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\*E-Filed 6/8/12\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WAYNE W. SMITH,  
Plaintiff,

No. C 12-2547 RS (PR)

**ORDER OF DISMISSAL**

v.

DISTRICT ATTORNEY OFFICE,  
and REMA BREALL,  
Defendants.

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**INTRODUCTION**

This federal civil rights action was filed by a *pro se* state prisoner in state court. Defendants removed the action to this Court pursuant to 28 U.S.C. § 1441. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a). For the reasons stated herein, the action is DISMISSED.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

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For the Northern District of California

1 See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and  
2 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may  
3 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*  
4 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*  
5 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

6 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim  
7 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)  
8 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
9 plausibility when the plaintiff pleads factual content that allows the court to draw the  
10 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting  
11 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions  
12 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from  
13 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).  
14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
15 (1) that a right secured by the Constitution or laws of the United States was violated, and  
16 (2) that the alleged violation was committed by a person acting under the color of state law.  
17 *See West v. Atkins*, 487 U.S. 42, 48 (1988).

## 18 **B. Legal Claims**

19 In 2008, a San Francisco County Superior Court jury convicted plaintiff of the  
20 possession and sale of cocaine, and the possession of heroin. In consequence, plaintiff was  
21 sentenced to 13 years and 4 months in state prison. Plaintiff claims that defendants violated  
22 his constitutional rights by failing to disclose exculpatory evidence about a prosecution  
23 witness during his criminal trial, thereby rendering his conviction invalid.<sup>1</sup> In order to  
24 recover damages for an allegedly unconstitutional conviction or imprisonment, or for other

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26 <sup>1</sup> Plaintiff also has brought state law claims of negligence, false arrest, and fraud. Because  
27 his federal claim will be dismissed, the Court declines to exercise supplemental jurisdiction over  
28 his state law claims pursuant to 28 U.S.C. § 1367(c)(3).

1 harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a  
2 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed on  
3 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to  
4 make such determination, or called into question by a federal court's issuance of a writ of  
5 habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486–487 (1994). A claim for damages  
6 bearing that relationship to a conviction or sentence that has not been so invalidated is not  
7 cognizable under § 1983. *Id.* at 487. Where, as in the instant matter, a state prisoner seeks  
8 damages in a § 1983 suit, the district court must therefore consider whether a judgment in  
9 favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it  
10 would, the complaint must be dismissed unless the plaintiff can demonstrate that the  
11 conviction or sentence has been invalidated. *Id.* at 487.

12 In the instant matter, a judgment in favor of plaintiff that defendants had falsely  
13 arrested him and failed to disclose exculpatory evidence would necessarily imply the  
14 invalidity of his conviction or sentence. It is clear from the complaint that his convictions  
15 have not been invalidated, however. Accordingly, plaintiff's action barred by *Heck*, and the  
16 action is hereby DISMISSED without prejudice to plaintiff refile such claims when he can  
17 make such a showing. The Clerk shall enter judgment in favor of defendants, and close the  
18 file.

19 **IT IS SO ORDERED.**

20 DATED: June 8, 2012

21   
22 RICHARD SEEBORG  
23 United States District Judge  
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