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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DALLIN FORT,

Plaintiff,

v.

STATE OF WASHINGTON,  
WASHINGTON DEPARTMENT OF  
CORRECTIONS, a political  
subdivision and agency of the State of  
Washington, INDETERMINATE  
SENTENCE REVIEW BOARD, a  
political subdivision and agency of  
the State of Washington and  
Washington Department of  
Corrections, KECIA L. RONGEN,  
wife and the marital community  
composed thereof, JOHN DOE  
RONGEN, husband and the marital  
community composed thereof, JEFF  
PATNODE, husband and the marital  
community composed thereof, JANE  
DOE PATNODE, wife and the  
marital community composed thereof,  
LORI RAMSDELL-GILKEY, wife  
and the marital community composed  
thereof, JOHN DOE RAMSDELL-  
GILKEY, husband and the marital

NO. 4:20-CV-5053-TOR

ORDER GRANTING MOTION TO  
DISMISS

1 community composed thereof,  
2 ELYSE BALMERT, wife and the  
3 marital community composed thereof,  
4 JOHN DOE BALMERT, husband  
5 and the marital community composed  
6 thereof, IRENE SEIFERT, wife and  
7 the marital community composed  
8 thereof, and JOHN DOE SEIFERT,  
9 husband and the marital community  
10 composed thereof,

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Defendants.

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8 BEFORE THE COURT is Defendants’ Motion to Dismiss (ECF No. 4).

9 This matter was submitted for consideration with telephonic oral argument on  
10 March 10, 2021. Jeffrey T. Sperline appeared on behalf of Plaintiff and Assistant  
11 Attorney General Jacob Brooks appeared on behalf of Defendants. The Court has  
12 reviewed the record and files herein, and is fully informed. For the reasons  
13 discussed below, Defendants’ Motion to Dismiss (ECF No. 4) is GRANTED.

14 **BACKGROUND**

15 This case concerns Plaintiff’s allegation that members of the Indeterminate  
16 Sentence Review Board (“ISRB”) wrongfully calculated the minimum term of  
17 Plaintiff’s indeterminate sentence for a sex offense, thereby denying him a timely  
18 ISRB hearing and detaining him in the custody of the Department of Corrections  
19 (“DOC”) for nearly nine months past the date on which Plaintiff asserts he could  
20 have been released from custody. ECF No. 1-2 at 3-9. Plaintiff was serving

1 sentences for two counts of rape of a child in the first degree with a minimum term  
2 of 120 months and a maximum term of life imprisonment. ECF No. 4 at 62-75.  
3 Plaintiff originally filed the Complaint in Franklin County Superior Court on  
4 January 31, 2020. *Id.* On March 20, 2020, Defendants removed the case to federal  
5 court. ECF No. 1. Defendants filed the instant Motion to Dismiss on March 26,  
6 2020. ECF No. 4. Plaintiff opposes the Motion, arguing Defendants are not  
7 protected by quasi-judicial immunity. ECF No. 27.

### 8 **DISCUSSION**

9 Defendants move to dismiss the Complaint pursuant to Fed. R. Civ. P.  
10 12(b)(6) on the basis that all Defendants are entitled to quasi-judicial immunity.  
11 ECF No. 4 at 5-8. A motion to dismiss for failure to state a claim “tests the legal  
12 sufficiency” of the plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th  
13 Cir. 2001). To withstand dismissal, a complaint must contain “enough facts to  
14 state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550  
15 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads  
16 factual content that allows the court to draw the reasonable inference that the  
17 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
18 678 (2009) (citation omitted). This requires the plaintiff to provide “more than  
19 labels and conclusions, and a formulaic recitation of the elements.” *Twombly*, 550  
20 U.S. at 555. When analyzing whether a claim has been stated, the Court may

1 consider the “complaint, materials incorporated into the complaint by reference,  
2 and matters of which the court may take judicial notice.” *Metzler Inv. GMBH v.*  
3 *Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc.*  
4 *v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A plaintiff’s  
5 “allegations of material fact are taken as true and construed in the light most  
6 favorable to the plaintiff[,]” however “conclusory allegations of law and  
7 unwarranted inferences are insufficient to defeat a motion to dismiss for failure to  
8 state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996)  
9 (citation and brackets omitted).

