

United States District Court  
For the Northern District of California

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

LLOYD ALEXANDER PRICE,  
Plaintiff,

No. C-13-0103 TEH (PR)

v.

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

SERGEANT MCDONALD, San Jose  
Police Department Officer, #3274,  
Defendant.

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I

Plaintiff Lloyd Alexander Price, an inmate at the Santa Clara County Jail in San Jose, California, filed this pro se civil rights action under 42 U.S.C. § 1983 alleging that Defendant San Jose Police Sergeant McDonald violated his constitutional rights by doctoring pictures, "adding stuff and all out lying," and then charging him with a felony instead of a misdemeanor.<sup>1</sup> Plaintiff also alleges a state law claim of defamation of character. Plaintiff seeks dismissal of the "bogus charges" and money damages for his pain and suffering. Plaintiff has also filed an application

\_\_\_\_\_ <sup>1</sup>Plaintiff originally filed this action in the Eastern District of California, which transferred the case to this District pursuant to the federal venue statute, 28 U.S.C. § 1391(b).

1 to proceed in forma pauperis. Doc. ##2 and 5. That motion is  
2 GRANTED in a separate order, filed simultaneously.<sup>2</sup> The complaint  
3 is now before the Court for review pursuant to 28 U.S.C. § 1915A and  
4 the Court DISMISSES WITH LEAVE TO AMEND the complaint for the  
5 reasons set forth below.

6 II

7 Federal courts must engage in a preliminary screening of  
8 cases in which prisoners seek redress from a governmental entity or  
9 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
10 The court must identify cognizable claims or dismiss the complaint,  
11 or any portion of the complaint, if the complaint "is frivolous,  
12 malicious, or fails to state a claim upon which relief may be  
13 granted," or "seeks monetary relief from a defendant who is immune  
14 from such relief." Id. § 1915A(b). Pleadings filed by pro se  
15 litigants, however, must be liberally construed. Hebbe v. Pliler,  
16 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police  
17 Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

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

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26 <sup>2</sup>Plaintiff has also filed a letter requesting an extension of  
27 time to file a civil action against West Sacramento Police Officers.  
28 See Dkt. #6. This letter likely was filed in the wrong case; this  
case addresses events that took place in San Jose, not Sacramento.

1 III

2 The complaint has a fatal defect requiring its dismissal.  
3 The § 1983 claim for damages and dismissal of the charges is barred  
4 by Heck v. Humphrey, 512 U.S. 477 (1994). See Trimble v. City of  
5 Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995).

6 Generally, Heck bars claims challenging the validity of an  
7 arrest, prosecution or conviction. See Guerrero v. Gates, 442 F.3d  
8 697, 703 (9th Cir. 2006). Specifically, Heck bars a 42 U.S.C.  
9 § 1983 action for allegedly unconstitutional conviction or  
10 imprisonment, or for other harm caused by actions whose unlawfulness  
11 would render a conviction or sentence invalid unless the conviction  
12 or sentence first has been reversed on direct appeal, expunged by  
13 executive order, declared invalid by a state tribunal authorized to  
14 make such determination, or called into question by a federal  
15 court's issuance of a writ of habeas corpus. Heck, 512 U.S. at  
16 486-87. When a prisoner seeks damages in a civil rights action, the  
17 district court must therefore consider whether a judgment in favor  
18 of the plaintiff would necessarily imply the invalidity of his  
19 conviction or sentence; if it would, the complaint must be dismissed  
20 unless the plaintiff can demonstrate that the conviction or sentence  
21 has already been invalidated. Id. at 487.

22 The rationale of Heck applies only if there is an existing  
23 conviction. Wallace v. Kato, 549 U.S. 384, 393-94 (2007). The  
24 contention that "an action which would impugn an anticipated future  
25 conviction cannot be brought until that conviction occurs and is set  
26 aside" goes "well beyond Heck." Id. at 393 (emphasis in original).  
27 Nonetheless, if a plaintiff files a § 1983 claim "related to rulings  
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1 that will likely be made in a pending or anticipated criminal  
2 trial[], it is . . . in accord with common practice, to stay the  
3 civil action until the criminal case or the likelihood of a criminal  
4 case is ended." Id. at 393-94.

5 In his complaint, Plaintiff alleges that improper charges  
6 have been filed against him, but he does not allege that he has been  
7 convicted pursuant to these charges. If Plaintiff has been  
8 convicted, a decision in this case in his favor would imply the  
9 invalidity of that conviction because the alleged wrongful conduct  
10 of Sgt. McDonald caused him to be adjudicated for charges that he  
11 contends are false. If the charges are determined to be false  
12 (which would be necessary for Plaintiff to prevail), the conviction  
13 necessarily would be invalidated. Thus, if Plaintiff has been  
14 convicted, this case would be dismissed. However, under Wallace,  
15 549 U.S. at 393-94, if Plaintiff has not yet been convicted on the  
16 basis of the alleged wrongful charges, this case would be stayed  
17 until his criminal case is ended.

18 Therefore, this case will be dismissed with leave to amend  
19 for Plaintiff to allege in an amended complaint if he has been  
20 convicted or if his criminal case is still pending.

21 IV

22 Plaintiff also alleges a state law claim of defamation.  
23 Because the § 1983 claim will be dismissed or stayed, the court  
24 declines to exercise supplemental jurisdiction over the defamation  
25 claim. See 28 U.S.C. § 1367(c)(3). The defamation claim is  
26 dismissed without prejudice to Plaintiff pursuing it in state court.

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V


For the foregoing reasons, Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A FIRST AMENDED COMPLAINT against Sgt. McDonald to add the allegations that the Court has noted above. The pleading must include the caption and civil case number used in this order and the words COURT ORDERED FIRST AMENDED COMPLAINT on the first page. Failure to file a proper First Amended Complaint within twenty-eight (28) days of the date of this order will result in the dismissal of this action.

Plaintiff is advised that the First Amended Complaint will supersede the original Complaint. Therefore, he must include the allegations from his original complaint in his First Amended Complaint. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) .

The defamation claim is dismissed without prejudice to filing in state court.

IT IS SO ORDERED.

DATED 03/18/2013

  
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THELTON E. HENDERSON  
United States District Judge