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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAVID DANIELS,

Plaintiff,

v.

J. VALENCIA, *et al.*,

Defendants.

Case No. 1:17-cv-00492-DAD-EPG (PC)

**FINDINGS AND RECOMMENDATIONS
THAT DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S EXCESSIVE
FORCE CLAIM BE DENIED**

(ECF Nos. 19, 23, 26)

THIRTY (30) DAY DEADLINE

16 The Court has before it the Motion to Dismiss Plaintiff's Excessive Force Claims filed by
17 defendants Owns, Torres, Valencia, Pano, Benavidez, Crabtree, Johnson, and Madruga (ECF
18 No. 19), and joined by defendant Babb (ECF No. 26). For the following reasons, the Court
19 recommends denying the Motion to Dismiss.

20 **I. INTRODUCTION**

21 David Daniels ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, commenced this
22 civil rights action pursuant to 42 U.S.C. § 1983 on April 6, 2017. In his Second Amended
23 Complaint ("SAC") (ECF No. 14), Plaintiff brings claims for excessive force and deliberate
24 indifference to serious medical needs in violation of the Eighth Amendment. (*Id.*) At issue here
25 is Plaintiff's claim for excessive force, which Plaintiff brings against defendants S. Babb, M.
26 Owens, E. Torres, J. Valencia, S. Pano, M. Benevidez, C. Crabtree, N. Johnson, and E.
27 Madruga (the "moving defendants").

28 On January 26, 2018, the moving defendants filed the Motion to Dismiss, contending

1 that Plaintiff's excessive force claim is barred by the holdings in *Heck v. Humphrey*, 512 U.S.
2 477, 480 (1994), and *Edwards v. Balisok*, 520 U.S. 641, 643 (1997). (ECF No. 19, 26.) The
3 moving defendants rely on Plaintiff's conviction for a violation of the California Penal Code
4 for assaulting prison staff on the date at issue (March 14, 2016), which resulted in a sentence of
5 eight months of additional incarceration. The moving defendants also rely on a Rules Violation
6 Report ("RVR") for a disciplinary proceeding for an incident that occurred on March 14, 2016.
7 The moving defendants request that the Court take judicial notice of an Abstract of Judgment
8 from a felony criminal proceeding in Kings County Superior Court (the "Abstract of
9 Judgment"), as well as the RVR. (ECF No. 20.)

10 Plaintiff filed his opposition to the motion to dismiss and request for judicial notice on
11 February 12, 2018. (ECF No. 23.) Plaintiff argues that the Kings County Superior Court felony
12 criminal proceeding is distinct from and unrelated to Plaintiff's excessive force claims against
13 the moving defendants. In support of his argument, Plaintiff submits a copy of the same
14 Abstract of Judgment submitted by the moving defendants, as well as a copy of the Information
15 filed in that same criminal proceeding. (ECF No. 23.) Plaintiff further argues the Court should
16 not take judicial notice of the RVR as the facts set forth therein are biased and in dispute in this
17 case.

18 For the reasons described below, the Court recommends that the Motion to Dismiss be
19 denied.

20 **II. LEGAL STANDARD**

21 In considering a motion to dismiss, the court must accept all allegations of material fact
22 in the complaint as true. *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007); *Hosp. Bldg. Co. v. Rex*
23 *Hosp. Trustees*, 425 U.S. 738, 740 (1976). The court must also construe the alleged facts in the
24 light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236, *overruled on other*
25 *grounds by Davis v. Scherer*, 468 U.S. 183 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816 (9th
26 Cir. 1994) (per curiam). All ambiguities or doubts must also be resolved in the plaintiff's favor.
27 See *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). In addition, *pro se* pleadings are held to a
28 less stringent standard than those drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520

1 (1972).

2 The scope of review on a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss is
3 ordinarily limited to the contents of the complaint. Fed. R. Civ. P. 12(d); *Van Buskirk v. Cable*
4 *News Network*, 284 F.3d 977, 980 (9th Cir. 2002) (“Ordinarily, a court may look only at the
5 face of the complaint to decide a motion to dismiss.”). If a court considers evidence outside of
6 the complaint when ruling on a Rule 12(b)(6) motion, “it must normally convert the 12(b)(6)
7 motion into a Rule 56 motion for summary judgment.” *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th
8 Cir. 2003). However, exceptions exist for “documents attached to the complaint, documents
9 incorporated by reference in the complaint, or matters of judicial notice,” which a court may
10 properly consider “without converting the motion to dismiss into a motion for summary
11 judgment.” *Id.* at 907-08 (citations omitted).

