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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COREY D. SPECK,
Plaintiff,
v.
SHASTA COUNTY SHERIFF'S
DEPARTMENT, et al.,
Defendants.

No. 2:09-cv-3440-TLN-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. According to the allegations in his December 28, 2011 amended complaint, defendants Kropholler and McQuillan (“defendants”), employees of the Shasta County Sheriff’s Department, subjected him to an improper search and seizure.

On April 1, 2013, defendants moved to dismiss all but plaintiff’s Fourth cause of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that plaintiff had failed to state a claim upon which relief can be granted. ECF No. 28. In granting the motion, the court informed plaintiff that he could either proceed on his Fourth cause of action, relating to the allegedly improper search and seizure, or file an amended complaint to correct the deficiencies in his excessive force and state law tort claims. See ECF No. 39 (Feb. 11, 2014 Findings and Recommendations); ECF No. 43 (Apr. 3, 2014 Order Adopting Findings and Recommendations).

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1 The court informed plaintiff that any amended complaint shall name Kropholler and McQuillan
2 as defendants, shall not add any new claims or new defendants, and that once an amended
3 complaint is filed, the original complaint is superseded. ECF No. 39 at 6.

4 Plaintiff filed a second amended complaint which is now before the court for screening.
5 Federal courts must engage in a preliminary screening of cases in which prisoners seek redress
6 from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
8 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
9 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
10 relief.” *Id.* § 1915A(b).

11 The second amended complaint improperly identifies the “Shasta County Sheriff
12 Department” as the sole defendant, and contains numerous allegations unrelated to the claims of
13 an improper search and seizure, excessive force, and state law torts. Rather, the second amended
14 complaint, which fails to identify any specific claims for relief, complains generally of racism in
15 prison, plaintiff’s mental instability, broken family ties, and lack of employment. *See* ECF No.
16 41. For these vague and conclusory complaints, plaintiff seeks three million dollars. *Id.* Thus,
17 the amended complaint fails to comply with the court’s instructions in granting him leave to
18 amend, including the admonition that any amended complaint must identify the proper defendants
19 and claims for relief.

20 Moreover, the allegations are too vague and conclusory to state a cognizable claim for
21 relief. Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
22 notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*
23 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Because plaintiff has disregarded the requirements
24 for an amended complaint as set forth in the February 11, 2014 findings and recommendations,
25 and also fails to state a claim upon which relief could be granted, the second amended complaint
26 should be dismissed pursuant to 28 U.S.C. § 1915A and Rule 41(b) of the Federal Rules of Civil
27 Procedure.

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1 Accordingly, IT IS HEREBY RECOMMENDED that the second amended complaint
2 (ECF No. 41) be dismissed without further leave to amend pursuant to 28 U.S.C. § 1915A and
3 Rule 41(b) of the Federal Rules of Civil Procedure and that the Clerk be directed to close the
4 case.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
10 objections shall be served and filed within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
13 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: July 2, 2014.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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