

1 This action arises from defendants' violation of plaintiff's First Amendment right of
2 access to the courts by denying plaintiff copies of documents supporting a state court habeas
3 petition.¹ Plaintiff filed the petition, without supporting documents, in the Mendocino County
4 Superior Court, where it was denied on January 5, 2000. Findings and Recommendations, filed
5 August 6, 2014 (ECF No. 154) at 2-3 (quoting ECF No. 71 at 4-6). Plaintiff sought review of the
6 denial in the state court of appeal. Id.

7 Plaintiff included correspondence to that court explaining the
8 deficiency and lack of exhibits, and asked the court for relief and an
9 order to direct the institution of custody to copy the exhibits
10 referred to in the writ petition. On January 25, 2000, the court clerk
11 for the First Appellate District Court returned plaintiff's state
12 habeas petition, requesting plaintiff to attach the missing exhibits
13 that defendants refused to copy, before the court would accept the
14 petition and assign it a docket number. Court records show that
15 plaintiff's habeas petition was denied by the First Appellate District
16 Court on April 13, 2000.

17 Id. Plaintiff did not file a petition for writ of habeas corpus in the California Supreme Court, nor
18 did he file a federal habeas corpus petition.²

19 On March 2, 2006, a magistrate judge recommended summary judgment for defendants
20 based on a finding that under California law a pro se habeas corpus petitioner was not required to
21 provide supporting documents with his petition and, therefore, "that defendants' refusal to copy
22 exhibits did not cause 'actual injury' to plaintiff's constitutional right to access the court." Order
23 filed March 31, 2006 (ECF No. 49) at 1 (quoting Findings and Recommendations filed March 1,
24 2006 (ECF No. 46) at 6-7. The district court declined to adopt the findings and
25 recommendations, concluding that "the appropriate question appears to be whether the failure to
26 allow the plaintiff to provide additional evidence in support of his habeas petition resulted in the
27 state court denying the petition on the grounds that the petitioner 'made no offer of proof by way
28 of additional evidence' to support his argument that the findings of the jury were unreasonable."

Id. at 2. As noted above, summary judgment was subsequently entered for plaintiff on the

26 ¹ Defendants' liability on the merits of plaintiff's First Amendment claim has been decided in
27 plaintiff's favor. See Order filed September 26, 2007 (ECF No. 74), adopting in full Findings and
28 Recommendations filed August 20, 2007 (ECF No. 71).

² Plaintiff did seek direct review of his conviction in the California Supreme Court. Defs.
Request for Judicial Notice (RJN) 5 (ECF No. 134).

1 question of liability, leaving the question of damages for further proceedings. See ECF Nos. 71,
2 74.

3 In an order filed September 29, 2009, the district court vacated the date set for jury trial
4 and remanded the matter to the magistrate judge “for briefing as to damages, including whether
5 the inclusion of plaintiff’s exhibits with his habeas petition would have altered the result of his
6 criminal conviction and sentence, and how that issue relates to plaintiff’s claim for damages.”
7 Order filed September 28, 2009 (ECF No. 119). The findings and recommendations at bar follow
8 submission of the briefs filed by the parties.³

9 The magistrate judge notes two agreements by the parties: first, “that plaintiff’s damages
10 will be much greater if it is determined that his state habeas petition would have been granted had
11 the exhibits been included” and second, “that, regardless of whether the state petition would have
12 succeeded, plaintiff is owed nominal damages, some amount of compensatory damages, and
13 potentially punitive damages.” Findings and Recommendations (ECF No. 154) at 3-4. He
14 recommends that the damages questions be tried by a jury and that the jury be tasked with
15 resolving whether petitioner’ state habeas petition had merit. Id. at 4, 18.

16 A threshold question must be resolved prior to resolution of which questions, if any, are
17 for the court in this action and which, if any, are for the jury. In Heck v. Humphrey, 512 U.S. 477
18 (1994), the United States Supreme Court held:

19 [I]n order to recover damages for allegedly unconstitutional
20 conviction or imprisonment, or for other harm caused by actions
21 whose unlawfulness would render a conviction or sentence invalid,
22 a § 1983 plaintiff must prove that the conviction or sentence has
23 been reversed on direct appeal, expunged by executive order,
24 declared invalid by a state tribunal authorized to make such
25 determination, or called into question by a federal court’s issuance
26 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under § 1983. Thus, when a
state prisoner seeks damages in a § 1983 suit, the district court must
consider whether a judgment in favor of the plaintiff would
necessarily imply the invalidity of his conviction or sentence; if it
would, the complaint must be dismissed unless the plaintiff can
demonstrate that the conviction or sentence has already been

27 _____
28 ³ The record reflects numerous extensions of time sought and received by the parties to file their
briefs on damages and materials related thereto.

1 invalidated. But if the district court determines that the plaintiff's
2 action, even if successful, will not demonstrate the invalidity of any
3 outstanding criminal judgment against the plaintiff, the action
 should be allowed to proceed, in the absence of some other bar to
 the suit.

4 Heck, 512 U.S. at 486-87. Unlike Heck, where the plaintiff sought money damages for claims
5 arising directly from his criminal conviction, see id. at 479, here plaintiff's claim for damages
6 arises from defendants' interference with plaintiff's right to access the courts to obtain habeas
7 corpus relief. The United States Court of Appeals for the Ninth Circuit has not squarely
8 addressed whether Heck's so-called favorable termination rule applies to damages claims based
9 on interference with habeas corpus claims or other collateral attacks on criminal convictions. See
10 Koch v. Jester, 2014 WL 3783961, slip op. at 4. The United States Court of Appeals for the
11 Seventh Circuit and several district courts in the Ninth Circuit have so held. See id. at 4-5 (and
12 cases cited therein). The threshold question that must be resolved in this action is whether
13 plaintiff may recover money damages based on a finding that his habeas corpus petition would
14 have been granted absent defendants' refusal to make the requested copies or, instead, whether
15 this aspect of plaintiff's claim is barred by the rule announced in Heck.⁴ The parties have not
16 briefed this question, and it is not addressed in the findings and recommendations before the
17 court.

18 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

19 1. The findings and recommendations filed August 6, 2014 are not adopted at this time;

20 and

21 ////

22 ////

23 ////

24 ⁴ Whether a habeas corpus remedy remains available to plaintiff, and the consequences if it does
25 not, should also be addressed. See Guerrero v. Gates, 442 F.3d 697, 704-05 (9th Cir. 2006)
26 (discussing Cunningham v. Gates, 312 F.3d 1148, 1153 n.3 (9th Cir. 2002)) (fact that habeas relief
27 is no longer available to a § 1983 plaintiff does not necessarily preclude application of the rule
28 announced in Heck); cf. Hoard v. Reddy, 175 F.3d 531, 533 (7th Cir. 1999) (“there is probably an
 exception to the rule of Heck for cases in which no route other than a damages action under
 section 1983 is open to the person to challenge his conviction.”)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. This matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

DATED: November 7, 2014

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE