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

ZACKERY HUNT,

Plaintiff,

No. CIV S-08-2838 LKK KJM P

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 8, 2008, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty days. Plaintiff has filed objections to the findings and recommendations.


In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Plaintiff's claim attacks the validity of the revocation of his parole and his present
2 confinement. The Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994)
3 prohibits a plaintiff who is still in custody from bringing such a challenge as a section 1983
4 claim. Betterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997) (citing Crow v. Penry, 102 F.3d
5 1086, 1087 (10th Cir. 1996) and McGrew v. Texas Board of Pardons & Paroles, 47 F.3d 158,
6 161 (5th Cir. 1995)). Plaintiff's claim "amounts to a collateral attack on his parole revocation
7 and subsequent incarceration. Heck does not permit this." Crow, 102 F.3d at 1087. Instead, if
8 plaintiff wishes to challenge his confinement in federal court, this challenge must be brought at a
9 petition for habeas corpus, pursuant to 28 U.S.C. § 2254.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed December 8, 2008, are adopted in
12 full; and
- 13 2. This action is dismissed and plaintiff's motion for injunctive relief
14 (Docket No. 3) is denied.

15 DATED: February 9, 2009.

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18 LAWRENCE K. KARLTON
19 SENIOR JUDGE
20 UNITED STATES DISTRICT COURT
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