12 **III. RELEVANT ALLEGATIONS**

13 In the SAC, Plaintiff alleges that on March 14, 2016, while housed at California
14 Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”), he was beaten in his
15 cell by Correctional Officers S. Babb, M. Owens, E. Torres, J. Valencia, S. Pano, M.
16 Benevidez, C. Crabtree, and N. Johnson. (ECF No. 14.) According to the SAC, E. Torres
17 opened Plaintiff’s cell door. M. Owens, J. Valencia, S. Pano, M. Benevidez, C. Crabtree, N.
18 Johnson, and S. Babb entered Plaintiff’s cell and each of them beat and kicked Plaintiff with
19 their feet and closed fists. (*Id.* at 5.) M. Benevidez placed Plaintiff in a rear chokehold, while J.
20 Valencia repeatedly punched Plaintiff in the face, head, and right eye with his closed fist. N.
21 Johnson kicked Plaintiff repeatedly, while C. Crabtree, M. Owens, and S. Babb punched
22 Plaintiff until Plaintiff lost consciousness. (*Id.*) They dragged Plaintiff, unconscious and
23 bleeding, out of his cell with his hands cuffed behind his back and restraints on his legs. (*Id.*)
24 They took Plaintiff to the rear area of the housing unit where E. Madruga slammed Plaintiff’s
25 head repeatedly into a wall and then threw Plaintiff into a holding cage. (*Id.* at 6.)

26 **IV. DISCUSSION**

27 The moving defendants contend that *Heck v. Humphrey*, 512 U.S. 477 (1994), precludes
28 Plaintiff from pursuing his excessive force claim because a judgment in favor of Plaintiff would

1 necessarily imply the invalidity of his felony conviction or sentence.

2 **a. Judicial Notice**

3 The moving defendants request that the Court take judicial notice of an Abstract of
4 Judgment from Kings County Superior Court Case No. 17CMS-2756, and a Rules Violation
5 Report (“RVR”) for a disciplinary proceeding. (ECF Nos. 20, 20-1, 20-2.) Plaintiff requests
6 that the Court take judicial notice of the Information and the Abstract of Judgment from the
7 same Kings County Superior Court case.¹ (ECF No. 23 at 11-15.) Plaintiff objects to the Court
8 taking judicial notice of the RVR. (*Id.* at 4-5.)

9 Under Federal Rule of Evidence 201, courts may take judicial notice of facts “not
10 subject to reasonable dispute” that are either “(1) generally known within the trial court’s
11 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
12 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see U.S. ex rel. Robinson*
13 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (a court “may
14 take notice of proceedings in other courts, both within and without the federal judicial system,
15 if those proceedings have a direct relation to matters at issue” (citation omitted)); *see also*
16 *Bykov v. Rosen*, 703 F. App’x 484, 487 (9th Cir. 2017) (finding that the district court did not
17 abuse its discretion by taking judicial notice of state court proceedings).

18 1. Abstract of Judgment and Information from Criminal Proceeding

19 Both parties request the Court take judicial notice of the Abstract of Judgment from the
20 Kings County Superior Court criminal proceeding. (ECF No. 20, 20-2.) Plaintiff requests the
21 Court also take judicial notice of the Information from the same criminal proceeding (ECF No.
22 23 at 11-12), and Defendants have not opposed Plaintiff’s request. Both the Abstract of
23 Judgment and the Information are public records of state court proceedings and neither party
24 disputes the accuracy of the documents. The Court finds judicial notice of both the Abstract of
25 Judgment and the Information to be appropriate.

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28 ¹ Although Plaintiff does not explicitly request the Court take judicial notice of the Information and Abstract of Judgment, the Court construes his argument as making such a request. (ECF No. 23 at 3-7.)

1 adjudicative fact and in any event was not beyond reasonable dispute).

