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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 BRIAN APPLGATE,

12 Plaintiff,

13 v.

14 CHRISTIAN TRAUSCH,

15 Defendant.
16

1:15-cv-00811-AWI-GSA-PC

**ORDER RE REQUEST FOR JUDICIAL
NOTICE
(ECF No. 38.)**

**ORDER FOR PLAINTIFF TO FILE UPDATED
STATUS REPORT WITHIN 14 DAYS, AS
DIRECTED BY THIS ORDER**

17 **I. BACKGROUND**

18 Brian C. Applegate (“Plaintiff”) is a state prisoner proceeding pro se and in forma
19 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 29, 2015, Plaintiff
20 filed the Complaint commencing this action. (ECF No. 1.) The case now proceeds with the
21 initial Complaint, against Defendant Christian Trausch (“Defendant”), on Plaintiff’s Eighth
22 Amendment claim and related state law claims.

23 On March 29, 2016, on Defendant’s motion, the court stayed the proceedings in this
24 action pending resolution of Plaintiff’s petition for writ of mandate in the Sacramento County
25 Superior Court. (ECF No. 24.) On July 25, 2016, the court issued an order continuing the stay
26 pending final resolution of Plaintiff’s petition in state court. (ECF No. 30.)

27 On February 24, 2017, Plaintiff filed a status report, providing evidence that he had
28 appealed the Superior Court’s denial of his petition to the Third District Court of Appeal, where

1 it was denied on or about January 4, 2017.¹ (ECF No. 38 at 13-14.) Plaintiff notifies the court
2 that he has “contested the COA denial of his petition, by filing anew in the California Supreme
3 Court.” (Id. at 1.)

4 **II. REQUEST FOR JUDICIAL NOTICE**

5 Under Federal Rule of Evidence 201(b), “[t]he court may judicially notice a fact that is
6 not subject to reasonable dispute because it: (1) is generally known within the trial court’s
7 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
8 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

9 Plaintiff has requested that the court take judicial notice of his file at the Sacramento
10 County Superior Court, Case no. 34-2015-80002056, as evidence “in rebutting summary
11 judgment challenge to his claims.” (ECF No. 38 at 1.) Plaintiff also requests the court to
12 acquire the records for him from the Sacramento Superior Court.

13 Plaintiff has not shown good cause for the court to acquire, nor take judicial notice of
14 his state court records. There is no motion for summary judgment motion pending in this
15 action. Moreover, in the event that a motion for summary judgment is filed the court shall not
16 assist Plaintiff with obtaining state court records on his behalf. Therefore, Plaintiff’s request
17 for judicial notice shall be denied.

18 **III. STATUS OF STATE COURT PROCEEDINGS**

19 Plaintiff shall be required to file a status report within 14 days, updating the court on the
20 status of his state court proceedings and whether he has filed a petition for review at the
21 California Supreme Court pursuant to Rule 8.500(a) of the California Rules of Court.² If
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24 ¹ On February 10, 2017, Defendant also filed a status report indicating that Plaintiff had
25 appealed to the Third District Court of Appeal, Case No. C083150, and that the Third District Court of Appeal
entered an order denying the writ of mandate and issuing a remittitur on January 6, 2017, after which time the
jurisdiction of the trial court ordinarily reattaches. (ECF No. 37.)

26 ² Pursuant to Rule 8.500(a) of the California Rules of Court, “[a] party may file a petition in the
27 [California] Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order,
except the denial of a transfer of a case within the appellate jurisdiction of the superior court.” Cal. R. Ct.
28 8.500(a)(1). A petition for review must be served and filed within 10 days after the Court of Appeal decision is
final in that court. Cal. R. Ct. 8.500(e)(1).

1 Plaintiff has filed a petition for review, he is required to submit a conformed copy of the filed
2 petition, date-stamped by the Supreme Court.

3 **III. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's request for judicial notice, filed on February 24, 2017, is DENIED;
- 6 2. Within **fourteen (14) days** of the date of service of this order, Plaintiff is
7 required to file an updated status report and a copy of his petition for review, if
8 any, as instructed by this order; and
- 9 3. Plaintiff's failure to comply with this order may result in the dismissal of this
10 case.

11 IT IS SO ORDERED.

12 Dated: April 28, 2017

13 /s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE