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3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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8 KYLE ROBERT CHEZA,
9 Plaintiff,

10 v.

11 JUDGE ARIADNE J. SYMONS, et al.,
12 Defendants.
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Case No. [14-cv-2078 VC \(PR\)](#)

**ORDER OF DISMISSAL WITHOUT
LEAVE TO AMEND**

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15 Kyle Robert Cheza, a California state prisoner incarcerated at Mercer County Prison,
16 located in Mercer, Pennsylvania, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983
17 against officials employed by the County of Santa Cruz, California. On May 29, 2014, the Court
18 issued an Order of Dismissal with Leave to Amend. In the Order, the Court reviewed Cheza's
19 complaint and found that his claims would imply that his conviction or sentence was invalid and,
20 because Cheza did not allege that his conviction or sentence has been determined to be wrongful,
21 his claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The Court allowed Cheza to
22 file an amended complaint alleging or showing that his conviction and sentence had been
23 invalidated. The Court allowed Cheza twenty-one days from the date of the Order to file an
24 amended complaint remedying the noted deficiencies and informed him that, if he did not file an
25 amended complaint within twenty-one days, his complaint would be dismissed without leave to
26 amend.

27 On June 18, 2014, Cheza filed an amended complaint. However, the complaint does not
28 allege or show that his conviction or sentence has been invalidated. The only additional

1 information Cheza submits with his amended complaint are copies of pages from Federal Practice
2 and Procedure by Charles Wright and Arthur Miller pertaining to judicial immunity from damages
3 in civil rights cases. In its Order of Dismissal, the Court did not address the issue of immunity.
4 This additional information on immunity does not remedy the deficiency noted by the Court in the
5 May 29, 2014 Order of Dismissal.¹

6 Because Cheza's amended complaint does not indicate his conviction or sentence has been
7 invalidated, his complaint is barred by *Heck v. Humphrey* and must be dismissed. Dismissal is
8 without prejudice to filing a paid complaint.

9 The Clerk shall enter a separate judgment and close the file.

10 **IT IS SO ORDERED.**

11 Dated: July 3, 2014



VINCE CHHABRIA
United States District Judge

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¹ On June 18, 2014, Cheza's mother submitted a letter to the Court explaining that, pursuant to Cheza's May 2012 conviction and sentence in the Santa Cruz County Superior Court, Cheza believed he had been placed on probation, to be served in Ohio. Cheza's mother related that an Ohio police officer searched for Cheza's probation records in California and Ohio and told Cheza that he was not listed as being on probation. However, when Cheza called the Santa Cruz probation office about returning to California, he was told that he could not return for a period of one year. This information does not show that Cheza's conviction and sentence were invalidated.