

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

McKenzie v. Cisneros

McKenzie · No. 2:23-cv-02764-DAD-JDP (PC) · Decided August 11, 2025

OPINION

(PC) McKenzie v. Cisneros

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 GERALD MCKENZIE, No. 2:23-cv-02764-DAD-JDP (PC)

12 Plaintiff,

13 v. ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS, GRANTING

14 THERESA CISNEROS, et al., DEFENDANT MERCADO'S MOTION TO

DISMISS, AND DISMISSING THIS ACTION

15 Defendants. WITHOUT LEAVE TO AMEND 16 (Doc. Nos. 23, 29) 17 18 19 Plaintiff Gerald
McKenzie is a state prisoner proceeding pro se and in forma pauperis in 20 this civil rights action
brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United 21 States Magistrate
Judge pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 302. 22 On February 27, 2025, the
assigned magistrate judge issued findings and 23 recommendations recommending that defendant
Mercado's motion to dismiss (Doc. No. 23) be 24 granted and this action be dismissed without
leave to amend. (Doc. No. 29.) Specifically, the 25 magistrate judge took judicial notice of
plaintiff's filings in a habeas proceedings he had initiated 26 in the Kings County Superior Court.
(Id. at 3.) The magistrate judge also determined that the 27 claims plaintiff raised in his operative
complaint in this federal civil rights action (that defendant 28 correctional officer Mercado had
violated his First and Eighth Amendment rights by retaliating 1 against plaintiff for filing
grievances through issuing false disciplinary reports and using the 2 prison lighting system to
prevent him from sleeping) had all been litigated and rejected by the 3 state court in a reasoned
opinion resulting in the entry of judgment. (Id. at 3–5.) The magistrate 4 judge additionally found
that the state habeas proceeding had resulted in a final judgment on the 5 merits of plaintiff's
claims. (Id. at 5.) Accordingly, the magistrate judge concluded that 6 plaintiff's claims were barred
by claim preclusion. (Id. at 5–6.) The findings and 7 recommendations were served on the parties
and contained notice that any objections thereto 8 were to be filed within fourteen (14) days after

service. (Id. at 6.) On March 24, 2025, plaintiff 9 filed his objections to the pending findings and recommendations. (Doc. No. 30.) On March 28, 10 2025, defendant Mercado filed a response to those objections. (Doc. No. 31.) 11 In his objections, plaintiff argues that claim preclusion cannot bar the present action 12 because he did not receive an evidentiary hearing in his state habeas proceeding and therefore was 13 not provided with a full and fair opportunity to litigate his claims.¹ (Doc. No. 30 at 3–4.) In 14 support of his argument, plaintiff cites the decision in *Silverton v. Department of Treasury*, 644 15 F.2d 1341 (9th Cir. 1981), which does not address claim preclusion but rather discusses issue 16 preclusion. See *Gonzales v. Cal. Dep’t of Corr.*, 739 F.3d 1226, 1229 (9th Cir. 2014) (noting that 17 in *Silverton* the court had held that a decision actually rendered in a state habeas proceeding 18 should preclude an identical issue from being relitigated in a subsequent § 1983 action if the state 19 habeas court afforded a full and fair opportunity for the issue to be heard but did not settle 20 whether claim preclusion should also apply to state habeas proceedings). Indeed, the Ninth 21 Circuit has not found, or even suggested, that “California claim preclusion based on prior state 22 habeas decisions . . . [requires] an evidentiary hearing.” *Smart v. Ortiz*, No. 17-cv-01454-AJB- 23 1 Plaintiff also argues that the magistrate judge improperly took judicial notice of the facts 24 contained within an opinion issued by another court. (Doc. No. 30 at 2–3.) This contention is without merit. The magistrate judge properly considered the court documents appearing on the 25 docket of plaintiff’s state habeas petition to determine the scope of claim preclusion in the present matter. See *Manufactured Home Cmtys. Inc. v. City of San Jose*, 420 F.3d 1022, 1037 (9th Cir. 26 2005) (finding that taking judicial notice was appropriate to determine if an issue was raised in a 27 prior state action); see also *Perrotte v. Muntz*, No. 07-cv-01031-MWF-VBK, 2015 WL 1310950, at *9–10 (C.D. Cal. Mar. 16, 2015) (taking judicial notice of state habeas petitions to determine 28 scope of claim preclusion). 1 | BGS, 2018 WL 3752326, at *6 (S.D. Cal. Aug. 8, 2018) (citing *Furnace v. Giurbino*, 838 F.3d 2 1019, 1022 (9th Cir. 2016); *Gonzales*, 739 F.3d at 1229), report and recommendation adopted, 3 | 2019 WL 1254570 (S.D. Cal. Mar. 19, 2019). Accordingly, the court finds that plaintiffs 4 | objections fail to provide any basis upon which to reject the magistrate judge’s recommendation. 5 || See *Stevenson v. Beard*, No. 16-cv-03079-JLS-RBM, 2019 WL 11779201, at *3 (S.D. Cal. Feb 6 | 25, 2019) (“When challenging [by way of state habeas petition] the same actions by the same 7 | group of officials at the same time that resulted in the same harm” a prisoner “cannot escape 8 | claim preclusion” in a subsequent suit under section 1983.”) (internal quotation marks omitted) 9 | (quoting *Gonzales*, 739 F.3d at 1234); *Anderson v. Mendoza*, No. 2:17-cv-01244-KJM-DB (PC), 10 | 2018 WL 6528429, at *4 (E.D. Cal. Dec. 12, 2018), report and recommendation adopted, 2019 11 WL 10374286 (E.D. Cal. Feb. 12, 2019). 12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a 13 | de novo review of the case. Having carefully reviewed the entire file, the court concludes that the 14 | findings and recommendations are supported by the record and by proper analysis. 15 For the above reasons, 16 1. The findings and recommendations issued on February 27, 2025 (Doc. No.

29) are 17 ADOPTED in full; 18 2. Defendant Mercado's motion to dismiss (Doc. No. 23) is
GRANTED; 19 3. This action is DISMISSED without leave to amend in light of the fact that 20
plaintiffs claims asserted in this action are barred; 21 4. The Clerk of the Court is directed to
CLOSE this case. 22 IT IS SO ORDERED. | Dated: _ August 9, 2025 Da A. 2, axel
24 DALE A. DROZD
35 UNITED STATES DISTRICT JUDGE
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