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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11

13 **Cole S. Evans,**

14 Plaintiff,

15 v.

17 **CHP Officers, Ivan Gregory, J. Gomez, et**
al.,

18 Defendants.

2:11-cv-03255-JAM-CKD

**ORDER ON MOTION FOR SUMMARY
 JUDGMENT**

Fed. R. Civ. 56(c)

Date: November 7, 2012
 Time: 9:30 a.m.
 Courtroom: 6
 Judge: The Hon. John Mendez
 Trial Date: June 30, 2013
 Action Filed: January 5, 2009

21 This matter came for hearing on noticed motion by Defendants Gregory and Gomez for
 22 summary judgment. This case arises out of a driving under the influence (DUI) arrest on January
 23 1, 2007. Plaintiff's claim is premised on violation of 42 U.S.C. § 1983. Having considered the
 24 moving papers, opposition papers, reply brief, objections to evidence and the audio tape of the
 incident submitted by Plaintiff, the Court finds as follows:

25 Summary judgment is appropriate when it is demonstrated that there exists no genuine issue
 26 of material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ.
 27 P. 56(c). Summary judgment is proper against a party who fails to make a showing sufficient to
 28 establish the existence of an element essential to that party's case, and on which that party will

1 bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91
2 L. Ed. 2d 265 (1986).

3 If the moving party meets its initial responsibility, the burden then shifts to the opposing
4 party to establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec.
5 Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).
6 In attempting to establish the existence of this factual dispute, the opposing party may not rely
7 upon denials of its pleadings, but is required to tender evidence of specific facts in the form of
8 affidavits, and/or admissible discovery material, in support of its contention that the dispute exists.
9 Rule 56(e); *Matsushita*, 475 U.S. at 586, n. 11. The opposing party must demonstrate that the
10 fact in contention is material, i.e., a fact that might affect the outcome of the suit under the
11 governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d
12 202 (1986); *T.W. Elec. Serv., Inc. v. Pacific elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir.
13 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return
14 a verdict for the nonmoving party, *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9th
15 Cir. 1987).

16 All reasonable inferences that may be drawn from the facts placed before the court must be
17 drawn in favor of the opposing party. *Matsushita*, 475 U.S. 587 (citing *United States v. Diebold,
18 Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962)(per curiam). However, inferences
19 are not drawn out of the air, and it is the opposing party's obligation to produce a factual
20 predicate from which the inferences may be drawn. *Richards v. Nielsen Freight Lines*, 602 F.
21 Supp 1244, 1244-45 (E.D. Cal. 1985), aff'd 810 F.2d 898, 902 (9th Cir. 1987). To demonstrate a
22 genuine issue, the opposing party "must do more than simply show that there is some
23 metaphysical doubt as to the material facts. Where the record taken as a whole could not lead a
24 rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (citation omitted).

25 Defendants raised two arguments in their motion for summary judgment. First, there is no
26 evidence supporting Plaintiff's conspiracy claim. And, second, there are no other viable claims
27 because they are all barred by the statute of limitations. As indicated in the reply brief,
28 Defendants point out that the only evidence that was presented by the Plaintiff in support of his
claims was his declaration, 90 percent of which is inadmissible. Plaintiff does appear to rely
exclusively on his declaration which is full of assumptions regarding the Defendants' state of
mind and standard police procedures which Plaintiff has alleged were not followed.

1 Plaintiff has not attempted to gather any evidence from the Defendants, or any police
2 officers, to demonstrate that the officers would, for example, normally discover and, in fact, did
3 discover the Plaintiff's 290 status during a DUI arrest. That is in large part the crux of the
4 Plaintiff's claim in this case. Plaintiff did not gather any evidence from, for example, hospital
5 staff that might have overheard officers harassing Plaintiff. Defendants are correct that there is
6 simply no evidence to substantiate Plaintiff's claims in this case.

7 Plaintiff does go into great detail about the night of the arrest and argues that there is an
8 ongoing conspiracy between the two Defendants, the two police officers, to violate Plaintiff's
9 constitutional rights. Plaintiff argues that the officers' testimony is not credible because there are
10 inconsistencies between the arrest report and the officers' declarations. It is not the Court's role at
11 the summary judgment motion stage to make a credibility determination. These arguments are
12 also not meritorious. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L.
13 Ed. 2d 202 (1986).

14 Defendants are correct that any claim for excessive force would have had to have been filed
15 no later than January 1, 2009. *See Wilson v. Garcia*, 471 U.S. 261; 105 S. Ct. 1938; 85 L. Ed. 2d
16 254 (1985); Cal. Code Civ. Proc. § 335.1. That goes as well for the claims for false arrest,
17 harassment, and deliberate indifference. Although substantive claims have a two-year statute of
18 limitations and, again, to the extent the motion seeks judgment as a matter of law that those
19 claims cannot be brought because they're barred by the statute of limitations, the Court also grants
20 that aspect of the motion.

21 On the conspiracy claim itself, again, both parties agree that to succeed on a conspiracy
22 claim, the plaintiff must demonstrate an agreement or meeting of the minds to violate
23 constitutional rights. To be liable, each participant in the conspiracy need not know the exact
24 details of the plan, but each participant must at least share the common objective of the
25 conspiracy. The defendants must have, by some concerted action, intended to accomplish some
26 unlawful objective for the purpose of harming another which results in damage. *Mendocino
27 Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283 (9th Cir. 1999).

28 Defendants are correct that Plaintiff has presented no evidence to show that there is a
possibility that a jury can infer from the circumstances a meeting of the minds. Indeed, Plaintiff
relies exclusively on his own declaration, again, most of which is inadmissible, to substantiate his
claim. Without more, there is no evidence of a conspiracy. Defendants' declarations establish
there was not one, and Plaintiff has not proffered any evidence to rebut this. **Plaintiff argued the**

1 one defendant's declaration (Gregory) denies he was a participant in a conspiracy but there is no
2 declaration from defendant Gomez denying he participated in a conspiracy; the Court disregarded
3 that argument. Plaintiff has not directed the Court to any law demonstrating that the arguments in
4 the opposition arguing that there may have been a conspiracy, which can be proved by inference,
5 are valid arguments. Plaintiff did include supporting case law reference *Kunik v. Racine County*,
6 946 F.2d 1574, 1580 (7th Cir. 1991) and *Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir.
7 1970), reversed in part on other grounds, 446 U.S. 754 (1980) (quoting *Adickes v. Kress & Co.*,
8 398 U.S. 144, 15859 (1970), but the Court did not find this persuasive.

8 For all those reasons, the Court grants Defendants' motion for summary judgment in its
9 entirety.

10
11 Dated: 11/19/2012

/s/ John A. Mendez
U.S. District Court Judge

12
13 /s/ Ellen C. Dove
14 Approved as to form