

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RODNEY JEROME CONERLY,)	No. C 10-2138 LHK (PR)
Plaintiff,)	ORDER OF DISMISSAL
v.)	
CITY OF OAKLAND, et al.,)	
Defendants.)	(Docket Nos. 2, 4.)

Plaintiff, a former state prisoner¹ proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 seeking damages for an allegedly unlawful arrest, prosecution and conviction. Plaintiff’s motions to proceed in forma pauperis are GRANTED.

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. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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* 28 U.S.C.

¹ According to the complaint, Plaintiff was paroled on January 6, 2010.

1 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*
2 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

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

7 B. Legal Claims

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

16 When a state prisoner seeks damages in a § 1983 suit, the district court must therefore
17 consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of
18 his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can
19 demonstrate that the conviction or sentence has already been invalidated. *See id.* A judgment in
20 favor of Plaintiff here would imply the invalidity of his state conviction and sentence which have
21 not already been invalidated. *See Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006) (*Heck*
22 generally bars claims challenging validity of arrest, prosecution and/or conviction). The instant
23 allegations therefore fail to state a cognizable claim under § 1983 and must be DISMISSED
24 without prejudice. *See Edwards v. Balisok*, 520 U.S. 641, 649 (1997); *Trimble v. City of Santa*
25 *Rosa*, 49 F.3d 583, 585 (9th Cir. 1995).²

26
27 ² To the extent Plaintiff seeks to challenge either the fact or duration of his confinement,
28 his sole remedy is to file a petition for writ of habeas corpus under 28 U.S.C. § 2254 after
exhausting state judicial remedies. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998). Any

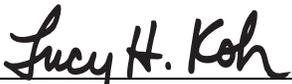
1 **CONCLUSION**

2 For the foregoing reasons, the complaint is DISMISSED for failure to state a claim under
3 the authority of 28 U.S.C. § 1915A. The dismissal is without prejudice to reasserting the claims
4 in a new complaint if a cause of action later accrues.

5 The Clerk shall enter judgment in accordance with this order and close the file.

6 IT IS SO ORDERED.

7 DATED: 8/30/2010

8 
9 _____
10 LUCY H. KOH
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 _____
such claim therefore is dismissed without prejudice. *See Trimble*, 49 F.3d at 586.