UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE L. SERRANO, Plaintiff, v. SCOTT RAWERS, et al., Defendants.	CASE NO. 1:11-cv-00399-MJS (PC) ORDER SETTING BRIEFING SCHEDULE ON HECK DEFENSE (ECF No. 61) FOURTEEN (14) DAY DEADLINE

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 1 & 8.) This action proceeds on Plaintiff's First Amended Complaint (ECF No. 6.) against Defendant Lucas for violation of Plaintiff's Eighth Amendment rights. (ECF Nos. 11 & 12.)

On May 4, 2015, the Court issued a second scheduling order, requiring the parties to submit pretrial statements and setting the matter for trial on November 12, 2015. (ECF No. 48.) A pretrial conference is currently set for October 9, 2015. (ECF No. 71.)

Upon review of Defendant's pretrial statement, it appears that Defendant wishes to assert the defense that Plaintiff's suit is barred by *Heck v. Humphrey,* 512 U.S. 477 (1994) and should be dismissed on that basis

The Court is unable to determine, based on Defendant's pretrial statement alone, whether *Heck* applies. Additionally, the Court notes that Defendant failed to raise this legal issue as an affirmative defense or by way of dispositive motion and the dispositive motion deadline has passed.

Accordingly, it is HEREBY ORDERED THAT:

1. Within **fourteen (14) days** of service of this Order, Defendant shall file a brief on the following issues: a) Is Plaintiff's suit barred by *Heck*, and b) Has Defendant waived the defense by failing to raise it earlier. In accordance with Local Rule 230(*l*), Plaintiff will have **twenty-one (21) days** to respond, and Defendant will have **seven (7) days** to reply; and
2. The pretrial conference date of October 9, 2015 and the trial date of November 12, 2015 are vacated to allow time for the parties to brief this issue and the Court to rule.

IT IS SO ORDERED.

Dated: September 16, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE