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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THERON N. LYNCH,

Plaintiff,

No. C 08-5424 PJH (PR)

v.

**ORDER OF DISMISSAL**

ALAMEDA COUNTY; Hon. LARRY  
GOODMAN, Judge; and Court  
Operations & Administrative Chief LON  
RODEKOHR,

Defendants.

Plaintiff, an inmate at Avenal State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee.

**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. See 28 U.S.C § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* at 1915A(b)(1),(2).

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

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1 **B. Legal Claims**

2 Plaintiff contends that the abstract of judgment for his sentence is incorrect in that it  
3 requires that he serve his full sentence. He claims that this violates his Eighth and  
4 Fourteenth Amendment rights.

5 The United States Supreme Court has held that to recover damages for an allegedly  
6 unconstitutional conviction or imprisonment, or for other harm caused by actions whose  
7 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove  
8 that the conviction or sentence has been reversed on direct appeal, expunged by executive  
9 order, declared invalid by a state tribunal authorized to make such determination, or called  
10 into question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*,  
11 512 U.S. 477, 486-487 (1994). A claim for damages arising from a conviction or  
12 sentence that has not been so invalidated is not cognizable under § 1983. *Id.*

13 When a state prisoner seeks damages in a § 1983 suit, the district court must  
14 consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of  
15 his continued confinement; if it would, the complaint must be dismissed unless the plaintiff  
16 can demonstrate that the conviction or sentence has already been invalidated. *Heck*, 512  
17 U.S. at 487. Although plaintiff contends he is not "seeking a release" but rather is  
18 attempting to hold the courts liable for the alleged error, success in this case would  
19 necessarily establish that his sentence is invalid, so the *Heck* doctrine applies to bar these  
20 claims. See *Erlin v. United States*, 364 F.3d 1127,1133 (9th Cir. 2004) (applying *Heck* to  
21 FTCA claim of negligent miscalculation of sentence); *Clemente v. Allen*, 120 F.3d 703,  
22 705 (7th Cir. 1997) (*Bivens* case alleging miscalculation of sentence). The complaint  
23 thus fails to state a cognizable claim under § 1983 and must be dismissed. See *Trimble v.*  
24 *City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (claims barred by *Heck* may be  
25 dismissed sua sponte without prejudice).

26 Because "a § 1983 cause of action for damages attributable to an unconstitutional  
27 conviction or sentence does not accrue until the conviction or sentence has been  
28 invalidated," *Heck*, 512 U.S. at 489-90 (footnote omitted), the dismissal will be without

1 prejudice to plaintiff filing a new case if he succeeds in getting the sentence invalidated by  
2 way of state or federal habeas actions or by executive action.

3 **CONCLUSION**

4 For the foregoing reasons plaintiff's claims are **DISMISSED** without prejudice to  
5 asserting them in a new case if a cause of action ever accrues.

6 The clerk shall close the file.

7 **IT IS SO ORDERED.**

8 Dated: January 5, 2009.



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PHYLLIS J. HAMILTON  
United States District Judge

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