IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN LYNCH, SR.	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, ET AL.	:	NO. 03-3063

MEMORANDUM

Padova, J. **February 6, 2004**

Plaintiff has brought this civil rights action pursuant to 42 U.S.C. § 1983 against the Commonwealth of Pennsylvania Department of Transportation and certain employees thereof, for injunctive relief and monetary damages arising from Defendants' alleged failure to restore his driver's license and correct his driving record. Before the Court is Defendants' Motion to Dismiss the Second Amended Complaint. For the reasons which follow, the Motion is granted.

I. BACKGROUND

The Second Amended Complaint alleges the following facts.[1]

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[1]Plaintiff initially filed this action, pro se, in the Philadelphia County Court of Common Pleas, civil action No. 02-12-3418 on December 23, 2002. The initial complaint named the following defendants: the City of Philadelphia, the City of Philadelphia Police Department, Steffa Metals Co., Inc., and the Philadelphia Parking Authority. Plaintiff's claims against the Philadelphia Police Department were dismissed on March 3, 2003. Plaintiff filed an Amended Complaint on April 6, 2003. The Amended Complaint named the following defendants: the City of Philadelphia, the Philadelphia Parking Authority, Steffa Metals Co., Inc., Century Auto Parts Co., and Philadelphia Traffic Court. This action was removed to this Court on May 13, 2003. The First Amended Complaint was dismissed by agreement of the parties on August 19, 2003. Plaintiff retained counsel and filed the Second

Plaintiff lives at 6046 Roosevelt Boulevard, Philadelphia, Pa. (Id. ¶ 5.) Defendant Pennsylvania Department of Transportation ("PENNDOT") is the employer of the individual Defendants. (Id. ¶ 9.) Prior to Defendants' wrongful suspension of Plaintiff's driver's license, he owned and operated a successful tow truck and delivery business. (Id. ¶ 17.) On October 19, 1996, PENNDOT sent a letter to Plaintiff, informing him that it was suspending his driver's license based upon erroneous allegations that Plaintiff had provided false information on his driver's license application and had obtained an out-of-state license while his license was suspended in Pennsylvania. (Id.) Plaintiff challenged the suspension of his driver's license in the Philadelphia Court of Common Pleas, which affirmed the suspension of his license in November 1996. (Id. ¶ 18-19.) Plaintiff appealed to the Commonwealth Court, which reversed the decision of the Court of Common Pleas on April 2, 1998. (Id. ¶ 20.) The Commonwealth Court order required PENNDOT to immediately restore Plaintiff's driver's

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Amended Complaint on September 22, 2003. The Second Amended Complaint alleges, for the first time, claims against Defendants PENNDOT, Allan Biehler, John Doe, Darlene Sanders, Rebecca Beckly, Sherry Knotts, Dee Chadwick and Kim Sullivan. The Second Amended Complaint also specifically drops all of Plaintiff's claims against the City of Philadelphia, Philadelphia Traffic Court, the Philadelphia Parking Authority, Century Auto Parts Co. and Steffa Metals Co., Inc. as Defendants. (2d Am. Compl. ¶ 1.) On September 22, 2003, after the Second Amended Complaint was filed, the City of Philadelphia, Philadelphia Traffic Court, the Philadelphia Parking Authority, Century Auto Parts Co., and Steffa Metals Co., Inc. were terminated as Defendants in this proceeding.

license. (Id. ¶ 21.) PENNDOT did not comply and, despite Plaintiff's repeated requests, his driver's license was never restored and his driving record was never corrected. (Id. ¶¶ 21 and 34.) PENNDOT's records still indicate that Plaintiff's driver's license is suspended. (Id. ¶ 21.) As a result of PENNDOT's failure to correct its records and restore Plaintiff's driver's license, Plaintiff was issued numerous driving and parking citations for driving with a suspended license. (Id. ¶ 22.) The Second Amended Complaint alleges that, as a consequence of these citations, the City of Philadelphia and Philadelphia Parking Authority, and their agents and contractors, seized vehicles belonging to Plaintiff on eight occasions.

On May 4, 2001, as a result of these erroneously issued citations, the City of Philadelphia and Steffa Metals Co. entered Plaintiff's property and confiscated his 1974 Ford Tow Truck and 1986 Ford Crown Victoria sedan. (Id. ¶ 23.) The City of Philadelphia sold the 1986 Ford Crown Victoria and retained the proceeds of the sale. (Id.)

In November 2001, as a result of the erroneously issued citations, the City of Philadelphia and Century Auto Parts entered Plaintiff's property and confiscated a 1973 tow truck and vintage 1971 Mercury Montero. (Id. at ¶ 24.) The City of Philadelphia retained custody of the vehicles for six months before returning them to Plaintiff. (Id.)

On October 1, 2002, as a result of the erroneously issued driving citations, the City of Philadelphia confiscated Plaintiff's 1987 Reliant, which was legally parked on the 2300 block of Front Street. (Id. ¶ 25.) The Reliant was towed while Plaintiff awaited renewal of its license plates. (Id.)

On October 24, 2002, as a result of erroneously issued driving citations, the City of Philadelphia confiscated Plaintiff's 1981 Chevrolet Citation from the parking lot of the Dunkin Donuts located at Erie and Tavesdale Avenue in Philadelphia. (Id. ¶ 26.)

On October 31, 2002, as a result of erroneously issued driving citations, the City of Philadelphia confiscated Plaintiff's 1973 Ford tow truck, which was located at 2nd and Erie Avenues in Philadelphia. (Id. ¶ 27.) The City kept the 1973 tow truck at Century Auto Pound until it was released to Plaintiff. (Id.)

On November 14, 2002, as a result of erroneously issued driving citations, the City of Philadelphia and Steffa Metals Co. entered Plaintiff's property and confiscated his 1971 Mercury Monterey. (Id. ¶ 28.) Steffa Metals continues to maintain custody of this vehicle. (Id.)

On December 11, 2002, as a result of erroneously issued driving citations, the City of Philadelphia confiscated Plaintiff's 1973 Ford tow truck from the 2700 block of Kensington Avenue, Philadelphia. (Id. ¶ 29.)

On December 24, 2002, pursuant to an Order of Judge Schafer of

the Philadelphia Traffic Court, the City of Philadelphia was required to release certain trucks and automobiles it had confiscated from Plaintiff. (Id. ¶ 30.) When Plaintiff retrieved his tow truck, it was damaged, several tools were missing, and the gas charged shock absorber was damaged. (Id.) Plaintiff also retrieved his Reliant, but was told that his 1981 Citation had been sold and personal items in the vehicle had been lost, including a cane, a two-way radio and two ratchet sets. (Id. ¶ 31.)

Plaintiff subsequently appeared at Philadelphia Traffic Court on January 31, 2003 to review the outstanding citations and the confiscation of his vehicles. (Id. ¶ 32.) Plaintiff was found guilty of violating the Philadelphia traffic code and sentenced to six months in prison, to be served immediately. (Id.)

On February 3, 2003, while Plaintiff was incarcerated, he was notified by a family member that his 1987 Reliant had been confiscated from his property by the City of Philadelphia. (Id. ¶ 33.) On March 20, 2003, the City notified him that the Reliant had been sold. (Id.)

The Second Amended Complaint asserts causes of action against all Defendants pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's Fifth and Fourteenth Amendment rights (Count I); for violation of Plaintiff's Constitutional due process rights (Count II); and against PENNDOT for supervisory liability for the individual Defendants' violations of Plaintiff's Constitutional due

process rights (Count III).

II. LEGAL STANDARD

When determining a Motion to Dismiss pursuant to Rule 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all well pleaded allegations in the complaint and view them in the light most favorable to the Plaintiff. Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted when a Plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him or her to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. DISCUSSION

Defendants have moved to dismiss the Second Amended Complaint on the grounds that PENNDOT, as a state agency, is immune from suit by Plaintiff in federal court pursuant to the Eleventh Amendment and because the Commonwealth of Pennsylvania, and its agencies, are not "persons" for purposes of Section 1983. Defendants have also moved to dismiss Plaintiff's claims for monetary damages brought against the individual Defendants in their official capacities. Defendants have further moved to dismiss the entire Second Amended Complaint as barred by the applicable statute of limitations.

Plaintiff concedes that PENNDOT is immune from suit in this

proceeding and should be dismissed as a Defendant in this action. (Pl.'s Mem. at 2.) Plaintiff also concedes that the individual Defendants cannot be sued for damages in their official capacities and states that the relief sought in the Second Amended Complaint from the individual Defendants in their official capacities is only for prospective injunctive relief. (Pl.'s Mem. at 12.) Accordingly, PENNDOT is dismissed as a defendant in this proceeding and the Second Amended Complaint will be construed to assert claims against the individual Defendants in their official capacities solely for prospective injunctive relief.

Defendants also seek the dismissal of this proceeding in its entirety because Plaintiff's claims are barred by the applicable statute of limitations. The Courts apply the state's statute of limitations for personal injury actions to actions brought pursuant to Section 1983. See Montgomery v. De Simone, 159 F.3d 120, 126 n.4 (3d Cir. 1998) (citing Wilson v. Garcia, 471 U.S. 261, 276 (1985)). The statute of limitations for personal injury actions in Pennsylvania is two years. Id. Federal law governs the accrual of § 1983 claims. Id. at 126. Under federal law, "'the limitations period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis of the section 1983 action.'" Id. (quoting Gently v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991)).

Defendants argue that the limitations period began to run on

Plaintiff's claims in April 1998, when the Commonwealth Court ordered PENNDOT to restore Plaintiff's driver's license and correct his driving record. Defendants maintain that Plaintiff knew, or had reason to know, of the injury which is the basis of his section 1983 claim against PENNDOT and its employees at that time. The Second Amended Complaint, which is the first complaint alleging claims against the Department of Transportation and its employees, was not filed until November 19, 2003, more than five years after the Commonwealth Court's order. Plaintiff argues that his claims are not time barred for two reasons: (1) he did not know of his injury until February 2003 and (2) Defendants' actions created continuing violations.

