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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES R. FEATHERSTONE,

Plaintiff,

No. 2:08-cv-2354-JFM (PC)

vs.

PERRY RENIFF, Sheriff, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. In his second amended complaint, filed May 26, 2009, plaintiff claims that defendant Matthew Cate, the Director of the California Department of Corrections and Rehabilitation (CDCR), violated plaintiff’s constitutional rights by failing to remove a hold placed on plaintiff after his conviction and prison commitment were vacated. Plaintiff alleges that this hold prevented him from being released on bail from the Butte County Jail pending retrial. Plaintiff seeks money damages. This matter is before the court on defendant’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

STANDARDS FOR A MOTION TO DISMISS

Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

1 In considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as
2 true the allegations of the complaint in question, Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197
3 (2007), and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes,
4 416 U.S. 232, 236 (1974). In order to survive dismissal for failure to state a claim a complaint
5 must contain more than “a formulaic recitation of the elements of a cause of action;” it must
6 contain factual allegations sufficient “to raise a right to relief above the speculative level.” Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 554 (2007). However, “[s]pecific facts are not
8 necessary; the statement [of facts] need only “give the defendant fair notice of what the . . .
9 claim is and the grounds upon which it rests.”” Erickson, 551 U.S. 89, 127 S.Ct. at 2200
10 (quoting Bell Atlantic at 554, in turn quoting Conley v. Gibson, 355 U.S. 41, 47 (1957).

11 DEFENDANT’S MOTION

12 Defendant Cate makes three arguments in support of dismissal. First, he contends
13 that the Eleventh Amendment bars plaintiff’s claim for money damages against defendant Cate in
14 his official capacity. This contention is correct. See Edelman v. Jordan, 415 U.S. 651, 675-76
15 (1974).

16 Second, defendant Cate contends that he may not be held liable in his personal
17 capacity based solely on his supervisory role in CDCR and that plaintiff has failed to allege any
18 facts that suggest his personal involvement in the events complained of. However, plaintiff
19 specifically alleges that “defendant failed to remove a hold placed on plaintiff. . . .” Second
20 Amended Complaint at 3. This is a sufficient allegation of personal involvement to withstand
21 defendant’s second argument.

22 Finally, defendant Cate contends that plaintiff’s claim is barred by Heck v.
23 Humphrey, 512 U.S. 477 (1994) and its progeny. In Heck, the United States Supreme Court held
24 that a suit for damages on a civil rights claim concerning an allegedly unconstitutional
25 conviction or imprisonment cannot be maintained absent proof “that the conviction or sentence
26 has been reversed on direct appeal, expunged by executive order, declared invalid by a state

1 tribunal authorized to make such determination, or called into question by a federal court's
2 issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck, 512 U.S. at 486. Under Heck, the
3 court is required to determine whether a judgment in plaintiff’s favor in this case would
4 necessarily invalidate his conviction or sentence. Id. If it would, the action must be dismissed
5 unless the plaintiff can show that the conviction or sentence has been invalidated.

6 In support of this contention, defendant has requested that the court take judicial
7 notice of several court documents regarding petitions for collateral relief filed by plaintiff in the
8 state courts in connection with the state criminal proceedings underlying the claim at bar.
9 Plaintiff has not opposed the request for judicial notice and, in any event, the documents tendered
10 by defendant are properly subject to judicial notice. See Fed. R. Evid. 201; see also Reyn’s Pasta
11 Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (citing Burbank-Glendale-
12 Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (court “may
13 take judicial notice of court filings and other matters of public record.”). Accordingly,
14 defendant’s request for judicial notice will be granted.¹

15 In the second amended complaint, plaintiff alleges that on November 21, 2007, a
16 state court judge granted a petition for writ of habeas corpus that plaintiff had filed, vacating
17 plaintiff’s criminal conviction and prison sentence. Second Amended Complaint, at 3.
18 Defendant has requested judicial notice of the state court’s order, which finds that plaintiff
19 received ineffective assistance of counsel and provides that his no contest plea to the criminal
20 charges is withdrawn and his not guilty plea reasserted. Request for Judicial Notice (RJN) 42.
21 With the granting of the petition, plaintiff’s prison commitment was vacated, and the court
22 further ordered plaintiff’s property “returned to the Butte County Jail.” RJN 43. Plaintiff was
23 returned to Butte County Jail pending retrial. See RJN 52. Thereafter, plaintiff was convicted
24

25 ¹ On this motion to dismiss, the court may consider matters properly subject to judicial
26 notice without thereby converting the motion to a motion for summary judgment. See Emrich v.
Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1988).

1 pursuant to a plea of nolo contendere and sentenced to five years in state prison. RJN 55. He
2 was given credit for 949 days spent in custody, including 158 days of actual local time and 316
3 days of local conduct credits. RJN 76, 78.

4 Plaintiff's claim implicates the validity of his confinement in the Butte County
5 Jail pending retrial. It also implicates the length of his continuing confinement because plaintiff
6 was granted credit against his current sentence for the time spent at the Butte County Jail. A
7 judgment in plaintiff's favor would call into question the validity of his detention in the Butte
8 County Jail pending retrial and, correspondingly, the length of his current term of incarceration.
9 The validity of the alleged parole hold and its impact on plaintiff's detention at the Butte County
10 Jail has not been invalidated, and he is still serving the prison term against which that time was
11 credited. Accordingly, plaintiff's claim is barred by the rule announced in Heck v. Humphrey
12 and must be dismissed without prejudice. See Heck, 512 U.S. at 486-87.

13 In accordance with the above, IT IS HEREBY ORDERED that:

- 14 1. Defendant's request for judicial notice is granted;
- 15 2. The Clerk of the Court is directed to assign this action to a United States
16 District Judge; and

17 IT IS HEREBY RECOMMENDED that:

- 18 1. Defendant's March 2, 2010 motion to dismiss be granted; and
- 19 2. This action be dismissed.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
25 objections shall be filed and served within fourteen days after service of the objections. The

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1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: April 29, 2010.

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6 UNITED STATES MAGISTRATE JUDGE

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