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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSE GALLIMORT,

Plaintiff

Case No.: 2:17-cv-02712-APG-VCF

Order Accepting Report and Recommendation and Closing Case

[ECF No. 6]

6 BRIAN SANDOVAL, et al.,

Defendants

On June 27, 2018, Magistrate Judge Ferenbach recommended I dismiss counts 3, 4, and 5
of plaintiff Jose Gallimort's complaint because Gallimort challenges the constitutionality of his
imprisonment, and thus his claims are barred by *Heck v. Humphrey*. Judge Ferenbach also
recommended that I decline to exercise supplemental jurisdiction over claims 1 and 2 because
those claims raise only state law issues. Gallimort objects, asserting that his claims are valid.
I conducted a de novo review of Judge Ferenbach's recommendations. Judge
Ferenbach's Report and Recommendation sets forth the proper legal analysis and factual basis
for the decision.

Gallimort misunderstands the basis for Judge Ferenbach's recommendation. Judge Ferenbach did not recommend I dismiss Gallimort's claims on the merits. Rather, under the rule announced in *Heck v. Humphrey*, if a judgment in the plaintiff's favor in an action under 42 U.S.C. § 1983 "would necessarily imply the invalidity of his conviction or sentence . . . the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." 512 U.S. 477, 487 (1994). Gallimort's claims in counts 3, 4, and 5 necessarily challenge his criminal conviction and Gallimort has not indicated his criminal conviction has been invalidated. To the contrary, Gallimort lists his address as High Desert State Prison and states habeas corpus was recently denied. ECF No. 1-1 at 7. Accordingly, I dismiss
 Gallimort's claims in counts 3, 4, and 5, without prejudice to Gallimort refiling his claims should
 his criminal conviction later be invalidated.

Having dismissed the federal claims, I decline to exercise supplemental jurisdiction over
counts 1 and 2 because they assert only state law claims. *See* 28 U.S.C. § 1367(c). Gallimort
may bring those claims in state court.

7 IT IS THEREFORE ORDERED Judge Ferenbach's report and recommendation (ECF
8 No. 6) is accepted. Gallimort's claims in counts 3, 4, and 5 are dismissed without prejudice. I
9 decline to exercise supplemental jurisdiction over the claims in counts 1 and 2. The clerk of
10 court is instructed to close this case.

DATED this 7th day of August, 2018.

ANDREW P. GORDON UNITED STATES DISTRICT JUDGE