

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LENOIR SMITH,

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

Plaintiff,

v.

DARREN ALBEE, et al.,

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Defendants.

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, in an action brought under 42 U.S.C. § 1983. Plaintiff's second amended complaint is now before the court.

As plaintiff was previously advised, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

II. Plaintiff's Second Amended Complaint

Plaintiff names the following defendants: Deputy Darren Albee; Sacramento Sheriff's Department; CDCR; Sheriff Scott Jones; Sgt. Alexander; and Russel Detrick, Court

1 Commissioner, Sacramento Superior Court. Plaintiff again raises claims based on events in 2002,  
2 although some of his allegations are marked “background,” he also claims a “cause of action”  
3 alleging that defendants Jones and Albee “conspired to charge plaintiff with attempted murder of  
4 defendant Albee. (ECF No. 25 at 12.) Plaintiff alleges that since he was acquitted of the  
5 attempted murder charge, the CDCR has maintained in its electronic files, that plaintiff has an  
6 “active” case for attempted murder of a deputy, despite state regulations that mandate that court  
7 verdicts shall be the finding of fact. (ECF No. 25 at 13.) Plaintiff argues that these records make  
8 it appear that he was charged in 2013 while he was out to court for resentencing consideration.  
9 While plaintiff was out to court to the Sacramento County Main Jail in 2015, the Sacramento  
10 County Sheriff’s Department maintained a locator card that states plaintiff attempted to murder  
11 defendant Albee. Plaintiff filed a grievance asking that it be removed, but defendant Alexander  
12 refused. (ECF No. 25 at 13.) Plaintiff also alleges that defendant Jones “signed a motion falsely  
13 asserting that plaintiff was found in possession of an inmate-manufactured knife.” (ECF No. 25  
14 at 14.) Finally, plaintiff claims that Court Commissioner Detrick was the prosecutor in the  
15 attempted murder case, and was initially assigned to plaintiff’s resentencing case. Plaintiff claims  
16 he had to file a complaint to the judicial counsel, and defendant Detrick was removed, but  
17 plaintiff alleges that Detrick “knew or reasonably knew the case was about [plaintiff] and quietly  
18 worked in the shadows influencing it negatively.” (ECF No. 25 at 15.)

19 **III. Discussion**

20 **A. Claims based on 2002 Events**

21 Plaintiff claims that in 2002, he was housed at the Sacramento County Main Jail, where he  
22 witnessed numerous assaults by white deputies on African-American inmates. On March 13,  
23 2002, plaintiff witnessed defendant Albee “ruthlessly attack” African- American inmate Ernest  
24 Walker. Following these assaults, plaintiff claims that the white deputies would fabricate  
25 “spurious incident reports” to cover up their own misconduct. (ECF No. 25 at 6.) Plaintiff filed a  
26 grievance recounting these assaults, and alleged that because he was also African-American, there  
27 was a potential for him to be attacked by white deputies as well. Subsequently, on April 13,  
28 2002, plaintiff claims that defendant Albee attacked him, and then falsely accused plaintiff of

1 assault to cover up Albee's actions. Plaintiff then discusses other events concerning his  
 2 underlying criminal charges, during which defendant Jones, then a Sergeant and member of the  
 3 California State Bar, represented the sheriff's department at a hearing where plaintiff complained  
 4 he was not given the law library access the court had previously ordered. (ECF No. 25 at 11.)  
 5 Plaintiff states that the court ruled that plaintiff's due process rights had been violated, and that  
 6 the court's order granting plaintiff access to the court had been abrogated. (*Id.*) Plaintiff alleges  
 7 that defendant Jones "threw his legal file folder in the courtroom into the well of the court," and  
 8 "Jones stated that he did not know what degree of misbehavior would be necessary to revoke  
 9 plaintiff's pro per privileges." (*Id.*) Plaintiff contends that as a result, and in retaliation for his  
 10 earlier-filed grievance concerning white deputies beating African-American inmates, defendants  
 11 Jones and Albee conspired to charge plaintiff with attempted murder of defendant Albee. (ECF  
 12 No. 25 at 12.)

