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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                       |   |                        |
|-----------------------|---|------------------------|
| STACEY E. RILEY,      | ) |                        |
|                       | ) |                        |
| Plaintiff(s),         | ) | No. C 07-1181 TEH (PR) |
|                       | ) |                        |
| vs.                   | ) | ORDER OF DISMISSAL     |
|                       | ) |                        |
| BRANDON SMITH, et al, | ) | (Docket no. 2)         |
|                       | ) |                        |
| Defendant(s).         | ) |                        |
| _____                 | ) |                        |

Plaintiff, currently incarcerated at the Santa Rita County Jail, in Dublin, California, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 seeking damages for the allegedly unconstitutional actions of police officers from Berkeley, California in pursuing rape charges against Plaintiff. Plaintiff asserts that these false criminal charges resulted in a hung jury and that he is currently incarcerated pending retrial of the matter. Plaintiff also seeks to proceed in forma pauperis under 28 U.S.C. § 1915 (docket no. 2).

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint

1 "is frivolous, malicious, or fails to state a claim upon which relief may be  
2 granted," or "seeks monetary relief from a defendant who is immune from such  
3 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.  
4 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
6 elements: (1) that a right secured by the Constitution or laws of the United States  
7 was violated, and (2) that the alleged violation was committed by a person acting  
8 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

9 B. Legal Claims

10 In order to recover damages for allegedly unconstitutional conviction or  
11 imprisonment, or for other harm caused by actions whose unlawfulness would  
12 render a conviction or sentence invalid, a § 1983 plaintiff must prove that the  
13 conviction or sentence has been reversed on direct appeal, expunged by executive  
14 order, declared invalid by a state tribunal authorized to make such determination,  
15 or called into question by a federal court's issuance of a writ of habeas corpus.  
16 Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). A claim for damages bearing  
17 that relationship to a conviction or sentence that has not been so invalidated is not  
18 cognizable under § 1983. Id. at 487.

19 When a prisoner seeks damages in a § 1983 suit, the district court must  
20 therefore consider whether a judgment in favor of the plaintiff would necessarily  
21 imply the invalidity of his conviction or sentence; if it would, the complaint must  
22 be dismissed unless the plaintiff can demonstrate that the conviction or sentence  
23 has already been invalidated. See id. Heck bars claims which necessarily  
24 implicate the validity of pending criminal charges. See Harvey v. Waldron, 210  
25 F.3d 1008, 1014 (9th Cir. 2000). A civil claim which necessarily implicates the  
26 validity of pending criminal charges does not accrue until after one has succeeded  
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1 in the criminal realm. See id. (citing Heck).

2 A judgment in favor of the Plaintiff here would imply the invalidity of  
3 pending criminal charges against him. The instant allegations therefore fail to  
4 state a cognizable claim under § 1983 and must be DISMISSED without  
5 prejudice. See Edwards v. Balisok, 520 U.S. 641, 649 (1997); Trimble v. City of  
6 Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995).<sup>1</sup>


7 **CONCLUSION**

8 For the foregoing reasons, plaintiff's request to proceed in forma pauperis  
9 (docket no. 2) is DENIED and the instant allegations are DISMISSED without  
10 prejudice to reasserting them in a new complaint if a cause of action accrues.

11 The Clerk shall enter judgment in accordance with this order, terminate all  
12 pending motions as moot and close the file.

13  
14 SO ORDERED.

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16 DATED: 03/06/07

17   
18 \_\_\_\_\_  
19 THELTON E. HENDERSON  
20 United States District Judge

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24 \_\_\_\_\_  
25 <sup>1</sup>And to whatever extent Plaintiff seeks to challenge either the fact or  
26 duration of his confinement, his sole remedy is to file a petition for writ of habeas  
27 corpus under 28 U.S.C. § 2254 after exhausting state judicial remedies. See  
28 Calderon v. Ashmus, 523 U.S. 740, 747 (1998). Any such claim therefore is  
dismissed without prejudice. See Trimble v. City of Santa Rosa, 49 F.3d at 586.