

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 24 2017

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

DAVID CRAMER,

Plaintiff-Appellant,

v.

CITY OF AUBURN; et al.,

Defendants-Appellees.

No. 16-15234

D.C. No. 2:15-cv-00462-KJM-AC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

David Cramer appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims in connection with his arrest and prosecution for battery. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under *Heck v. Humphrey*, 512 U.S. 477 (1994). *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly dismissed Cramer's claims alleging false arrest and imprisonment as *Heck*-barred because success on Cramer's claims would necessarily imply the invalidity of his conviction, and Cramer failed to show that his conviction had been invalidated. *See Heck*, 512 U.S. at 486-87 (if "a judgment in favor of the plaintiff 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"); *see also Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998) (holding that *Heck* barred false arrest and false imprisonment claims under § 1983 until conviction was invalidated).

AFFIRMED.

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 DAVID CRAMER,

12 Plaintiff,

13 v.

14 CITY OF AUBURN, et al.,

15 Defendants.
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No. 2:15-cv-0462 KJM AC (PS)

ORDER

17 Plaintiff is proceeding in this action in pro per. The matter was referred to a
18 United States Magistrate Judge by Local Rule 302(c)(21).

19 On November 19, 2015, the magistrate judge filed findings and recommendations,
20 which were served on all parties and which contained notice to all parties that any objections to
21 the findings and recommendations were to be filed within fourteen days. ECF No. 23. Plaintiff
22 has filed objections to the findings and recommendations. ECF Nos 24 & 25. Defendant has
23 filed a response to plaintiff's objections. ECF No. 26.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
25 this court has conducted a de novo review of this case. Having carefully reviewed the file, the
26 court finds the findings and recommendations to be supported by the record and by proper
27 analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 19, 2015 (ECF No. 23), are adopted in full;

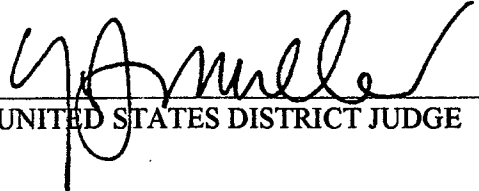
2. Defendants' Motion To Dismiss (ECF No. 12) is GRANTED, as follows:

a. Counts One and Three are dismissed without prejudice as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994); and

b. The court declines to exercise supplemental jurisdiction over Counts Two, Four and Five, and therefore dismisses those claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3); and

3. Plaintiff's Motion to Continue (ECF No. 16) is DENIED.

DATED: February 3, 2016.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID CRAMER,

Plaintiff,

v.

CITY OF AUBURN, et al.,

Defendants.

No. 2:15-cv-0462 KJM AC (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this case pro se. The case was therefore referred to the undersigned by Local Rule 302(c)(21). The Amended Complaint alleges that two City of Auburn police officers violated plaintiff's Fourth Amendment rights, enforceable under 42 U.S.C. § 1983, when they arrested and jailed him on January 25, 2014. The court's jurisdiction rests upon 28 U.S.C. §§ 1331 and 1343(a)(3).

Defendants move to dismiss on the ground that plaintiff is asserting that the arrest that led to his conviction lacked probable cause, and therefore, the action is barred by Heck v. Humphrey, 512 U.S. 477 (1994). ECF No. 12. Plaintiff moves to continue the action pending resolution of an application for habeas corpus which he says is pending in Placer County Superior Court. ECF No. 16. For the reasons set forth below, the court will recommend that defendants' motion to dismiss be granted, and that plaintiff's motion to continue be denied.

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I. BACKGROUND

According to the Amended Complaint (ECF No. 8-1), there was “an incident” at a dog park in Auburn on January 23, 2014. Defendant Officers Dalton and Garlock showed up but did not make an arrest on that day. On January 25, 2014, Officer Dalton called plaintiff and asked him to return to the park. Officer Dalton then “made an unlawful arrest,” of plaintiff. Officer Garlock “initialed an evidence bag containing altered evidence.” Officer Garlock allowed that evidence to be altered on January 23, 2014, and then “booked the evidence” on January 31, 2014, knowing it would be used in a case against plaintiff. Officer Dalton presented the evidence in court. Finally, Officer Dalton perjured himself in court.

II. MOTION TO DISMISS

All defendants move to dismiss for failure to state a claim, arguing that the action is barred by Heck v. Humphrey, 512 U.S. 477 (1994).

A. Dismissal Standards – Fed. R. Civ. P. 12(b)(6)

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

In order to survive dismissal for failure to state a claim, a complaint must contain more than a “formulaic recitation of the elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of facts that “merely creates a suspicion” that the pleader might have a legally cognizable right of action. Id. (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged.” Id. at 678.

In reviewing a complaint under this standard, the court “must accept as true all of the factual allegations contained in the complaint,” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citing Twombly, 550 U.S. at 555-56), construe those allegations in the light most favorable to the plaintiff, Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010) (citing Twombly), cert. denied, 131 S. Ct. 3055 (2011), and resolve all doubts in the plaintiffs' favor. Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010) (citing Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738 (1976)). The court need not accept as true, legal conclusions “cast in the form of factual allegations.” Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

Moreover, pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). “Pro se complaints are construed ‘liberally’ and may only be dismissed ‘if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (quoting Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)).¹

B. Motion To Dismiss

1. Section 1983 Claims: Counts One and Three

Defendants move to dismiss the Fourth Amendment claims contained in Counts One (“Fourth Amendment” based upon false arrest) and Three (“False Arrest/False Imprisonment”) on the grounds that they are based upon an arrest that led to plaintiff’s conviction. Defendants argue that the claims are therefore barred by Heck v. Humphrey, 512 U.S. 477 (1994), since they would undermine the conviction if upheld. Defendants are correct.

When a plaintiff who has been convicted of a crime under state law seeks damages in a § 1983 suit, “the district court must consider whether a judgment in favor of the plaintiff would necessarily

¹ “Iqbal did not alter the rule that, ‘where the petitioner is pro se, particularly in civil rights cases, [courts should] construe the pleadings liberally and . . . afford the petitioner the benefit of any doubt.’” Wilhelm, 680 F.3d at 1121 (quoting Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

1 imply the invalidity of his conviction or sentence.” If the answer is
2 yes, the suit is barred.

3 Hooper v. Cty. of San Diego, 629 F.3d 1127, 1130 (9th Cir. 2011) (citations omitted) (quoting
4 Heck).

5 At the hearing on this motion, plaintiff confirmed that he was challenging the arrest that
6 led to his conviction. The basis for his challenge is that the arresting officer lacked probable
7 cause to arrest or jail him. Were this court to find that there was no probable cause, that finding
8 would necessarily imply that the resulting conviction was invalid:

9 To prevail on his § 1983 claim for false arrest and imprisonment,
10 Cabrera [plaintiff] would have to demonstrate that there was no
11 probable cause to arrest him. See George v. City of Long Beach,
12 973 F.2d 706, 710 (9th Cir. 1992). The police claim [that] hearing
13 Cabrera's challenge to fight provided probable cause to arrest him
14 for disturbing the peace. On these facts, finding there was no
15 probable cause would “necessarily imply” that Cabrera's conviction
16 for disturbing the peace was invalid. Therefore, under Heck,
17 Cabrera's false arrest and imprisonment claims were not cognizable
18 and did not accrue until his conviction was invalidated . . .

15 Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998); see also, Guerrero v.
16 Gates, 442 F.3d 697, 703 (9th Cir. 2006) (“[w]rongful arrest, malicious prosecution, and a
17 conspiracy among Los Angeles officials to bring false charges against Guerrero could not have
18 occurred unless he were innocent of the crimes for which he was convicted”).²

19 As such, this action is barred by Heck until plaintiff's conviction is overturned.³

20 2. Remaining claims

21 Counts Two (Fraud), Four (Obstruction of Justice) and Five (Perjury) are, or purport to be,

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23 _____
24 ² Plaintiff's other allegations here – that the police altered evidence, presented false physical
25 evidence at trial, and presented perjured testimony by a police officer – would also undermine the
26 conviction, if true.

27 ³ At the hearing on this matter, plaintiff argued that because he was not arrested on the day of the
28 incident, but was instead arrested two days later, the arresting officer therefore lacked probable
cause. Whether this reasoning is correct or not makes no difference to the outcome here. So long
as plaintiff challenges the arrest that led to his conviction on the grounds of lack of probable
cause, the action is barred by Heck.

1 state claims.⁴ Since the only claims over which the court has original jurisdiction should be
2 dismissed, any remaining state claims should also be dismissed. See 28 U.S.C. § 1367(c)(3)
3 (court may decline to exercise supplemental jurisdiction over state claims when all claims over
4 which it has original jurisdiction are dismissed).

5 III. MOTION TO CONTINUE

6 Plaintiff requests that the action be continued pending resolution of a habeas corpus
7 petition he says is pending in Placer County Superior Court. Plaintiff has not provided any reason
8 for continuing the case, rather than dismissing it without prejudice. If plaintiff gets his conviction
9 overturned, he will be able to sue for his constitutional claims without facing the Heck bar. See
10 Cabrera, 159 F.3d at 380 (“false arrest and imprisonment claims were not cognizable and did not
11 accrue until his [plaintiff’s] conviction was invalidated”). Therefore, this motion should be
12 denied.

13 IV. CONCLUSION

14 For the reasons stated above, IT IS HEREBY RECOMMENDED that

15 1. Defendants’ Motion To Dismiss (ECF No. 12) should be GRANTED, as follows:

16 a. Counts One and Three should be dismissed without prejudice as barred by Heck
17 v. Humphrey, 512 U.S. 477 (1994); and

18 b. The court should decline to exercise supplemental jurisdiction over Counts
19 Two, Four and Five, and should therefore dismiss those claims without prejudice pursuant to 28
20 U.S.C. § 1367(c)(3); and

21 2. Plaintiff’s Motion To Continue (ECF No. 16) should be DENIED.

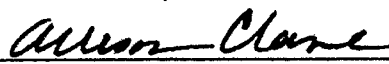
22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
24 days after being served with these findings and recommendations, any party may file written

25 ⁴ The court is mindful that “obstruction of justice” is a predicate offense for a federal claim under
26 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961(1)(B),
27 however it is not a stand-alone federal claim. Defendants argue that there is no civil action in
28 California for Obstruction of Justice or for Perjury. It is not necessary for the court to determine
if defendants are correct.

1 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
2 document should be captioned "Objections to Magistrate Judge's Findings and
3 Recommendations." Any response to the objections shall be filed with the court and served on all
4 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file
5 objections within the specified time may waive the right to appeal the District Court's order.

6 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57
7 (9th Cir. 1991).

8 DATED: November 19, 2015

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10 ALLISON CLAIRE
11 UNITED STATES MAGISTRATE JUDGE
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DAVID CRAMER,

Plaintiff-Appellant,

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No. 16-15234

D.C. No. 2:15-cv-00462-KJM-AC
Eastern District of California,
Sacramento

ORDER

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Cramer's petition for panel rehearing (Docket Entry No. 18) is denied.

No further filings will be entertained in this closed case.

**Additional material
from this filing is
available in the
Clerk's Office.**