2 Here, the Court may take judicial notice of the RVR, including the charge of which
3 Plaintiff was found guilty in the RVR (attempted murder), the victim of that charge (J.
4 Valencia), and the punishment imposed as a result of the guilty finding (including the loss of
5 credit of “360”). (ECF No. 20-1 at 2, 12, 16.) The Court may not, however, take judicial notice
6 of, and construe as true, the factual allegations contained in the RVR as those factual
7 allegations are in dispute. *See Wyatt*, 315 F.3d at 1114 n.5 (“[F]actual findings in one case
8 ordinarily are not admissible for their truth in another case through judicial notice.”); *see also*
9 *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (although the court can take
10 judicial notice of undisputed matters of public record, the court cannot take judicial notice of
11 disputed facts stated in public records); *Rivera v. Hamlet*, No. C03-962 SI (PR), 2003 WL
12 22846114, at *5 & n.2 (N.D. Cal. Nov. 25, 2003) (“If the court cannot take judicial notice of a
13 factual finding in other court cases, it certainly cannot take judicial notice of a factual finding in
14 the less procedurally rigid prison disciplinary hearing.”).

15 Accordingly, the Court recommends granting the request for judicial notice of the RVR
16 only as to the charge of which Plaintiff was found guilty, the victim of that charge, and the
17 punishment imposed, and otherwise denying judicial notice of the RVR and particularly
18 denying the request for judicial notice of the factual allegations contained in the RVR.

19 **b. Heck Bar**

20 The moving defendants contend that *Heck v. Humphrey*, 512 U.S. 477, precludes
21 Plaintiff from pursuing his excessive force claim because, if Plaintiff were to prevail, it would
22 necessarily render his felony conviction invalid. In opposition, Plaintiff argues that his
23 excessive force claim is not a collateral attack on his criminal conviction, but is a totally
24 separate claim and is thus not barred by *Heck*.

25 Under *Heck*, a prisoner cannot bring a claim under 42 U.S.C. § 1983 to collaterally
26 attack a criminal conviction unless “the conviction or sentence has been reversed on direct
27 appeal, expunged by executive order, declared invalid by a state tribunal authorized to make
28 such a determination, or called into question by a federal court's issuance of a writ of habeas

1 corpus.” *Heck*, 512 U.S. at 486-87. In considering whether a § 1983 claim is barred by *Heck*,
2 courts ask whether a ruling favoring the plaintiff would necessarily imply that the plaintiff’s
3 conviction or sentence is invalid. *See, e.g., Szajer v. City of Los Angeles*, 632 F.3d 607, 611
4 (9th Cir. 2011). “[I]f ‘a judgment in favor of the plaintiff would necessarily imply the invalidity
5 of his conviction or sentence,’ then ‘the complaint must be dismissed unless the plaintiff can
6 demonstrate that the conviction or sentence has already been invalidated.’” *Whitaker v.*
7 *Garcetti*, 486 F.3d 572, 583 (9th Cir. 2007) (quoting *Heck*, 512 U.S. at 487). Here, there are
8 two separate potential sources for finding that Plaintiff’s excessive force claim is barred by
9 *Heck*: (1) the criminal conviction, and (2) the RVR disciplinary hearing finding of guilty.

10 1. The Criminal Conviction

11 According to the Information and Abstract of Judgment (ECF Nos. 20-2, 23 at 11-15),
12 Plaintiff was charged with two counts of Battery on a Non-Confined Person by Prisoner, in
13 violation of California Penal Code 4501.5. (ECF No. 23 at 11-12.) Plaintiff received a sentence
14 of an additional eight months of imprisonment as a result of this conviction. (ECF Nos. 20-2 at
15 2-3, 23 at 14-15.) Both the incident of which Plaintiff was convicted in the criminal proceeding,
16 and the factual allegations underlying Plaintiff’s excessive force claim occurred on March 14,
17 2016. (*Compare* ECF No. 23 at 11 (Information alleging that “On or about March 14, 2016”
18 Daniels committed “the crime of Battery”) *with* ECF No. 14 at 5-6 (SAC alleging that “On,
19 March 14, 2016” the moving defendants “used excessive physical force” on Plaintiff).
20 However, there is a key difference between the crime of conviction in the criminal proceeding
21 and the excessive force allegation in the SAC—the victims in the criminal proceeding are
22 different and distinct from the defendants that allegedly used excessive force on Plaintiff.

23 The Information lists the victims of the battery in the criminal proceeding as Nicholas
24 Vazquez, David Smith, and Jaime Vazquez. (*See* ECF No. 23 at 11-12.) None of these victims
25 are listed as defendants in Plaintiff’s SAC; rather, the SAC alleges an excessive force claim
26 against the moving defendants: S. Babb, M. Owens, E. Torres, J. Valencia, S. Pano, M.
27 Benevidez, C. Crabtree, N. Johnson, and E. Madruga. (ECF No. 14 at 4-6.) Thus, the
28 individuals who are the victims of the crimes of conviction are entirely different and distinct

1 from the defendants alleged to have used excessive force on Plaintiff. This conclusion is
2 consistent with Plaintiff’s insistence that he is not challenging his criminal conviction or the
3 sentence he received, and that the crime of conviction is “totally, unrelated, to any, of, the
4 defendants, in, this action, at bar.” (ECF No. 23 at 5-6.)

