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

COREY D. SPECK,

Plaintiff,
vs.

No. CIV S-09-3440 GEB EFB P

SHASTA COUNTY SHERIFF
DEPARTMENT, et al.,

Defendants.

ORDER

_____ /

Corey Speck filed this pro se civil rights action under 42 U.S.C. § 1983. At the time that he filed his complaint he was in jail. It is not clear to the court whether he is currently incarcerated.

On March 30, 2011, the court found that plaintiff's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because his claims challenged the validity of his conviction or sentence and he had not demonstrated that his sentence had previously been invalidated. On April 21, 2011, plaintiff filed objections implying that the charges against him had been dismissed.

A section 1983 action alleging illegal search and seizure of evidence upon which criminal charges are based does not accrue until the criminal charges have been dismissed or the conviction has been overturned. *Harvey v. Waldron*, 210 F.3d 1008, 1015 (9th Cir. 2000). It is

1 not clear whether plaintiff is currently incarcerated based on criminal charges stemming from his
2 allegedly unconstitutional arrest or search and seizure. It may be that the charges against
3 plaintiff related to the arrest at issue have been dismissed, and plaintiff is currently incarcerated
4 on unrelated charges.

5 Therefore, the court vacates its March 30 findings and recommendations. Plaintiff is
6 granted 30 days to file an amended complaint clarifying his claims.

7 Any amended complaint must adhere to the following requirements:

8 It must be complete in itself without reference to any prior pleading. E.D. Cal. Local
9 Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
10 complaint, the original pleading is superseded.

11 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
12 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must
13 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
14 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
15 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
16 he does an act, participates in another's act or omits to perform an act he is legally required to do
17 that causes the alleged deprivation).

18 It must contain a caption including the name of the court and the names of all parties.
19 Fed. R. Civ. P. 10(a).

20 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
21 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
22 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
23 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
24 against different defendants must be pursued in multiple lawsuits. "The controlling principle
25 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
26 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple

1 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
2 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
3 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
4 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
5 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
6 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
7 607 (7th Cir. 2007); see also Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
8 both commonality and same transaction requirements are satisfied).

9 The allegations must be short and plain, simple and direct and describe the relief plaintiff
10 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
11 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
12 including many defendants with unexplained, tenuous or implausible connection to the alleged
13 constitutional injury or joining a series of unrelated claims against many defendants very likely
14 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
15 plaintiff’s action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
16 these instructions.

17 Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a). By signing an amended
18 complaint, plaintiff certifies he has made reasonable inquiry and has evidentiary support for his
19 allegations and that for violation of this rule the court may impose sanctions sufficient to deter
20 repetition by plaintiff or others. Fed. R. Civ. P. 11.

21 A prisoner may bring no § 1983 action until he has exhausted such administrative
22 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
23 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his
24 claims are warranted by existing law, including the law that he exhaust administrative remedies,
25 and that for violation of this rule plaintiff risks dismissal of his entire action.


26 ////

1 Accordingly, it is hereby ORDERED that:

2 1. The court's March 30, 2011 findings and recommendations are vacated; and

3 2. The complaint is dismissed with leave to amend within 30 days. The amended
4 complaint must bear the docket number assigned to this case and be titled "First Amended
5 Complaint." Failure to comply with this order will result in a recommendation that this action be
6 dismissed. If plaintiff files an amended complaint stating a cognizable claim the court will
7 proceed with service of process by the United States Marshal.

8 Dated: June 22, 2011.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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