

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 9 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EUGENE WASHINGTON,

Plaintiff-Appellant,

v.

COUNTY OF ALAMEDA SANTA RITA
COUNTY JAIL,

Defendant-Appellee,

and

BUREAU OF PRISONS,

Defendant.

No. 19-16723

D.C. No. 5:18-cv-03420-LHK
Northern District of California,
San Jose

ORDER

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On October 9, 2019, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and responses to the October 9, 2019 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 4) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

DISMISSED.

UNITED STATES COURT OF APPEALS
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EUGENE WASHINGTON,

Plaintiff - Appellant,

v.

COUNTY OF ALAMEDA SANTA
RITA COUNTY JAIL,

Defendant - Appellee,

and

BUREAU OF PRISONS,

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D.C. No. 5:18-cv-03420-LHK

U.S. District Court for Northern
California, San Jose

MANDATE

The judgment of this Court, entered January 09, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EUGENE WASHINGTON,

Plaintiff,

v.

THE SANTA RITA COUNTY JAIL,

Defendant.

Case No. 18-CV-03420-LHK

**ORDER GRANTING MOTION TO
DISMISS WITH PREJUDICE**

Re: Dkt. No. 21

Plaintiff, a former federal prisoner proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983, and claimed he was detained in Santa Rita County Jail ("SRC Jail") for 11 days past his release date. Defendant SRC Jail moved to dismiss ("Motion"), and argued that plaintiff's claim was time-barred and that judicially noticeable facts showed plaintiff failed to state a claim. *See* Dkt. No. 21. Defendant also asked the Court to take judicial notice of three documents in support of the motion to dismiss ("RJN"). *See* Dkt. No. 21-01. Plaintiff did not file an opposition, and defendant did not file a reply.

For the reasons stated below, the Court **GRANTS** defendant's RJN and Motion.

I. BACKGROUND**A. Plaintiff's Injury**

On December 21, 1994, plaintiff was sentenced to 360 months in custody. Am. Compl., Ex. A. On April 21, 2015, plaintiff's sentence was reduced to 292 months. *Id.* Plaintiff was released from federal prison on September 16, 2015, and was assigned to live in a "halfway house" in San Francisco. *Id.* After plaintiff suffered some undisclosed injury, he was taken to a hospital in Oakland and then a hospital in San Leandro. *Id.* at 5. Upon plaintiff's release from the San Leandro hospital, U.S. Marshals transported plaintiff to SRC Jail. *Id.*

Plaintiff alleged that he should have been released from SRC Jail on November 1, 2015, because his sentence reduction took effect on that date. *Id.* at 11. SRC Jail did not release plaintiff until November 12, 2015. *Id.* at 8. Plaintiff alleged that SRC Jail "maintains computer files that list all inmates currently serving time," and implied that his correct release date should have been in those files. *Id.* at 13.

Defendant represented that the Federal Bureau of Prisons ("BOP") sent "a letter plus attachments" to SRC Jail, which "stated that [plaintiff's] release date was November 12, 2015." Mot. at 2; *see also* RJN & Exs.

B. Proceedings in this Court

Plaintiff filed the instant civil rights suit on May 29, 2018. Dkt. No. 1-1 (stating the Court received plaintiff's complaint on that date). Prisoners are entitled to benefit from the "mailbox rule," under which a complaint is deemed filed from the moment the prisoner hands the complaint to prison authorities for mailing. *See Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009) (applying the mailbox rule to prisoner's § 1983 complaint) (relying on *Houston v. Lack*, 487 U.S. 266 (1988)). However, plaintiff is no longer "an 'inmate confined in an institution,'" and so "is not entitled to the benefit of the prison mailbox rule." *McCloskey v. Borders*, No. 18-55179, 2018 WL 2221884, at *1 (9th Cir. Apr. 20, 2018) (citation omitted).

The Court dismissed plaintiff's complaint with leave to amend and explained that plaintiff could not pursue claims against SRC Jail unless he identified some policy of the jail that led to his

injury. *See* Dkt. No. 10. The Court also dismissed the BOP from suit, because “there is no indication that the federal government has waived sovereign immunity.” *Id.* at 2. Finally, the Court outlined the procedures plaintiff must follow in order to bring a claim against the BOP under the Federal Tort Claims Act. *Id.* at 3-4.

