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

MARTIN WARE,

Plaintiff,

No. 2:12-cv-1505 MCE KJN P

vs.

M. McDONALD, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding without counsel, and in forma pauperis. On July 30, 2012, plaintiff’s first amended complaint was dismissed, and plaintiff was granted thirty days in which to file a second amended complaint. On September 14, 2012, the undersigned recommended that this action be dismissed based on plaintiff’s failure to file a second amended complaint. (Dkt. No. 22.) However, on September 17, 2012, plaintiff filed a second amended complaint, which was presented to prison officials for mailing on September 5, 2012. On September 28, 2012, plaintiff filed objections to the findings and recommendations. Plaintiff claims his filing was delayed based on difficulties in obtaining photocopies of the second amended complaint. Good cause appearing, the findings and recommendations are vacated.

On October 15, 2012, plaintiff filed a document styled, “Motion for Supplemental Pleading.” (Dkt. No. 27.) While not entirely clear, it appears that plaintiff contends that the

1 September 17, 2012 second amended complaint does not contain all of plaintiff's allegations or  
2 all of the exhibits plaintiff wished to append.

3 Plaintiff is advised that Local Rule 220 requires that an amended complaint be  
4 complete in itself without reference to any prior or subsequent pleading. This requirement exists  
5 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
6 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
7 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
8 original complaint, each claim and the involvement of each defendant must be sufficiently  
9 alleged.

10 Because it is unclear from plaintiff's filing whether he seeks to provide a revised,  
11 third amended complaint, or whether he wishes to proceed on the second amended complaint  
12 filed September 17, 2012, the court will provide plaintiff an opportunity to inform the court of  
13 his election between the two options.

14 If plaintiff chooses to file a third amended complaint, plaintiff must comply with  
15 this court's order filed July 30, 2012. (Dkt. No. 16.) Plaintiff must demonstrate how the  
16 conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights.  
17 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms  
18 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983  
19 unless there is some affirmative link or connection between a defendant's actions and the  
20 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,  
21 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official  
22 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,  
23 268 (9th Cir. 1982). As set forth above, any third amended complaint must be complete in and  
24 of itself, without reference to any prior pleading.

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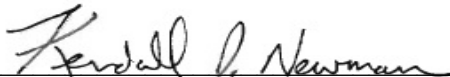
1                   Accordingly, IT IS HEREBY ORDERED that:

2                   1. The September 14, 2012 findings and recommendations (dkt. no. 22) are  
3 vacated;

4                   2. Plaintiff's October 15, 2012 motion (dkt. no. 27) is granted in part; and

5                   3. Within thirty days from the date of this order, plaintiff shall complete the  
6 attached Notice of Election form, electing to (a) proceed on the September 17, 2012 second  
7 amended complaint, or (b) file a third amended complaint, and providing the original third  
8 amended complaint. Failure to timely comply with this order will result in the court proceeding  
9 on the second amended complaint.

10 DATED: October 23, 2012

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13                   KENDALL J. NEWMAN  
14                   UNITED STATES MAGISTRATE JUDGE

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FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN WARE,

Plaintiff,

No. 2:12-cv-1505 MCE KJN P

vs.

M. McDONALD, et al.,

NOTICE OF ELECTION

Defendants.

\_\_\_\_\_ /

in compliance with the court's order filed \_\_\_\_\_, plaintiff elects to:

\_\_\_\_\_ File a Third Amended Complaint, which is attached.

OR

\_\_\_\_\_ Proceed on the September 17, 2012 Second Amended  
Complaint.

DATED:

\_\_\_\_\_  
Plaintiff