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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LENOIR SMITH,  
Plaintiff,  
v.  
DARREN ALBEE, et al.,  
Defendants.

No. 2:15-cv-1598 JAM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 28, 2017, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections to the findings and recommendations.<sup>1</sup>

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<sup>1</sup> Plaintiff claims that the prosecution used the attempted murder charge to oppose plaintiff's request for re-sentencing, and argues the superior court used it to deny plaintiff's resentencing request. (ECF No. 27 at 4.) Plaintiff is advised that he must raise any challenges to the fact or duration of his conviction or sentence through a writ of habeas corpus under 28 U.S.C. § 2254, not a civil rights action.

1 Plaintiff now argues that his claims based on events in 2002 should not be time-barred  
2 because he did not learn of the jail locator card until 2013,<sup>2</sup> and he alleges that defendants are  
3 engaged in the “continuing wrong” of mistreating plaintiff in the county jail and the CDCR from  
4 2002 through June 29, 2017. (ECF No. 27 at 2-3.) However, “the ‘continuing violations’  
5 doctrine was not designed to extend the statute of limitations in cases involving discrete unlawful  
6 acts or continuing ill effects from an injury occurring outside the limitations period.” Ybarra-  
7 Johnson v. State of Arizona, 2014 WL 5843358, at \*4 (D. Az. Nov. 12, 2014) (citing Nat’l R.R.  
8 Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002); Knox v. Davis, 260 F.3d 1009, 1014-15  
9 (9th Cir. 2001)) (this court has repeatedly held that a mere continuing *impact* from past violations  
10 is not actionable.). The allegations of the second amended complaint, even liberally construed in  
11 light of our notice pleading system, do not properly yield a finding that plaintiff’s § 1983 claims  
12 arising out of the allegations that in 2002, Deputy Albee falsely accused plaintiff of attempted  
13 murder, and the conspiracy and retaliation claims that took place in 2002, are timely. Aside from  
14 the remaining due process claims, plaintiff has failed to articulate cognizable civil rights claims  
15 against other defendants following the 2013 discovery of the locator card, despite multiple  
16 opportunities to amend his pleading. (ECF No. 8 at 8 (failed to address all elements of a  
17 retaliation claim against Epperson); ECF No. 24 at 4, 6-7 (included laundry list of allegations  
18 based on incidents from 2002-16, but named individuals who were not involved in all of the  
19 alleged incidents, many of whom worked at different prisons; the court again provided plaintiff  
20 with the standards governing retaliation claims, as well as rules governing proper joinder of  
21 claims).

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
23 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the  
24 court finds the findings and recommendations to be supported by the record and by proper  
25 analysis. Thus, this action will proceed on plaintiff’s due process claims against defendants Sgt.

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27 <sup>2</sup> Plaintiff claims he received the locator card through discovery from the prosecution in 2013.  
28 (ECF No. 27 at 3.) He alleges the card states: “Tried to throw deputy Albee off tier in ’02. SHU  
inmate known for litigation.” (ECF No. 27 at 3.)

1 Alexander and Sacramento County Sheriff's Department. (ECF No. 26 at 7.)

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The findings and recommendations filed August 28, 2017, are adopted in full;

4 2. Plaintiff's claims based on the incidents in 2002, including his retaliation claims  
5 against defendants Albee and Jones based on their actions in 2002, are dismissed with prejudice;  
6 and

7 3. Plaintiff's remaining claims, including his claim against defendant Jones based on  
8 Jones' alleged false claim in 2015, are dismissed without prejudice.

9 DATED: March 19, 2018

10 /s/ John A. Mendez

11 UNITED STATES DISTRICT COURT JUDGE

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