Plaintiff argues that he did not know of his injury until February 2003, when, as a result of erroneously issued driving citations, his 1987 Plymouth Reliant was confiscated by the City of Philadelphia. However, his claims against Defendants are based on their alleged failure to restore his driver's license and correct his driving record. The Second Amended Complaint does not allege that Plaintiff was unaware of Defendants' failure to comply with the Commonwealth Court's April 1998 order at any time relevant to this action. To the contrary, the Second Amended Complaint alleges that Plaintiff made repeated requests that Defendants comply with that order by reinstating his driver's license and correcting his driving record. Moreover, the February 2003 seizure of the Reliant

was not the first time one of Plaintiff's vehicles was seized as a result of allegedly erroneous citations. The Second Amended Complaint alleges that the first such seizure occurred on May 4, 2001. (2d Am. Compl. ¶¶ 22-23.) Assuming, arguendo, that Plaintiff was entirely unaware, prior to the May 4, 2001 confiscation of his vehicle, that PENNDOT had not restored his driver's license or corrected his driving record, and viewing the allegations of the Second Amended Complaint in the light most favorable to Plaintiff, he knew or should have known that PENNDOT had failed to comply with the 1998 order of the Commonwealth Court at the time that his tow truck was confiscated on May 4, 2001. Accordingly, the Court finds that the limitations period for bringing the claims asserted in the Second Amended Complaint would have begun to run, at the latest, on May 4, 2001 and would have expired on May 4, 2003, four and one-half months prior to the filing of the Second Amended Complaint.

Plaintiff also argues that his claims are not time barred because Defendants' failure to comply with the Commonwealth Court's order was a continuing violation. The United States Court of Appeal for the Third Circuit ("Third Circuit") has stated that "'when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would

otherwise be time barred.'" Cowell v. Palmer Township, 263 F.3d 286, 292 (3d Cir. 2001) (quoting Brenner v. Local 514, United Bd. of Carpenters and Joiners of Amer., 927 F.2d 1283, 1295 (3d Cir. 1991)). The courts consider the following factors in weighing the application of the continuing violations doctrine:

> (1) subject matter--whether the violations constitute the same type of discrimination, tending to connect them in a continuing violation; (2) frequency--whether the acts are recurring or more in the nature of isolated incidents; and (3) degree of permanence--whether the act had a degree of permanence which should trigger the plaintiff's awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate.

Id. (citing Brenner, 927 F.2d at 755 n.9).

Plaintiff claims that the continuing violations doctrine applies in this case because (1) the subject matter of the violations are identical, i.e., PENNDOT's non-compliance with the Commonwealth Court's order, and the City of Philadelphia's issuance of driving citations and confiscation of his vehicles; (2) Defendants have denied Plaintiff a driver's license for five years and have not corrected his driving record for this period of time, as a result of which the City of Philadelphia continues to issue Plaintiff driving citations and confiscate his vehicles; and (3) these actions are permanent in nature and did not trigger a duty on the part of Plaintiff to assert his rights because the Commonwealth Court's order did not require Plaintiff to take any further action

to have his driver's license restored and his driving record corrected.

Although Plaintiff alleges a series of related actions taken against him, he does not allege that the Defendants took any of those actions. The issuance of citations and confiscations of Plaintiff's vehicles were allegedly performed by the City of Philadelphia and its employees and agents, who are not defendants in this proceeding. The Second Amended Complaint alleges that Defendants have committed a continuing violation by inaction, i.e., by failing to restore his driver's license and correct his driving record. The Third Circuit has determined that a continued failure or refusal to act does not constitute a continuing violation. See id. at 292-93 (finding that Palmer Township's refusal, for several years, to remove liens from the Cowell's property did not constitute a continuing violation because "[t]he focus of the continuing violations doctrine is on affirmative acts of the defendants.") (citations omitted).

The Court finds that Defendants' continuing failure to comply with the Commonwealth Court's April 1998 order was not a continuing violation because the Second Amended Complaint alleges only inaction on the part of Defendants and does not allege that Defendants committed any affirmative acts. Consequently, the Court finds that the Section 1983 claims asserted in the Second Amended Complaint are barred by the applicable statute of limitations.

Defendants' Motion to Dismiss is, therefore, granted.

An appropriate order follows.

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ET AL.	:	NO. 03-3063

ORDER

AND NOW, this 6th day of February, 2004, upon consideration of Defendants' Motion to Dismiss (Docket No. 52) and Plaintiff's response thereto, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. **IT IS FURTHER ORDERED** that this case is **DISMISSED** in its entirety. The Clerk shall close this case statistically.

BY THE COURT:

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John R. Padova, J.