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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAMOUNT HOUZE, III,  
Plaintiff,  
v.  
SACRAMENTO POLICE  
DEPARTMENT, et al.,  
Defendants.

No. 2:13-cv-1466 JAM CKD PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding pro se and in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

1 Plaintiff has filed an amended complaint and a request to stay this action pending  
2 completion of his habeas proceedings. The amended complaint alleges plaintiff was wrongfully  
3 convicted on stalking charges because of allegedly perjurious testimony by defendant McGovern.  
4 Plaintiff also acknowledges, however, that he currently has pending a habeas action challenging  
5 that conviction. As such, plaintiff's instant civil rights action is barred. See Heck v. Humphrey,  
6 512 U.S. 477 (1994) (suit for damages on a civil rights claim concerning an allegedly  
7 unconstitutional conviction or imprisonment cannot be maintained absent proof that the  
8 conviction or sentence has been invalidated). Although plaintiff requests this court stay the  
9 pending action because of the statute of limitations, any claim under 42 U.S.C. § 1983 does not  
10 accrue until the conviction has been invalidated. Heck, 512 U.S. at 489. This action should  
11 therefore be dismissed.

12 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to stay (ECF No. 5) is  
13 denied; and

14 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
20 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: September 11, 2013

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25 CAROLYN K. DELANEY  
26 UNITED STATES MAGISTRATE JUDGE