13 Plaintiff was subsequently acquitted of attempted murder on December 19, 2002.

14 Where the running of the statute of limitations is apparent on the face of the complaint,  
 15 dismissal for failure to state a claim is proper. See Cervantes v. City of San Diego, 5 F.3d 1273,  
 16 1275 (9th Cir. 1993). A claim under 42 U.S.C. § 1983 accrues when the "wrongful act or  
 17 omission results in damages." Wallace v. Kato, 549 U.S. 384, 388, 391 (2007); Hardin v. Staub,  
 18 490 U.S. 536, 543-44 (1989) (federal law governs when a § 1983 cause of action accrues). In  
 19 other words, a claim accrues "when the plaintiff knows or has reason to know of the injury which  
 20 is the basis of the action." Maldonado v. Harris, 370 F.3d 945, 954-55 (9th Cir. 2004).

21 California law determines the applicable statute of limitations in this § 1983 action. Fink  
 22 v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999). Until December 31, 2002, the applicable state  
 23 limitations period was one year. See Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004) (citing  
 24 Cal. Civ. Proc. Code § 340(3) (West Supp. 2002); see also Maldonado, 370 F.3d at 954-55.<sup>1</sup>  
 25 Effective January 1, 2003, the applicable California statute of limitations was extended to two

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26 <sup>1</sup> Federal law governs when plaintiff's § 1983 claims accrued and when the limitations period  
 27 begins to run. Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998). Under  
 28 federal law, "the claim generally accrues when the plaintiff 'knows or has reason to know of the  
 injury which is the basis of the action.'" *Id.* (citations omitted).

1 years. See Blanas, 393 F.3d at 927 (citing Cal. Civ. Proc. Code § 335.1). However, the new  
 2 statute of limitations period does not apply retroactively. Maldonado, 370 F.3d at 955. California  
 3 law also tolls for two years the limitations period for inmates “imprisoned on a criminal charge,  
 4 or in execution under the sentence of a criminal court for a term less than for life.” Cal. Civ.  
 5 Proc. Code § 352.1.<sup>2</sup> The limitations period is also tolled while the prisoner completes the  
 6 mandatory exhaustion process. Brown v. Valoff, 422 F.3d 926, 942-43 (9th Cir. 2004).

7 Here, plaintiff first became aware in April of 2002 that defendant Albee falsely accused  
 8 plaintiff. On April 25, 2002, plaintiff was issued an incident report #0849352330 for attempted  
 9 murder of a peace officer by Deputy D. Treat, subsequently found guilty, and administratively  
 10 punished. (ECF No. 1 at 6.) Criminal charges were also brought against him in the Sacramento  
 11 County Superior Court, including charges of attempted murder and assault of a peace officer. On  
 12 December 19, 2002, a jury found plaintiff not guilty of attempted murder, but a mistrial was  
 13 declared on the assault charges. On December 19, 2002, plaintiff was subsequently acquitted by  
 14 a jury of the charges alleged by defendant Albee. (ECF No. 1 at 11; 25 at 12.)

15 Thus, plaintiff’s claims based on the alleged false charges in April of 2002, the alleged  
 16 conspiracy, retaliation, and plaintiff’s December 19, 2002 acquittal of attempted murder charges  
 17 accrued in 2002 are subject to a one year statute of limitations period because such claims  
 18 precede the 2003 extension of the limitations period. Maldonado, 370 F.3d at 955.

19 Plaintiff is entitled to tolling of the statute of limitations period for an additional two  
 20 years. Blanas, 393 F.3d at 927 n.5. Therefore, plaintiff was required to bring these civil rights  
 21 claims before April of 2005 and December of 2005, respectively. Plaintiff did not file the instant  
 22 action until July 11, 2015, over ten years too late.

23 Even assuming, arguendo, the court were to grant plaintiff the additional year of tolling, it  
 24 would not be sufficient to toll the statute of limitations period inasmuch as plaintiff became aware  
 25 of Albee’s alleged false charges in April of 2002.

26  
 27 <sup>2</sup> “The California courts have read out of the statute the qualification that the period of  
 28 incarceration must be ‘for a term less than for life’ in order for a prisoner to qualify for tolling.”  
Blanas, 393 F.3d at 927 n.5 (citations omitted).

1           Federal courts generally apply the forum state's law regarding equitable tolling. Fink, 192  
2 F.3d at 914. Under California law, a plaintiff must meet three conditions to equitably toll a  
3 statute of limitations: (1) he must have diligently pursued his claim; (2) his situation must be the  
4 product of forces beyond his control; and (3) the defendants must not be prejudiced by the  
5 application of equitable tolling. See Hull v. Central Pathology Serv. Med. Clinic, 28 Cal. App.  
6 4th 1328, 1335, 34 Cal. Rptr. 2d 175 (1994). Given the lengthy delay here, it is unlikely that  
7 plaintiff could plead facts demonstrating an entitlement to equitable tolling for a nine or ten year  
8 period of time.

9           Thus, plaintiff's claims based on events in 2002 are, on their face, barred by the statute of  
10 limitations, and the undersigned recommends that such claims should be dismissed.

11           B. CDCR

12           Defendant CDCR is not a proper defendant. State agencies, such as the California  
13 Department of Corrections and Rehabilitation ("CDCR"), are immune from suit under the  
14 Eleventh Amendment. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989); Lucas  
15 v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (holding that prisoner's Eighth  
16 Amendment claims against CDCR for damages and injunctive relief were barred by Eleventh  
17 Amendment immunity); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984)  
18 (Eleventh Amendment immunity extends to state agencies). Thus, defendant CDCR should be  
19 dismissed.

20           C. Russel Detrick

21           Plaintiff claims that defendant Detrick was the prosecutor in the attempted murder case,  
22 and was initially assigned to plaintiff's resentencing case. Plaintiff claims he had to file a  
23 complaint to the judicial counsel, and defendant Detrick was removed, but plaintiff alleges that  
24 defendant Detrick "knew or reasonably knew the case was about [plaintiff] and quietly worked in  
25 the shadows influencing it negatively." (ECF No. 25 at 15.)

26           While detailed factual allegations are not required in a complaint, "[t]hreadbare recitals of  
27 the elements of a cause of action, supported by mere conclusory statements, do not suffice."  
28 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S.

1 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a  
2 claim to relief that is plausible on its face.’” Ashcroft, 556 U.S. at 678 (quoting Bell Atlantic  
3 Corp., 550 U.S. at 570).

4 A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that  
6 the defendant is liable for the misconduct alleged. The plausibility  
7 standard is not akin to a “probability requirement,” but it asks for  
8 more than a sheer possibility that a defendant has acted unlawfully.  
Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility  
and plausibility of entitlement to relief.

9 Ashcroft, 566 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions  
10 can provide the framework of a complaint, they must be supported by factual allegations, and are  
11 not entitled to the assumption of truth. Id.

12 Plaintiff’s bald assertion concerning defendant Detrick is insufficient to state a claim.  
13 Indeed, plaintiff concedes he sought removal of defendant Detrick from the case addressing  
14 plaintiff’s motion for re-sentencing, and plaintiff’s request was granted. A new judicial officer  
15 was assigned to hear plaintiff’s motion. Plaintiff’s sole allegation that defendant Detrick “worked  
16 in the shadows” is insufficient to state a cognizable civil rights violation. The undersigned  
17 recommends that defendant Detrick be dismissed.

18 D. Defendant Jones’ Alleged False Claim

19 Plaintiff also alleges that defendant Jones “signed a motion falsely asserting that plaintiff  
20 was found in possession of an inmate-manufactured knife.” (ECF No. 25 at 14.) To the extent  
21 plaintiff attempts to raise a retaliation claim against defendant Jones based on such knife incident,  
22 plaintiff fails to address the five prongs required under Rhodes v. Robinson, 408 F.3d 559, 567-68  
23 (9th Cir. 2005). Plaintiff discusses how he found the knife, but fails to elaborate on any purported  
24 retaliation claim based on defendant Jones signing a “motion.” On November 13, 2015, plaintiff  
25 was initially informed of the five prongs he must address in pleading a retaliation claim. (ECF  
26 No. 8 at 7.) Plaintiff was also informed that the falsification of disciplinary reports does not state  
27 a standalone constitutional claim. (ECF No. 8 at 8 n.6.) Finally, it appears that this alleged act  
28 by defendant Jones took place while plaintiff was re-housed at the jail for hearing on his request

1 for re-sentencing in 2015. Thus, it is unlikely plaintiff exhausted his administrative remedies as  
2 to such claim prior to filing the instant action on July 11, 2015. For all of these reasons,  
3 plaintiff's conclusory claim as to defendant Jones actions in connection with the knife found in  
4 plaintiff's mattress should be dismissed without prejudice to plaintiff's bringing such claim in a  
5 separate action.

6       E. "Ongoing Retaliation"

7       Plaintiff appears to attempt to connect incidents that occurred in 2015 with a grievance he  
8 filed in 2002 while housed in the Sacramento County Jail. However, he fails to demonstrate that  
9 any of the named defendants, aside from defendants Albee and Jones, were aware of such  
10 grievance. Any retaliation claim against defendants Albee and Jones in connection with the 2002  
11 incidents is time-barred, as discussed above. Moreover, given the span of time, 13 years, plaintiff  
12 adduces no facts demonstrating that any of the incidents in 2015 were in retaliation for plaintiff's  
13 grievance filed in 2002. Thus, plaintiff's purported claim of "ongoing retaliation" should also be  
14 dismissed.

15       F. Failure to Correct Jail Records

16       Plaintiff alleges that despite being acquitted by a jury of the attempted murder charge,  
17 defendants Alexander and the Sacramento County Sheriff's Department failed to correct their  
18 records. In 2015, plaintiff confirmed that the jail locator card continued to reference the  
19 attempted murder charge, despite plaintiff's acquittal. Plaintiff contends that the failure to correct  
20 these records subjects him to continual torment by jail staff, and results in further trumped-up  
21 charges against him. Plaintiff claims his efforts to correct such records have failed. Liberally  
22 construed, plaintiff's second amended complaint states a potential cognizable due process claim  
23 against defendants Alexander and the Sacramento County Sheriff's Department based on their  
24 alleged failure to correct their internal records to reflect that plaintiff was acquitted by a jury of  
25 the attempted murder charge.

26       IV. Conclusion

27       Plaintiff has been granted leave to amend on multiple occasions, and further leave to  
28 amend would be futile.

1        The second amended complaint states a potentially cognizable due process claim for relief  
2 against defendants Alexander and the Sacramento County Sheriff's Department pursuant to 42  
3 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the second amended complaint are  
4 proven, plaintiff has a reasonable opportunity to prevail on the merits of such due process claim.  
5 Plaintiff's remaining claims should be dismissed.

6        In accordance with the above, IT IS HEREBY ORDERED that:

7            1. Service is appropriate for the following defendants: Sgt. Alexander and the  
8 Sacramento County Sheriff's Department.

9            2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an  
10 instruction sheet and a copy of the second amended complaint (ECF No. 25).

11            3. Within thirty days from the date of this order, plaintiff shall complete the attached  
12 Notice of Submission of Documents and submit the following documents to the court:

13                a. The completed Notice of Submission of Documents;  
14                b. One completed summons;  
15                c. One completed USM-285 form for each defendant listed in number 1 above;

16 and

17                d. Three copies of the endorsed second amended complaint (ECF No. 25).

18            4. Plaintiff need not attempt service on defendants and need not request waiver of service.  
19 Upon receipt of the above-described documents, the court will direct the United States Marshal to  
20 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment  
21 of costs.

22            Further, IT IS HEREBY RECOMMENDED that:

23            1. Plaintiff's claims based on the incidents in 2002, including his retaliation claims  
24 against defendants Albee and Jones based on their actions in 2002, be dismissed with prejudice;  
25 and

26            2. Plaintiff's remaining claims, including his claim against defendant Jones based on  
27 Jones' alleged false claim in 2015, be dismissed without prejudice.

28            ////

1 These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
3 after being served with these findings and recommendations, plaintiff may file written objections  
4 with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that  
6 failure to file objections within the specified time may waive the right to appeal the District  
7 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 || Dated: August 25, 2017

Kendall J. Newman  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

/smit1598.ord

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LENOIR SMITH,

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

Plaintiff,

v.

DARREN ALBEE, et al.,

NOTICE OF SUBMISSION OF  
DOCUMENTS

Defendants.

Plaintiff hereby submits the following documents in compliance with the court's order  
filed \_\_\_\_\_ :

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Second Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff