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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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12  
13 DERWIN LASHUN WEBSTER,

14 Plaintiff,

15 v.

16 COUNTY OF LOS ANGELES,  
17 et al.,

18 Defendants.  
19

Case No. CV 12-656 ODW (MRW)

**ORDER DISMISSING ACTION**

20 The Court summarily dismisses Plaintiff's long-pending civil rights action:  
21 (a) as Heck-barred; and (b) for failing to prosecute or abide by court orders.

22 \* \* \*

23 Plaintiff was arrested in 2006 on state drug trafficking offenses. As a  
24 consequence of his arrest, Plaintiff remained in local custody for several years until  
25 his trial and conviction. Additionally, according to his complaint, his children  
26 were removed from his custody. (Docket # 20 at 2.)

27 In 2012, Plaintiff filed a civil rights action in this Court. The gist of his  
28 claims was that investigators and prosecutors falsely arrested him, prosecuted him,

1 and used false evidence to convict him. (Docket # 3 at 4-7.) Magistrate Judge  
2 Wilner declined to serve the complaint on any of the named parties after screening  
3 the pleading. Instead, he issued a Report and Recommendation (later adopted by  
4 the district judge) to: (a) dismiss the action as to the prosecutors as time-barred;  
5 and (b) stay the action against the other law enforcement personnel based on Heck  
6 v. Humphrey, 512 U.S. 477 (1994), and Wallace v. Kato, 549 U.S. 384 (2007).  
7 (Docket # 20.)

8 In the interim, Plaintiff was convicted of the drug charges. The trial court  
9 sentenced him to a term of over 30 years in prison. In 2014, the state appellate  
10 court affirmed the conviction. People v. Webster, 2014 WL 2814856 (Cal. App.  
11 2014). However, even though Plaintiff filed semi-regular reports with the Court  
12 regarding the status of his criminal case, he failed to tell the Court that he lost his  
13 appeal. As a result, in April 2016, the Court ordered Plaintiff to explain the status  
14 of his criminal case. (Docket # 56.) He failed to do so, instead filing an inaccurate  
15 and broad statement that his state case was still ongoing. (Docket # 57.)

16 The Court then lifted the stay in the action in May 2016. (Docket # 58.)  
17 The Court further ordered Plaintiff to submit a statement demonstrating “how he is  
18 lawfully entitled to pursue” the claims relating to his arrest further in light of his  
19 conviction and Heck. (Id.) The Court informed Plaintiff that his failure to respond  
20 substantively to the Court’s order could lead to the dismissal of the case under  
21 Federal Rule of Civil Procedure 41.

22 Plaintiff submitted several requests for extension of time to respond to the  
23 Court’s inquiry. (Docket # 59, 61.) He also asked for another indefinite stay of the  
24 case. (Docket # 63.) However, five months after the Court lifted the stay over  
25 Plaintiff’s four-year-old case alleging ten-year-old misconduct, he still has not  
26 responded to the Court’s basic inquiry as to why he can maintain this action in  
27 federal court.  
28

2 1. A prisoner may not pursue a Section 1983 claim where “a judgment in  
3 favor of the plaintiff would necessarily imply the invalidity of his conviction or  
4 sentence.” Heck, 512 U.S. at 487. If judgment in favor of a plaintiff would imply  
5 the invalidity of a criminal conviction, then the “complaint must be dismissed  
6 unless the plaintiff can demonstrate that the conviction or sentence has already  
7 been invalidated.” Id.; Stewart v. Roderick, \_\_\_ F. App’x \_\_\_, 2016 WL 4474829  
8 (9th Cir. Aug. 25, 2016) (same).

9 2. Plaintiff’s claims against the state investigators allege that they falsely  
10 arrested him, maliciously prosecuted him, and improperly incarcerated him.  
11 (Docket # 20 at 2.) Those claims necessarily imply the invalidity of his recently-  
12 affirmed conviction. As a result, Heck mandates their dismissal. Lawrence v. City  
13 of Chino, No. CV 04-6466 DSF (SHx), 2006 WL 4811344 at \*3 (C.D. Cal. 2006)  
14 (“Here, however, the section 1983 claims are based on Plaintiff’s alleged false  
15 arrest for the robbery. A judgment in Plaintiff’s favor would not necessarily imply  
16 that his conviction for being a felon in possession of ammunition was invalid.”);  
17 Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) (per curiam)  
18 (claims for false arrest and false imprisonment not cognizable; a finding of no  
19 probable cause to arrest plaintiff for disturbing the peace necessarily implies that  
20 plaintiff’s conviction for disturbing the peace was invalid).

21 3. Plaintiff’s vague claims involving the termination of his custody of his  
22 children – and the involvement of law enforcement in that proceeding – fare no  
23 better. The bare fact that Plaintiff will serve three decades in prison following his  
24 lawful 2006 arrest makes his claims of unconstitutional misconduct frivolous.  
25 Moreover, Plaintiff essentially wants this federal court intervene in or evaluate the  
26 merits of Plaintiff’s state court child custody action. But a federal court must  
27 abstain from interfering with the state judicial process. Younger v. Harris,

1 401 U.S. 37 (1971); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Any claim  
2 that the effect of Plaintiff’s lawful arrest led to the loss of custody of his children is  
3 not remediable in this federal civil rights action.

4 4. Dismissal is also proper under Federal Rule of Civil Procedure 41.  
5 Rule 41(b) provides that if a party “fails to prosecute or to comply with these rules  
6 or a court order, a defendant may move to dismiss the action or any claim against  
7 it.” Dismissal also may be ordered by the Court sua sponte. Link v. Wabash R.R.,  
8 370 U.S. 626, 629-30 (1962). Dismissal of a civil action under Rule 41 may be  
9 appropriate to advance the public’s interest in the expeditious resolution of  
10 litigation, the court’s need to manage its docket, and to avoid the risk of prejudice  
11 to defendants. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir. 2010).  
12 Additionally, a court should consider the public policy favoring disposition of  
13 cases on their merits and the availability of less drastic alternatives in its  
14 evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

15 5. These factors weigh heavily in favor of dismissal. The Court stayed  
16 Plaintiff’s action – rather than dismiss it outright – during the pendency of  
17 Plaintiff’s criminal case and appeal. When the Court discovered that the state  
18 criminal action was over, it became apparent that Plaintiff had no legitimate  
19 interest in moving the case forward (despite filing his formulaic, periodic status  
20 reports). Further, the Court gave Plaintiff numerous opportunities to explain the  
21 merits of his claims after the lifting of the stay. Plaintiff failed to respond  
22 substantively. The Court, the named defendant, and the public have a considerable  
23 interest in the prompt resolution of this action. Omstead, 594 F. 3d at 1084.  
24 Furthermore, because Plaintiff is a pro se litigant who has been unable to abide by  
25 the Court’s orders to date, no sanction short of dismissal will be effective in  
26 moving this case forward. Carey, 856 F.2d at 1440.

27 \* \* \*

1           Therefore, for the reasons set forth above, the action is hereby DISMISSED  
2 without prejudice and without leave to amend. Trimble v. City of Santa Rosa,  
3 49 F.3d 583, 585 (9th Cir. 1995) (Heck dismissals are without prejudice);  
4 McQuillon v. Schwarzenegger, 369 F.3d 1091, 1099 (9th Cir. 2004) (where  
5 amendment would be futile, complaint may be dismissed without leave to amend).  
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7           IT IS SO ORDERED.

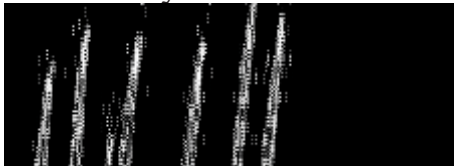


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9 Dated: October 6, 2016

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10 HON. OTIS D. WRIGHT II  
11 UNITED STATES DISTRICT JUDGE

12  
13 Presented by:



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16 HON. MICHAEL R. WILNER  
17 UNITED STATES MAGISTRATE JUDGE