

1 Defendants because Defendants have committed perjury. (Id. at 4-6.) On April 30, 2019,
2 Defendants Ahlin and Price filed a reply to Plaintiff’s opposition. (ECF No. 74.)

3 On May 17, 2019, the Magistrate Judge issued Findings and Recommendations
4 recommending that Defendants’ motion for judgment on the pleadings be granted without leave to
5 amend, that the instant action be dismissed with prejudice, and that Plaintiff’s request for sanctions
6 be denied. (ECF No. 75.) The Findings and Recommendations were served on all parties and
7 contained notice that any objections thereto were to be filed within thirty (30) days after service.
8 (Id.)

9 On June 5, 2019, Plaintiff filed objections to the Findings and Recommendations. (ECF
10 No. 77.) First, Plaintiff contends that the Findings and Recommendations are clearly erroneous
11 and contrary to law because Defendants have created conditions of confinement at the state hospital
12 that are more restrictive than those under which state prisoners are held, discovery has established
13 that Defendant presented perjured “evidence” to support promulgation of the challenged
14 regulations, and the U.S. Supreme Court’s decision in Packingham v. North Carolina, 582 U.S.
15 ____, 137 S. Ct. 1730 (2017), establishes that the challenged regulations are unconstitutional.
16 However, Plaintiff’s arguments regarding the merits of his Fourteenth Amendment claim are
17 irrelevant because the Court does not consider the merits of a claim when deciding whether the
18 claim is barred by the applicable statute of limitations. Lukovsky v. City & County of San
19 Francisco, 535 F.3d 1044, 1046 (9th Cir. 2008) (“We do not consider the merits of the plaintiffs’
20 allegations, however, as the only issue before us is whether their claims are barred by the statute of
21 limitations[.]”); Government of Guam v. United States, 744 F.2d 699, 701 (9th Cir. 1984) (“The
22 merit of a claim is irrelevant to operation of the bar of a statute of limitations.”). Therefore,
23 Plaintiff’s first objection is overruled.

24 Second, Plaintiff argues that the Findings and Recommendations are clearly erroneous
25 because “every single item of the documentary ‘evidence’ of which [the Magistrate Judge] took
26 judicial notice are overruled by the United States Supreme Court’s decision in Packingham.” (ECF
27 No. 77, at 9.) However, nothing in the Packingham decision establishes that the Magistrate Judge
28 erred when he took judicial notice of the Department of State Hospitals – Coalinga’s (“DSH-C”)

1 statement of its patient population, of several records from the California Department of State
2 Hospitals and DSH-C, of the dates that California Code of Regulations, title 9, §§ 891 and 4350
3 were promulgated, and of the court dockets and records of twelve federal or California state actions
4 filed by Plaintiff. Therefore, Plaintiff's second objection is overruled.

5 Third, Plaintiff contends that the Findings and Recommendations are clearly erroneous and
6 contrary to law because, since he has supported his contention that he did not know nor reasonably
7 have reason to know of his injury until he attempted to purchase a computer, his complaint is timely.
8 However, the Magistrate Judge determined that, since individuals are presumed to have knowledge
9 of duly enacted regulations and California Code of Regulations, title 9, §§ 891 and 4350 had been
10 enacted and were in effect on December 12, 2012, the day that Plaintiff arrived at DSH-C, Plaintiff
11 knew, or had reason to know, of his conditions of confinement at DSH-C, including that Sections
12 891 and 4350 banned him from possessing a personal computer which had any form of wired and/or
13 wireless capability to connect to the Internet, as of the date that Plaintiff arrived at DSH-C.
14 Consequently, the Magistrate Judge found that Plaintiff's Fourteenth Amendment claim accrued
15 on December 12, 2012. Since the undersigned finds no error in that analysis, Plaintiff's third
16 objection is overruled.