10 In support of their motion, Defendants request this Court take judicial notice  
11 of several records of court and administrative proceedings from Plaintiff’s  
12 underlying criminal case. ECF No. 4 at 2-3. In considering a motion to dismiss,  
13 the Court may consider the “complaint, materials incorporated into the complaint  
14 by reference, and matters of which the court may take judicial notice.” *Metzler*  
15 *Inv.*, 540 F.3d at 1061 (citing *Tellabs*, 551 U.S. at 322). The Court may take  
16 judicial notice of “matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d  
17 668, 688-89 (9th Cir. 2001) (citation omitted). This includes “records and reports  
18 of administrative bodies.” *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir.  
19 2003) (citation omitted). The court orders and ISRB decisions Defendants submit  
20 are matters of public record and properly subject to judicial notice, so the Court

1 considers them in determining the present motion.

2 Defendants argue dismissal is appropriate because all Defendants are  
3 entitled to quasi-judicial immunity. ECF No. 4 at 5-8. Plaintiff asserts Defendants  
4 are not entitled to quasi-judicial immunity on the grounds that the ISRB's failure to  
5 hold a timely hearing was an administrative function, not a judicial function. ECF  
6 No. 27 at 14. Quasi-judicial immunity protects actions that are functionally similar  
7 to judicial functions. *Taggart v. State*, 118 Wash. 2d 195, 205 (1992). Conversely,  
8 administrative functions are not protected by quasi-judicial immunity, even where  
9 such actions are carried out by officials who typically perform judicial or quasi-  
10 judicial duties. *Taggart*, 118 Wash. 2d at 210. Factors courts consider when  
11 determining whether a challenged action is functionally similar to judicial action  
12 include: "whether a hearing was held to resolve an issue or controversy, whether  
13 objective standards were applied, whether a binding determination of individual  
14 rights was made, whether the action is one that historically the courts have  
15 performed, and whether safeguards exist to protect against errors." *Id.* at 205.

16 Under Washington law, custodial release determinations made by sentencing  
17 review boards, such as the one at issue here, are protected by quasi-judicial  
18 immunity. *Taggart*, 118 Wash. 2d at 207 (1992); *see also Plotkin v. State Dept. of*  
19 *Corrections*, 64 Wash. App. 373, 377 (1992) (immunity extends to the state as well  
20 as to individual ISRB members). This is because "parole decisions are essentially

1 judicial in nature and, like judges' decisions, require freedom from personal fears  
2 of litigation." *Taggart*, 118 Wash. 2d at 207. The same parole board immunities  
3 have been extended under federal law as well. *Sellers v. Procunier*, 641 F.2d  
4 1295, 1302 (9th Cir. 1981) ("In our view, parole board officials are entitled to  
5 absolute immunity from suits by prisoners for actions taken when processing  
6 parole applications.").<sup>1</sup> As the Ninth Circuit similarly explained, "[i]f parole board  
7 officials had to anticipate that each time they rejected a prisoner's application for  
8 parole, they would have to defend that decision in federal court, their already  
9 difficult task of balancing the risk involved in releasing a prisoner whose  
10 rehabilitation is uncertain against the public's right to safety would become almost  
11 impossible." *Id.* at 1303. The Ninth Circuit recognized other "safeguards,  
12 especially the right to habeas corpus relief, are sufficient to protect petitioner's  
13 constitutional rights." *Id.* at 1304.

14 The parties agree the ISRB is entitled to quasi-judicial immunity. The issue  
15 is whether the ISRB's actions related to Plaintiff's hearing were administrative

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17 <sup>1</sup> The Court also notes that for the purpose of Plaintiff's § 1983 claim, neither  
18 the State nor the ISRB are "persons" acting under color of state law. *See*  
19 *Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Howlett By and*  
20 *Through Howlett v. Rose*, 496 U.S. 356, 365 (1990).

1 functions or judicial functions. Plaintiff argues they were administrative functions  
2 because the alleged harm stems from the administrative task of setting timely  
3 hearings, not from the ISRB's discretionary determination regarding Plaintiff's  
4 release. ECF No. 27 at 14. Defendants argue the gravamen of Plaintiff's  
5 Complaint is premised on the ISRB's calculation of Plaintiff's sentence. ECF No.  
6 4 at 5. Defendants also argue that because the ISRB was under a statutory duty to  
7 hold a release determination hearing, the decision of when to hold that hearing is  
8 not purely administrative. ECF No. 31 at 4-5.

9 As an initial matter, the facts pleaded in Plaintiff's Complaint relate  
10 primarily to the miscalculation of Plaintiff's sentence, not to the scheduling of his  
11 hearing. Specifically, Plaintiff states: "[Defendant] Seifert insisted that the  
12 sentence was 180 months. She negligently, and with deliberate indifference,  
13 authorized the ISRB/DOC sentencing records for Dallin Fort to be changed to a  
14 180 month sentence." ECF No. 1-2 at 7. Moreover, Plaintiff's alleged facts  
15 implicate the sentencing calculation as the cause of the resulting harm, not a  
16 scheduling mishap. *See* ECF No. 1-2 at 7, ¶ XVI.

17 The ISRB was required to hold Plaintiff's hearing at a certain date based on  
18 the calculation of Plaintiff's minimum sentence. Because the hearing date, the  
19 calculation of Plaintiff's minimum sentence and the ultimate decision whether and  
20 when to release the Defendant are intertwined, the act of setting the hearing date is

1 not purely administrative. Additionally, Washington courts have found that  
2 statutorily imposed actions which are so closely related to the judicial or quasi-  
3 judicial process must be protected by immunity. *See Loveridge v. Schillberg*, 17  
4 Wash. App. 96, 99 (1977) (holding “[e]ven though it could be argued the acts  
5 required of the prosecutor and judge are more ministerial in nature than judicial or  
6 discretionary. . . , we consider them to be so much a part of the prosecution process  
7 that the public interest demands the protection of immunity.”). Even if the ISRB  
8 miscalculated Plaintiff’s minimum sentence, thereby delaying the release hearing  
9 date, such actions are precisely the kind protected by quasi-judicial immunity.

10 Finally, Plaintiff’s arguments seem premised on the assumption that the  
11 ISRB would have determined him immediately releasable but for the  
12 miscalculation of his minimum sentence. To prove this assumption, Plaintiff  
13 would need to depose the ISRB panelists to determine whether they hypothetically  
14 would have reached the same conclusions earlier. Plaintiff’s case presents exactly  
15 the type of situation quasi-judicial immunity is intended to prevent. Parole board  
16 officials cannot be expected to anticipate the need to defend their release  
17 determinations from every dissatisfied prisoner. “[T]heir already difficult task of  
18 balancing the risk involved in releasing a prisoner whose rehabilitation is uncertain  
19 against the public's right to safety would become almost impossible” because “time  
20 spent in depositions and on the witness stand defending their actions would leave



1 these overburdened public servants with even less time to perform their crucial  
2 tasks.” *Sellars*, 641 F.2d at 1303. The Court finds the ISRB’s actions relating to  
3 Plaintiff’s release determination hearing fall squarely within the quasi-judicial  
4 nature of the ISRB’s functions. Thus, defendants are entitled to protection under  
5 quasi-judicial immunity.

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 1. Defendants’ Motion to Dismiss, ECF No. 4, is **GRANTED**.

8 2. Plaintiff’s Complaint is dismissed with prejudice.

9 The District Court Executive is directed to enter this Order, furnish copies to  
10 counsel, enter judgment for all Defendants, and CLOSE the file.

11 **DATED** March 11, 2021.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge