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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 JOHN McCLINTOCK,

No. 2:13-cv-0264 JFM P

12 Plaintiff,

13 v.

ORDER

14 C/O COLOSIMO, et al.,

15 Defendants.
16

17 Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42
18 U.S.C. § 1983. By order filed April 23, 2013, the court found that plaintiff's February 11, 2013
19 complaint (ECF No. 1) states a cognizable claim for relief against defendants Beshears, Colosimo
20 and Meriweather and directed plaintiff to complete and return the forms necessary for service of
21 process within thirty days. On April 30, 2013, plaintiff filed a motion to amend his complaint.
22 Plaintiff seeks to amend his complaint to add claims against three additional defendants. Plaintiff
23 has not included a proposed amended complaint with his motion.¹

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25 ¹ Plaintiff does, however, assert that the three proposed new defendants were identified as Doe
26 defendants in his original complaint, and he provides information about his proposed new claims
27 which are based on alleged events in February and March 2013. The claim in the original
28 complaint arose in February 2012, and there are no allegations in the original complaint based on
events in February or March 2013. Thus, while plaintiff did name Doe defendants in the original
complaint, he did not include any charging allegations from which the court could conclude that
the defendants he now seeks to sue were included among those Doe defendants. Indeed, the

1 On May 14, 2013, plaintiff submitted a completed summons and USM-285 forms,
2 together with a request for three additional USM-285 forms and a new summons. He did not,
3 however, submit the four copies of his original complaint required by the court's April 23, 2013
4 order apparently because he was awaiting ruling on his motion to amend. Plaintiff is entitled to
5 amend his complaint once as of right prior to service. Fed. R. Civ. P. 15(a). However, he must
6 file a proposed amended complaint which must be screened by the court prior to service pursuant
7 to 28 U.S.C. § 1915A.

8 For the reasons set forth in footnote 1, herein, it is not clear whether plaintiff may proceed
9 on the proposed new claims in this action. Accordingly, good cause appearing, plaintiff will be
10 granted a period of thirty days in which to file either a proposed amended complaint or four
11 copies of his original complaint filed in this action for service of process. If plaintiff chooses to
12 file an amended complaint, plaintiff must therein allege facts demonstrating how the conditions
13 complained of have resulted in a deprivation of his constitutional rights. See Ellis v. Cassidy, 625
14 F.2d 227 (9th Cir. 1980). Also, any proposed amended complaint must allege in specific terms
15 how each named defendant is involved in the claimed constitutional violation. There can be no
16 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
17 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.
18 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
19 1978). Furthermore, vague and conclusory allegations of official participation in civil rights
20 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
22 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading. This is because, as a
24 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

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26 original complaint in this action was filed in this court on February 11, 2013, and was prepared by
27 plaintiff before any of the events about which he now seeks to complaint occurred. Moreover, it
28 is not clear that plaintiff has exhausted administrative remedies with respect to the events about
which he now complains and he may not proceed on those claims in this or any other action prior
to exhausting such remedies. See 42 U.S.C. § 1997e(a).

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's April 30, 2013 motion to amend (ECF No. 10) is denied as unnecessary.

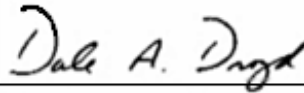
6 2. Within thirty days from the date of this order, plaintiff shall submit either four copies of
7 his original complaint or a proposed amended complaint.

8 3. If plaintiff decides to submit a proposed amended complaint, said first amended
9 complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil
10 Procedure, and the Local Rules of Practice; the proposed amended complaint must bear the
11 docket number assigned this case and must be labeled "Amended Complaint."

12 4. Failure to comply with this order may result in the dismissal of this action.

13 5. Plaintiff's May 14, 2013 request for additional summons (ECF No. 12) is denied
14 without prejudice.

15 Dated: June 18, 2013

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17 DALE A. DROZD
18 UNITED STATES MAGISTRATE JUDGE

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