5 If Plaintiff were to prevail on his claim of excessive force against the moving
6 defendants, it would not implicate Plaintiff’s conviction of battery against the victims. To put it
7 another way, Plaintiff’s battery on the victims is not inconsistent or at odds with Plaintiff’s
8 claim that the moving defendants used excessive force against him. Accordingly, the Court
9 recommends finding that Plaintiff’s excessive force claim is not barred pursuant to *Heck* based
10 on Plaintiff’s conviction in the Kings County Superior Court criminal proceeding.

11 2. The RVR Disciplinary Proceeding Finding of Guilty

12 The moving defendants also contend that, if Plaintiff were to prevail on his excessive
13 force claim, it would necessarily render the RVR conviction invalid.² (*See* ECF No. 24 at 2.)

14 Here, Plaintiff was charged in the RVR with attempted murder of J. Valencia based on
15 actions Plaintiff took on March 14, 2016. (ECF No. 20-1 at 2 (statement from Officer J.
16 Valencia); *id.* at 6 (stating that Daniels yelled and bragged about how he tried to kill Officer
17 Valencia); *id.* at 12-13 (factual finding discussing that Daniel’s had “bragged about how he
18 tried to kill” the victim); *id.* at 19 (stating that Daniels “committed ‘Battery on a Peace
19 Officer—Attempted Homicide’ by strangling Correctional Officer J. Valencia during an
20 immediate emergency cell extraction.”) Plaintiff was found guilty as charged and received
21 punishment that included a credit loss of “360.”³ (ECF No. 20-1 at 12, 14, 16.)

22 As an initial matter, Defendants do not establish that the “360” credit loss necessarily
23 impacted Plaintiff’s duration of incarceration such that any appeal would need to be done

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25 ² In both their Motion to Dismiss, and their reply, the moving defendants appear to blur the lines between the
26 criminal proceeding and the RVR. For example, in their Motion to Dismiss, the moving defendants refer to the
27 factual allegations in the RVR and argue that because the “incident” was referred for criminal prosecution, which
28 resulted in Plaintiff’s guilty plea and eight-month sentence for battery, the RVR allegations demonstrate that
Plaintiff’s excessive force claim is *Heck* barred. (*See, e.g.*, ECF No. 19-1 at 5-6; *see also* ECF No. 24 at 3-4
(discussing factual allegations in RVR in combination with argument that Plaintiff’s actions resulted in the
criminal conviction and eight-month sentence).)

1 through a writ of habeas corpus rather than in a lawsuit such as this. “If the invalidity of the
2 disciplinary proceedings, and therefore the restoration of good-time credits, would not
3 necessarily affect the length of time to be served, then the claim falls outside the core of habeas
4 and may be brought in § 1983.” *Nettles v. Grounds*, 830 F.3d 922, 929 (9th Cir. 2016), *cert.*
5 *denied*, 137 S. Ct. 645 (2017). In other words, *Heck* does not apply to “all suits challenging
6 prison disciplinary proceedings”; rather, “*Heck* applies only to administrative determinations
7 that “necessarily” have an effect on “the duration of time to be served.” *Id.* at 929 n.4 (citing
8 *Muhammad*, 540 U.S. at 754-55). Moving defendants do not establish that Plaintiff is serving a
9 determinate sentence less than life, such that the loss of good time credits would necessarily
10 affect the duration of that sentence. *See Sanford v. Motts*, 258 F.3d 1117, 1119 (9th Cir. 2001)
11 (noting that it was the defendants’ burden to establish their Heck defense).

12 Further, even if the “360” credit loss necessarily affects the duration of Plaintiff’s
13 sentence, the excessive force claim is not *Heck* barred because a finding that J. Valencia and
14 the other moving defendants used excessive force against Plaintiff would not necessarily
15 invalidate a finding that Plaintiff was guilty of attempted murder of J. Valencia. *See Nettles*,
16 830 F.3d at 928-29 (“challenges to disciplinary proceedings are barred by *Heck* only if the
17 § 1983 action would be ‘seeking a judgment at odds with [the prisoner’s] conviction or with the
18 State’s calculation of time to be served’”) (quoting *Muhammad*, 540 U.S. at 754-55).