Plaintiff filed an amended complaint (“Amended Complaint”) and explained that SRC Jail must have some policy of verifying an inmate’s release date. *See* Am. Compl. at 13. The Amended Complaint did not seek to bring a Federal Tort Claims Act claim against the BOP. *See generally, id.*

The Court found that, liberally construed, plaintiff had stated a cognizable claim that his constitutional rights were violated. *See* Dkt. No. 17 at 2. On November 14, 2018, the Court ordered defendant to respond to plaintiff’s Amended Complaint. *See id.*

Defendant moved to dismiss and sought judicial notice of three documents in support of that motion. *See* Mot, RJN. Plaintiff did not file an opposition, and defendant did not file a reply. *See generally, Dkt.*

II. REQUEST FOR JUDICIAL NOTICE

Defendant sought judicial notice of three documents submitted in support of the motion to dismiss: a letter from the BOP to SRC Jail, which identified plaintiff’s release date as “11-12-15”; a document entitled “Supervision Release Plan” from the BOP, which likewise identified plaintiff’s release date as “11-12-2015”; and a “Notice of Release and Arrival” from the BOP, which again identified plaintiff’s release date as “11-12-2015” (together, “BOP Documents”). RJN, Ex. A at 1-4.

Defendant argued that judicial notice is proper because plaintiff referred to the BOP Documents in his Amended Complaint. *See* RJN at 1. Although courts generally are confined to the pleadings on a Rule 12(c) motion, “[a] court may, however, consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *In re Silicon Graphics*

1 *Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999).

2 Here, as justification for holding SRC Jail liable, plaintiff stated, "It is presumed that the
3 BOP provided [SRC Jail] with a copy of the plaintiff's 'official' release date. And the [SRC] Jail
4 applied their policy used to verify the plaintiff's official release date." Am. Compl. at 13. The
5 Amended Complaint thereby referred to any document in which the BOP informed defendant of
6 plaintiff's release date, and so judicial notice of the BOP Documents is proper.

7 Defendant argued, in the alternative, that the BOP Documents are within a class of
8 documents of which courts routinely take judicial notice. *See* RJN at 1 (citing *Laboy v. Colvin*,
9 631 F. App'x 468, 469 n.1 (9th Cir. 2016) (taking judicial notice of a letter from a federal agency).
10 Defendant appears to be correct; the Ninth Circuit has recognized that "courts routinely take
11 judicial notice of letters published by the government." *Smith v. Los Angeles Unified Sch. Dist.*,
12 830 F.3d 843, 851 n.10 (9th Cir. 2016). Accordingly, the Court may properly take judicial notice
13 of the fact that the BOP Documents identified plaintiff's release date as November 12, 2015. *See*
14 *Cal. Sportfishing Prot. All. v. Shiloh Grp., LLC*, 268 F. Supp. 3d 1029, 1038 (N.D. Cal. 2017)
15 (taking judicial notice of a letter from a public agency for the existence of that letter's contents).¹
16 The Court does not, however, assume that the BOP calculated plaintiff's release date correctly.
17 *See id.* (distinguishing between taking judicial notice of the existence of a document's contents,
18 and of the truth of the document's contents).

19 Accordingly, the RJN is **GRANTED**.

20 **III. LEGAL STANDARD**

21 Dismissal for failure to state a claim is a ruling on a question of law. *See Parks Sch. of*
22 *Bus., Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995). "The issue is not whether plaintiff

23
24 ¹ *See also Foronda v. Wells Fargo Home Mortg., Inc.*, No. 14-CV-03513-LHK, 2014 WL
25 6706815, at *3 (N.D. Cal. Nov. 26, 2014) (taking judicial notice of, *inter alia*, a letter from the
26 Office of Thrift Supervision because "[t]hese documents are true and correct copies of government
27 records and public documents not subject to reasonable dispute"); *Smith v. Cty. of Santa Cruz*, No.
13-CV-00595-LHK, 2014 WL 1118014, at *4 n.2 (N.D. Cal. Mar. 19, 2014) (taking judicial
notice of a letter from a County Planning Department to the plaintiff, because the letter was
"obviously [a] public record[]").