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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 EDWARD L. TURNER,

11 Plaintiff,

12 v.

13 PAUL RICHARDSON, et al.,

14 Defendants.  
15

No. C 13-0910 JSW (PR)

**ORDER OF DISMISSAL**

16 **INTRODUCTION**

17 Plaintiff, a former parolee of the State of California, filed this pro se civil rights  
18 complaint under 42 U.S.C. § 1983 against judge of the Yolo County Superior Court. For  
19 the reasons discussed below, the complaint is dismissed without prejudice. The  
20 application to proceed *in forma pauperis* is granted in a separate order.

21 **STANDARD OF REVIEW**

22 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
23 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
24 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
25 is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200  
26 (2007) (citations omitted). Although in order to state a claim a complaint "does not need  
27 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
28 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic

1 recitation of the elements of a cause of action will not do. . . . Factual allegations must  
2 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*  
3 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer  
4 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se  
5 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,  
6 699 (9th Cir. 1990).

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

## 11 LEGAL CLAIMS

12 Plaintiff alleges that Defendants violated his rights to due process, equal  
13 protection, and "all constitutional bill of human rights" by denying his motion to suppress  
14 evidence and making other adverse rulings that led to his conviction and "false  
15 imprisonment." He seeks money damages and immediate release from prison.

16 The United States Supreme Court has held that to recover damages for an  
17 allegedly unconstitutional conviction or imprisonment, a section 1983 plaintiff must  
18 prove that the conviction or sentence has been reversed on direct appeal, expunged by  
19 executive order, declared invalid by a state tribunal authorized to make such  
20 determination, or called into question by a federal court's issuance of a writ of habeas  
21 corpus. *Heck v. Humphrey*, 114 S. Ct. 2364, 2372 (1994). A claim for damages arising  
22 from a conviction or sentence that has not been so invalidated is not cognizable under  
23 section 1983. *Id.*

24 Plaintiff seeks money damages for actions by Defendants that led to his  
25 confinement in prison. When a state prisoner seeks damages in a section 1983 suit, the  
26 district court must consider whether a judgment in favor of the plaintiff would necessarily  
27 imply the invalidity of his confinement; if it would, the complaint must be dismissed  
28 unless the plaintiff can demonstrate that the conviction or sentence has already been

1 invalidated. *Heck*, 512 U.S. at 487. It is clear from the complaint that his conviction and  
2 consequent confinement have not been invalidated. Therefore, he fails to state a  
3 cognizable claim for damages under Section 1983, and such claims must be dismissed  
4 without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995)  
5 (claims barred by *Heck* may be dismissed sua sponte without prejudice).

6 Plaintiff's claims for release from prison, if he wants to pursue such claims in  
7 federal court, must be brought in a federal habeas petition, not a civil rights complaint,  
8 after he has properly exhausted his claims in the state courts. Such claims are dismissed  
9 without prejudice to his doing so.

#### 10 CONCLUSION

11 For the reasons set out above, this action is DISMISSED without prejudice.

12 The Clerk shall close the file and enter judgment.

13 IT IS SO ORDERED.

14 DATED: April 15, 2013



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16 JEFFREY S. WHITE  
17 United States District Judge  
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1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA  
5

6 ANTHONY RECARDO G TURNER,

Case Number: CV13-00910 JSW

7 Plaintiff,

8 **CERTIFICATE OF SERVICE**

9 v.

10 PAUL RICHARDSON et al,


11 Defendant.  
12 \_\_\_\_\_/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

14 That on April 15, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
17 receptacle located in the Clerk's office.

18 Anthony Recardo Turner-Gonzalez  
19 Salinas Valley State Prison  
20 P.O. Box 1051  
#G27511  
Soledad, CA 93960

21 Dated: April 15, 2013

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Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk  
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