17 Fourth, Plaintiff contends that the Findings and Recommendations are clearly erroneous
18 and contrary to law because he is entitled to equitable tolling under Jones v. Blanas, 393 F.3d 918
19 (9th Cir. 2004). Specifically, Plaintiff argues that just because he was transferred to DSH-C before
20 he filed this action does not mean that he had access to legal materials and that, frequently, new
21 arrivals at DSH-C are locked down for months in the so-called Orientation Unit. However, the
22 Magistrate Judge did not find that Plaintiff had access to legal materials just because he was
23 transferred to DSH-C before he filed this action. Instead, the Magistrate Judge found that Plaintiff
24 had access to legal materials and was not confined in conditions that prevented him from timely
25 filing the instant action because Plaintiff litigated numerous actions between December 12, 2012,
26 when Plaintiff arrived at DSH-C and his Fourteenth Amendment claim accrued, and August 26,
27 2016, the date that Plaintiff filed the instant action. (ECF No. 1.) The Magistrate Judge decided
28 that, since Plaintiff was not confined in conditions that prevented him from timely filing the instant

1 action, Plaintiff has not pursued the instant action in good faith and, thus, Plaintiff was not entitled
2 to equitable tolling pursuant to Jones. As the undersigned finds no error in that analysis, Plaintiff's
3 fourth objection is overruled.

4 Next, Plaintiff contends that the Findings and Recommendations are clearly erroneous and
5 contrary to law because his complaint is timely under the continuing violation doctrine. The
6 undersigned notes that Plaintiff did not argue in his opposition to Defendants' motion for judgment
7 on the pleadings that his complaint is timely under the continuing violation doctrine. Since Plaintiff
8 is a *pro se* litigant, the Court exercises its discretion to consider Plaintiff's new argument. Akhtar
9 v. Mesa, 698 F.3d 1202, 1208-1209 (district court has discretion, but is not required, to consider
10 evidence or arguments presented for the first time in objections to a magistrate judge's findings and
11 recommendations).

12 "The continuing violation theory applies to § 1983 actions[.]" Knox v. Davis, 260 F.3d
13 1009, 1013 (9th Cir. 2001). "Since [Plaintiff] does not allege a system or practice of discrimination,
14 the only way [he] can hope to show a continuing violation is to 'state facts sufficient ... [to]
15 support[] a determination that the alleged ... [violations] are related closely enough to constitute a
16 continuing violation, and that one or more of the acts falls within the limitations period.'" Id.
17 (citations omitted) However, the Ninth Circuit "has repeatedly held that a mere continuing *impact*
18 from past violations is not actionable." Id. (citations and internal quotation marks omitted).

19 Plaintiff's Fourteenth Amendment cause of action accrued on December 12, 2012, when he
20 arrived at DSH-C and was subjected to conditions of confinement that included bans on having any
21 access to the Internet and on personally possessing any electronic devices, including computers,
22 that had any wired and/or wireless capability to connect to the Internet due to the regulations
23 challenged in this action. The continuing violation doctrine is inapplicable because Plaintiff has
24 failed to establish that a new violation occurs every day that the bans on access to the Internet and
25 computers with the capability of connecting to the Internet are in effect. Rather, the fact that
26 Plaintiff has been continually prohibited each day from personally possessing a computer that has
27 the capability to connect to the Internet since he arrived at DSH-C is merely the continuing effect
28 of the bans imposed by the enactment of the challenged regulations. Therefore, Plaintiff's fifth

1 objection is overruled.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
3 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's
4 objections, the Court finds that the Magistrate Judge's Findings and Recommendations are
5 supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations issued on May 17, 2019, (ECF No. 75), are
8 adopted in full;
- 9 2. Defendants' motion for judgment on the pleadings, (ECF No. 67), is GRANTED
10 WITHOUT LEAVE TO AMEND;
- 11 3. Plaintiff's request for sanctions in his Opposition to Defendants' motion for
12 judgment on the pleadings, (ECF No. 73), is DENIED;
- 13 4. This action is DISMISSED WITH PREJUDICE; and
- 14 5. The Clerk of the Court is directed to enter judgment, vacate as moot all pending
15 motions and deadlines, and close this case.

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IT IS SO ORDERED.

Dated: November 26, 2019



SENIOR DISTRICT JUDGE