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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBIN GILLEN STARR,
Plaintiff,
vs.
CDCR,
Defendant.

1:11-cv-2108 AWI GSA (PC)

ORDER FOR CLERK ENTER
JUDGMENT AND CLOSE THE CASE

Robin Gillen Starr (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 12, 2014, the district court adopted the Magistrate Judge’s findings and recommendations of September 20, 2013, dismissing this case in its entirety for failure to state a claim under § 1983, with prejudice. (ECF No. 93.) Judgment was entered on March 12, 2014. (ECF No. 94.)

On May 6, 2014, Plaintiff appealed the district court’s dismissal order and judgment to the Court of Appeals for the Ninth Circuit. (ECF No. 105.)

On September 4, 2015, the Ninth Circuit issued an order vacating the judgment, and affirming in part and vacating in part the district court’s dismissal order, remanding the case to the district court. (ECF No. 111.) The Ninth Circuit’s mandate was issued on September 29, 2015. (ECF No. 112.)

1 The Ninth Circuit’s order held, in relevant part:

2 “To the extent that Starr seeks release from prison, or
3 modification or commutation of his sentence, dismissal was
4 proper because his “exclusive remedy is a writ of habeas corpus.”
5 *Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995)
6 (per curiam); see also *Ybarra v. Reno Thunderbird Mobile Home*
7 *Vill.*, 723 F.2d 675, 681-82 (9th Cir. 1984) (“If a prisoner seeks
8 both release from confinement and damages or injunctive relief
9 in an action under § 1983, the court may properly dismiss the
10 former claim while retaining the latter.”). However, because the
11 district court dismissed the action with prejudice, we vacate the
12 judgment and remand with instructions for the district court to
13 dismiss these claims without prejudice. See *Trimble*, 49 F.3d at
14 586.

9 To the extent that Starr raised due process and equal protection
10 claims in connection with events that occurred in prison, the
11 district court properly dismissed these claims because Starr failed
12 to allege facts sufficient to state cognizable claims for relief. See
13 *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although
14 pro se pleadings are to be liberally construed, a plaintiff must still
15 present factual allegations sufficient to state a plausible claim for
16 relief); see also *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir.
17 2000) (setting forth elements of a procedural due process claim);
18 *Barren*, 152 F.3d at 1194-95 (listing elements of an equal
19 protection claim).”

15 (ECF No. 111 at 3-4.)

16 In other words, the Ninth Circuit agreed with this Court’s analysis of the merits of the
17 case, but held that any claims that were within the purview of habeas corpus should be
18 dismissed without prejudice. The Court will follow the Ninth Circuit’s instructions.

19
20 **ORDER**

21 Pursuant to the instructions of the Ninth Circuit Court of Appeals (Doc. No. 111), and
22 the analysis of the September 20, 2013 Findings and Recommendation (Doc. No. 71), IT IS
23 HEREBY ORDERED that:

- 24 1. This action is dismissed, based on plaintiff’s failure to state a claim upon which
25 relief may be granted under § 1983;
- 26 2. All of Plaintiff’s claims seeking release from prison, or modification or
27 commutation of his sentence, are dismissed without prejudice;
- 28 3. Plaintiff’s other § 1983 claims are dismissed with prejudice;

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4. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and

5. The Clerk of Court is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: October 6, 2015



SENIOR DISTRICT JUDGE