

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

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,  
Plaintiff,  
v.  
DETECTIVE S. SPENCE,  
Defendant.

No. 2:17-cv-2617 MCE KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a county jail inmate, proceeding pro se. On June 8, 2018, this action was dismissed with prejudice for failure to state a claim.

On June 4, 2018, plaintiff filed an amended complaint. However, plaintiff named a different defendant, and different causes of action from his original complaint. (Compare ECF No. 1 with ECF No. 14.) This type of amending of claims and/or joining of parties is prohibited. See Fed. R. Civ. P. 20(a)(2) (stating defendants may only be joined in one action if claims arise from “same transaction, occurrence, or series of transactions or occurrences”); see also George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (stating plaintiff may not change nature of suit by alleging new, unrelated claims). As a result, plaintiff’s amended complaint (ECF No. 14) is inappropriately filed herein.

On June 13, 2018, plaintiff filed a motion to amend his complaint along with a proposed second amended complaint, and on September 10, 2018, he renewed his motion to amend. In his

1 proposed motion to amend, plaintiff properly named Detective Spence as a defendant, but now  
2 claims that defendant Spence violated plaintiff's due process rights under the Fourteenth  
3 Amendment when he wrote false reports supporting an arrest warrant for plaintiff's violation of  
4 California Penal Code § 290, failure to register as a sex offender. Plaintiff alleges that he had his  
5 sex crime misdemeanors expunged under California Penal Code § 1203.4, and argues that he is  
6 relieved of any obligation to register under Kelly v. San Francisco Municipal Court (1958). (ECF  
7 No. 18 at 4.)

8 Plaintiff's reliance on Kelly is misplaced. Sixty years ago, in Kelly v. Municipal Court of  
9 City & County of San Francisco, 160 Cal. App. 2d 38, 44 (1958), the First District California  
10 Court of Appeal held that the sex offender registration requirement under California Penal Code  
11 § 290 was "criminal in character" and thus imposed a penalty that would expire upon the  
12 defendant's fulfillment of all conditions of probation. However, the California courts have since  
13 held that "Kelly is no longer good law." People v. Hamdon, 225 Cal. App. 4th 1065, 1073  
14 (2014). Rather, "the subsequent enactment of section 290.5 evinces a legislative determination  
15 that the need for registration continues until the registrant obtains a certificate of rehabilitation or  
16 pardon." Id. "Indeed the Legislature enacted section 290.1 with Kelly in mind, specifically  
17 intending thereby to correct a perceived flaw in the registration statutes which allowed convicted  
18 sex offenders to avoid continuing compliance with registration requirements by obtaining an  
19 expungement of their convictions." People v. Fioretti, 54 Cal. App. 4th 1209, 1215 (1997).  
20 Therefore, Kelly does not support plaintiff's allegations. Moreover, plaintiff does not assert that  
21 he has received a certificate of rehabilitation, as required by Hamdon, 225 Cal. App. 4th at 1073.

22 Finally, court records reflect that plaintiff confirms under penalty of perjury that he has  
23 been convicted and sentenced. Humes v. Sacramento County, No. 2:18-cv-0691 AC P (E.D.  
24 Cal.) (ECF No. 1 at 4).<sup>1</sup> As a result, his action for damages is barred by the Supreme Court's  
25 decision in Heck v. Humphrey, 512 U.S. 477 (1994). A prisoner may not proceed under Section

---

26  
27 <sup>1</sup> A court may take judicial notice of court records. See, e.g., Bennett v. Medtronic, Inc., 285  
28 F.3d 801, 803 n.2 (9th Cir. 2002) ("[W]e may take notice of proceedings in other courts, both  
within and without the federal judicial system, if those proceedings have a direct relation to  
matters at issue") (internal quotation omitted).

1 1983 if a judgment favoring plaintiff “would necessarily imply the invalidity of his conviction or  
2 sentence.” Heck, 512 U.S. at 487. If plaintiff is serving a sentence based on a challenged  
3 conviction, then he is foreclosed from proceeding in this damages action without proof that his  
4 conviction or sentence have been reversed, expunged or invalidated. Id. at 486-87. For this  
5 reason, plaintiff’s motions to amend must be denied.

6 For these reasons, the court finds that the proposed second amended complaint fails to  
7 state a cognizable claim and such deficiencies cannot be cured by amendment. “A district court  
8 may deny leave to amend when amendment would be futile.” Hartmann v. CDCR, 707 F.3d  
9 1114, 1130 (9th Cir. 2013); accord Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Courts  
10 are not required to grant leave to amend if a complaint lacks merit entirely.”). Therefore, the  
11 undersigned recommends plaintiff’s motions to amend be denied.

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motions to amend (ECF  
13 Nos. 14, 17, 18, 19) be denied.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, plaintiff may file written objections  
17 with the court and serve a copy on all parties. Such a document should be captioned  
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that  
19 failure to file objections within the specified time may waive the right to appeal the District  
20 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: November 15, 2018

22   
23 \_\_\_\_\_  
24 KENDALL J. NEWMAN  
25 UNITED STATES MAGISTRATE JUDGE

26 /hume2617.mta  
27  
28