19 According to the SAC, after Plaintiff’s cell door was opened, M. Owens, J. Valencia, S.
20 Pano, M. Benevidez, C. Crabtree, N. Johnson, and S. Barb entered Plaintiff’s cell and each of
21 these defendants used excessive force when they “beat, and kicked, plaintiff, with closed fist,
22 and feet.” (ECF No. 14 at 5.) M. Benevidez then placed Plaintiff into a rear choke hold while J.
23 Valencia “repeatedly punched Plaintiff in the face, head, and right eye, with his closed fist.”
24 (*Id.*) N. Johnson kicked Plaintiff repeatedly while C. Crabtree, M. Owens, and S. Babb “kicked
25 and punched Plaintiff, until Plaintiff lost consciousness.” (*Id.*) The moving defendants dragged
26 an unconscious Plaintiff out of the cell, restrained with his hands cuffed behind his back and
27 leg restraints on his legs. Plaintiff was then taken to the rear of the housing unit where E.
28

1 Madruga slammed Plaintiff’s head repeatedly into a wall before throwing Plaintiff into a
2 holding cage. (*Id.* at 6.)

3 If Plaintiff were to prevail on his claim of excessive force against J. Valencia and the
4 other moving defendants, it would not necessarily implicate the validity of the finding that
5 Plaintiff attempted to murder J. Valencia. This is because, for example, J. Valencia and the
6 other moving defendants could have used excessive force on Plaintiff after Plaintiff attempted
7 to murder J. Valencia.

8 The Court recognizes that the factual allegations of the SAC are inconsistent with and
9 contradict the factual allegations in the RVR. However, that is not the test under *Heck*. As
10 noted previously, although the Court can take judicial notice of the RVR, including the finding
11 of guilty of attempted murder, and the punishment imposed, the Court cannot take judicial
12 notice of the factual allegations and findings contained in the RVR, which Plaintiff disputes.
13 *See Wyatt*, 315 F.3d at 1114 n.5 (“[F]actual findings in one case ordinarily are not admissible
14 for their truth in another case through judicial notice.”); *Lee*, 250 F.3d at 690 (the court cannot
15 take judicial notice of disputed facts stated in public records); *Rivera*, 2003 WL 22846114, at
16 *5 & n.2 (the court cannot take judicial notice of factual findings in prison disciplinary
17 proceedings). Further, “challenges to disciplinary proceedings are barred by *Heck* only if the
18 § 1983 action would be ‘seeking a judgment at odds with [the prisoner’s] conviction or with the
19 State’s calculation of time to be served.’” *Nettles v. Grounds*, 830 F.3d 922, 928-29 (9th Cir.
20 2016), *cert. denied*, 137 S. Ct. 645 (2017) (quoting *Muhammad v. Close*, 540 U.S. 749, 754-55
21 (2004)).

22 Accordingly, the Court recommends finding that Plaintiff’s excessive force claim
23 against the moving defendants is not barred pursuant to *Heck* based on the RVR disciplinary
24 proceedings.

25 V. RECOMMENDATIONS

26 Based on the foregoing, IT IS HEREBY RECOMMENDED:

27 1. That the moving defendants’ Request for Judicial Notice (ECF No. 20) be
28 GRANTED in part and DENIED in part as follows:

- 1 a. That the Court take judicial notice of the Abstract of Judgment.
2 b. That the Court take judicial notice of the RVR for the limited purpose of the
3 charge on which Plaintiff was found guilty, the victim of the charge, and the
4 punishment imposed as a result of the finding of guilt; but not for the underlying
5 factual allegations in the RVR, which are in dispute in this case.
6 c. That the Request for Judicial Notice otherwise be DENIED.

7 2. The Plaintiff's request for judicial notice (ECF No. 23) of the Information be
8 GRANTED.

9 3. That the Motion to Dismiss (ECF No. 19) be DENIED, without prejudice to
10 Defendants asserting preclusion pursuant to *Heck* at a later stage in the proceeding.

11 These Findings and Recommendations will be submitted to the United States District
12 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1). Within
13 **thirty (30) days** after being served with a copy of these Findings and Recommendations, any
14 party may file written objections with the court and serve a copy on all parties. Such a document
15 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any
16 reply to the objections shall be served and filed within **ten (10) days** after service of the
17 objections.

18 The parties are advised that failure to file objections within the specified time may result
19 in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
20 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.
22

23 Dated: July 27, 2018

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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