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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

RUSSELL KERSHAW,  
Plaintiff,

v.

CITY OF SANTA CLARA,  
Defendant.

Case No. [16-cv-00984-BLF](#)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF  
MAGISTRATE JUDGE DENYING  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS AND DISMISSING  
CASE**

[Re: ECF 4]

The Court has reviewed the Report and Recommendation of Magistrate Judge Paul Grewal denying as frivolous Plaintiff’s motion to proceed in forma pauperis and dismissing this action. *See* ECF 4.

Plaintiff brought suit after being arrested and convicted of malicious mischief. Compl. at 4, ECF 1. On September 29, 2015, Plaintiff entered Subway and “made a mess on a tile floor with feces.” *Id.* at 6. According to Plaintiff, his “prank[]” was a small claims matter and not a criminal incident. *Id.* As a result, Plaintiff filed this § 1983 action alleging that his criminal conviction violated the Fourteenth Amendment. *Id.* at 2, 6.

Under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), Plaintiff must allege that his criminal conviction has been reversed, expunged, declared invalid or called into question by a writ of habeas corpus in order to seek damages under § 1983. Plaintiff did not do this, and Judge Grewal recommended dismissing this action as frivolous.

No objections to the Report and Recommendation have been filed and the deadline to object has elapsed. See Fed. R. Civ. P. 72(b)(2) (deadline for objections is fourteen days after being served with report and recommendation); Certificate of Service, ECF 5 (Plaintiff served

1 with Report and Recommendation by mail on March 7, 2016).

2 Ordinarily, the Court would allow Plaintiff, who is proceeding *pro se*, liberal leave to  
3 amend. *See, e.g., Soto v. First Student, Inc.*, Case No. 11-cv-03907-LHK, 2012 WL 1413431, at  
4 \*1 (N.D. Cal. April 23, 2012). However, in this case, Plaintiff had fourteen days to file an  
5 objection to the Report and Recommendation and no objection was filed. Plaintiff's complaint  
6 does not allege a valid cause of action, and by not objecting to the Report and Recommendation,  
7 Plaintiff has not given the Court any reason to believe that he could state a valid cause of action.  
8 Accordingly, the Court finds there is no need to provide Plaintiff leave to amend. *See Khan v.*  
9 *Bush*, 93-cv-1342-FEL, 1993 WL 128083 (N.D. Cal. April 16, 1993) ("While *pro se* plaintiffs  
10 should be given liberal leave to amend, there is no need to provide an opportunity to amend if it is  
11 clear that no amendment can cure the defects in the complaint.").<sup>1</sup>

12 Thus, the Court finds the Report and Recommendation correct, well-reasoned and  
13 thorough, and adopts it in every respect. Accordingly, the Court DENIES Plaintiff's application to  
14 proceed in forma pauperis and DISMISSES this case as frivolous.

15 **IT IS SO ORDERED.**

16 Dated: March 22, 2016

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18 BETH LABSON FREEMAN  
United States District Judge

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28 <sup>1</sup> Moreover, should Plaintiff believe that he can state valid cause of action, he has the option of seeking relief from judgment under Fed. R. Civ. P. 60(b).