

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA BLAND,
Plaintiff,
v.
D. MOFFETT, et al.,
Defendants.

No. 1:19-cv-01750-NONE-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS’ MOTION TO PARTIALLY
DISMISS COMPLAINT

(Doc. Nos. 20, 26)

Plaintiff Joshua Bland is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 18, 2020, the defendants filed a motion to dismiss defendant Moffett from this action on the ground that the claim brought against him is barred by the applicable statute of limitations. (Doc. No. 20.) Plaintiff filed an opposition to defendants’ motion on September 29, 2020, to which defendants filed a reply on October 7, 2020. (Doc. Nos. 23, 24.) In support of their reply, defendants concurrently filed a request for judicial notice. (Doc. No. 25.)

On February 16, 2021, the assigned magistrate judge issued findings and recommendations, recommending that defendants’ motion to dismiss be granted and that Defendant Moffett and the claim brought against him be dismissed from this action with prejudice. (Doc. No. 26.) As requested by defendants, the magistrate judge took judicial notice

1 of the fact that plaintiff delivered his complaint in this case to prison authorities for forwarding to
2 the court on December 4, 2019. (*Id.* at 4.) Based on this fact, and on the fact that the incident
3 giving rise to plaintiff's claim against defendant Moffett allegedly occurred on November 23,
4 2015, the magistrate judge found that plaintiff had failed to timely file his complaint within the
5 four years afforded by the applicable statute of limitations and California Code of Civil Procedure
6 § 352.1. (*Id.* at 3-5.) The magistrate judge, therefore, concluded that plaintiff's claim against
7 defendant Moffett is time-barred. (*Id.*) The findings and recommendations were served on
8 plaintiff and provided him 21 days to file objections. (*Id.* at 5.) Plaintiff filed objections on
9 March 12, 2021. (Doc. No. 28.)

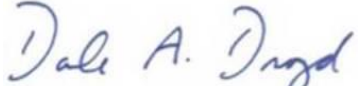
10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
11 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff's
12 objections, the court finds the findings and recommendations to be supported by the record and
13 proper analysis. The court agrees with the magistrate judge's finding that plaintiff's claim
14 brought against defendant Moffett is time-barred. Plaintiff's objections do not meaningfully
15 dispute this finding. Rather, plaintiff contends that the statute of limitations for the bringing of
16 § 1983 actions is unconstitutional. (*See* Doc. No. 28 at 1.) Plaintiff's contention and argument in
17 support thereof are frivolous.

18 Accordingly,

- 19 1. The findings and recommendations issued on February 16, 2021 (Doc. No. 26) are
20 adopted in full;
- 21 2. Defendants' motion to partially dismiss the complaint (Doc. No. 20) is granted;
- 22 3. Defendant Moffett and the claim brought against him in this action are dismissed with
23 prejudice; and,
- 24 4. This action is referred back to the assigned magistrate judge for further proceedings.

25 IT IS SO ORDERED.

26 Dated: April 1, 2021

27 
28 _____
UNITED STATES DISTRICT JUDGE