

1 a result, the plaintiff was sentenced to four years in prison. Thus, on February 22, 2017, the Court
2 ordered Plaintiff to show cause why this action should not be dismissed as barred by *Heck v.*
3 *Humphrey*, 512 U.S. 477, 487-88 (1994). (Doc. 9.) Despite lapse of nearly three months,
4 Plaintiff did not file any response to that order.²

5 When a prisoner challenges the legality or duration of his custody, or raises a
6 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a
7 writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874
8 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an
9 allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the
10 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
11 invalid by a state tribunal authorized to make such determination, or called into question by a
12 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Heck v. Humphrey*, 512
13 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a conviction or
14 sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at 488. This
15 "favorable termination" requirement has been extended to actions under § 1983 that, if successful,
16 would imply the invalidity of prison administrative decisions which result in a forfeiture of good-
17 time credits. *Edwards v. Balisok*, 520 U.S. 641, 643–647 (1997).

18 The Complaint does not contain any allegations to show that Plaintiff's conviction has
19 been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus.

20 **II. Conclusion & Recommendations**

21 Plaintiff's claims challenge his arrest, conviction, and sentence, which may be brought
22 only in a petition for a writ of habeas corpus. Thus, Plaintiff has failed to state any claims that are
23 cognizable under section 1983 until the actions he complains of have been reversed, expunged,
24 declared invalid, or called into question by a writ of habeas corpus. Plaintiff need not be given

25 Club, Inc., 615 F.2d 736, 738 (6th. Cir. 1980). Thus, the Court takes judicial notice of the court record in Kern
26 County Superior Court case, *People v. Ezell Moore*, case number BF164651A.

27 ² The docket shows that the OSC was returned as undeliverable "Not in Custody" on March 6, 2017. Plaintiff was
28 informed of his duty as a *pro se* litigant, he has a duty to notify the Clerk of the Court of any change of his address.
(Doc. 3.) Thus, it appears that Plaintiff has abandoned this action.

1 leave to amend as these deficiencies are not capable of being cured through amendment. *Akhtar v.*
2 *Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012).

3 Based on the foregoing, the Court RECOMMENDS that the Complaint (Doc. 1) be
4 dismissed without prejudice for failure to state a claim upon which relief can be granted.

5 These Findings and Recommendations will be submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 21**
7 **days** after being served with these Findings and Recommendations, Plaintiff may file written
8 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
9 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
10 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
11 839 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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13 IT IS SO ORDERED.

14 Dated: **May 8, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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