 650, 654 (9th
5 Cir. 2000), overruled on other grounds, 543 U.S. 499 (2005).

6 Because it was not clear from the face of Plaintiff’s original Complaint whether he
7 might be eligible to claim statutory tolling, see ECF No. 5 at 9-10 & n.2, the Court
8 granted him leave to allege facts to show that the Eighth Amendment claims related to his
9 placement in CAL’s SHU due to his drop-out status, first arising between January 17,
10 2011, see ECF No. 11 at 13, and continuing until May 21, 2013, when he was eventually
11 transferred to CCI, *id.* at 13-19, were statutorily tolled for two additional years—or until
12 May 21, 2015, at the latest—because he is serving a prison sentence “for a term less than
13 for life” as provided CAL. CIV. CODE PROC. § 352.1(a) (“If a person entitled to bring an
14 action, mentioned in Chapter 3 (commencing with Section 335), is, at the time the cause
15 of action accrued, imprisoned on a criminal charge, or in execution under the sentence of
16 a criminal court for a term less than for life, the time of that disability is not a part of the
17 time limited for the commencement of the action, not to exceed two years.”) (emphasis
18 added)).

19 In his FAC, however, Plaintiff now admits his “original sentence is LWOP [life
20 without parole].” See ECF No. 11 at 18; see also *People v. Melara & Ferguson*, 2006
21 WL 164989 at *1 (Cal. Ct. App. 2d Dist., Div. 4, Jan. 24, 2006) (unpub.) (affirming
22 Plaintiff’s convictions for two counts of first degree murder with special circumstances,
23 one count of attempted, willful, deliberate and premeditated murder, together with true
24 findings of gang benefit, and the personal discharge of a firearm causing death or great
25 bodily injury resulting in “an aggregate term of life without the possibility of parole plus
26 125 years to life.”) (emphasis added).

27 Therefore, it is now clear from the face of Plaintiff’s pleading that he is not entitled
28 to statutorily toll California’s limitations period—which began to run as early as January

1 2011, when Plaintiff first dropped out at CAL, or as late as May 2013, when he was
2 eventually transferred to CCI—for the two years provide by Cal. Civ. Code Proc.
3 § 352.1(a). See *Gonzalez v. Gardemal*, 599 Fed. Appx. 292 (9th Cir. 2015) (affirming
4 dismissal of retaliatory transfer and due process claims related to gang re-validation as
5 time-barred because California prisoner was “incarcerated for a life term without the
6 possibility of parole” and therefore, was “not entitled to statutory tolling” pursuant to Cal.
7 Civ. Proc. Code § 352.1(a)); see also *Guerra v. Janda*, 2014 WL 43885689 at *10 (S.D.
8 Cal. July 22, 2014) (unpub.) (finding Cal. Code Civ. Proc. § 352.1(a)’s plain language
9 “simply does not apply” to a California prisoner “sentenced to a life term without the
10 possibility of parole, or a straight life term.”); accord *Gonzalez v. Adams*, 2013 WL
11 636730 at *6 (E.D. Cal. Feb. 20, 2013) (unpub.).

12 Finally, while the Court previously informed Plaintiff that his CAL claims might
13 also be considered timely if, in his Amended Complaint, he alleged facts sufficient to
14 show the limitations period may be equitably tolled, see ECF No. 5 at 11 (citing
15 *Cervantes*, 5 F.3d at 1276-77; *Fink*, 192 F.3d at 914; *Bacon v. City of Los Angeles*, 843
16 F.2d 372, 374 (9th Cir. 1988)), his FAC includes no such facts and offers no argument to
17 show that he diligently pursued his claims, was unable to timely file suit due to forces
18 beyond his control, or that the CAL Defendants would not suffer prejudice should his
19 claims be subject to equitable tolling. See ECF No. 5 at 11 (citing *Hull v. Central*
20 *Pathology Serv. Med. Clinic*, 28 Cal. App. 4th 1328, 1335 (Cal. Ct. App. 1994); *Addison*
21 *v. State of California*, 21 Cal.3d 313, 316-17 (Cal. 1978); *Fink*, 192 F.3d at 916)).

22 Accordingly, the Court now finds that it is clear from the face of Plaintiff’s FAC
23 that his claims against all CAL Defendants are barred by the statute of limitations.
24 Because Plaintiff has been given an opportunity, but has failed to plead any additional
25 facts which, if proved, might support a plausible claim for statutory and/or equitable
26 tolling, see *Cervantes*, 5 F.3d at 1277; *Iqbal*, 556 U.S. at 679, these claims and
27 Defendants are again subject to sua sponte dismissal for failing to state a claim upon
28 which section 1983 relief may be granted. Leave to again amend the untimely CAL

1 claims is now **DENIED** as futile. See 28 U.S.C. § 1915(e)(2)(B)(ii); 1915A(b)(1); Lopez,
2 203 F.3d at 1126-27; Rhodes, 621 F.3d at 1004.


3 **VI. Conclusion and Order**

4 Based on the foregoing, the Court:

- 5 1) **DENIES** Plaintiff’s Motions to Extend Time and to Appoint Counsel [ECF
6 Nos. 13, 15];
- 7 2) **GRANTS** Plaintiff’s Motion to Expand Amended Complaint [ECF No. 17];
- 8 3) **DISMISSES** Calipatria State Prison Defendants Villa, Janda, Trujillo,
9 Groth, Duarte, Castillo, Whitman, Lizaraga, Hatfield, Perez, Ortiz, Hurtado, Ramos,
10 Reyes, Flores, Lopez, Jane Doe, Alvarez, and Espitia sua sponte based on Plaintiff’s
11 failure to state a timely claim for relief against them and without further leave to amend
12 pursuant to 28 U.S.C. § 1915(e)(2)(ii) and § 1915A(b)(1); and
- 13 4) **DIRECTS** the Clerk of the Court to **TRANSFER** the remainder of this civil
14 action in the interests of justice to the Eastern District of California pursuant to 28 U.S.C.
15 § 84(b) and 28 U.S.C. § 1406(a).⁷

16 **IT IS SO ORDERED.**

17 Dated: February 5, 2018

18 
19 _____
20 HON. JOHN A. HOUSTON
21 United States District Judge

22 _____
23
24 ⁷ Because the Court finds transfer appropriate, it expresses no opinion as to whether
25 Plaintiff’s remaining claims survive the sua sponte screening required by both 28 U.S.C.
26 § 1915(e)(2) and 28 U.S.C. § 1915A(b) and leaves that determination to the Eastern District
27 of California. See Lopez, 203 F.3d at 1126-27 (28 U.S.C. § 1915(e) “not only permits but
28 requires” the court to sua sponte dismiss an in forma pauperis complaint that fails to state
a claim); Rhodes, 621 F.3d at 1004 (discussing screening procedure required of prisoners’
complaints by 28 U.S.C. § 1915A(b)).