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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 SHERMAN MONROE POLK,

12 Plaintiff,

13 v.

14 DIANE GRAY, et al.,

15 Defendant.  
16  
17

No. 2:15-cv-0471 CKD P

ORDER

18 Plaintiff is a state prisoner proceeding pro se with an action pursuant to 42 U.S.C. § 1983.  
19 Plaintiff has consented to this court's jurisdiction pursuant to 28 U.S.C. § 636(c) and Local Rule  
20 302. Before the court is plaintiff's motion for reconsideration of the April 22, 2015 order  
21 dismissing this action as duplicative of plaintiff's pending action in the Northern District of  
22 California. (ECF No. 9.)

23 A district court may reconsider a ruling under either Federal Rule of Civil Procedure 59(e)  
24 or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1262 (9th  
25 Cir. 1993). "Reconsideration is appropriate if the district court (1) is presented with newly  
26 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3)  
27 if there is an intervening change in controlling law." Id. at 1263.  
28

1 In his complaint, plaintiff names three defendants: Stockton Parole Supervisor Diane  
2 Gray, Stockton Parole Agent Roy Lacy, and the Stockton Department of Justice. (ECF No. 1.)  
3 Plaintiff argues that his claims against Gray and Lacy are not pending in the Northern District,  
4 because – though they were originally brought in that action – they were dismissed without  
5 prejudice for improper venue. (ECF No. 9.)

6 In support, plaintiff has submitted a February 4, 2015 judicial order in the action Polk v.  
7 Todd, No. 14-cv-4375 KAW (N.D. Cal.). The order indicates that, while Gray and Lacy were  
8 dismissed from that action with prejudice in November 2014 (see ECF No. 1 at 38), the order was  
9 subsequently vacated, and on February 4, 2015 they were dismissed “without prejudice to refile  
10 a complaint against them in the proper venue.” (ECF No. 9 at 5-7.) As the events giving rise to  
11 the claims occurred in Stockton, California, venue was determined to be proper in the Eastern  
12 District of California. (Id.) Accordingly, the court will grant plaintiff’s motion for  
13 reconsideration.

14 Plaintiff has also requested leave to file an amended complaint. (ECF No. 9.) In an  
15 amended complaint, plaintiff must demonstrate how the conditions complained of have resulted  
16 in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir.  
17 1980). Also, the complaint must allege in specific terms how each named defendant is involved.  
18 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
19 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.  
20 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,  
21 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in  
22 civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.  
23 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
25 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
26 complaint be complete in itself without reference to any prior pleading. This is because, as a  
27 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
28 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no

1 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
2 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

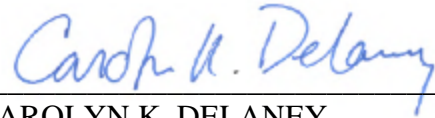
3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for reconsideration and to amend the complaint (ECF No. 9) is  
5 granted;

6 2. The Clerk of Court shall re-open this case; and

7 3. Plaintiff is granted thirty days from the date of service of this order to file an amended  
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
9 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number  
10 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and  
11 two copies of the amended complaint. In the alternative, plaintiff may inform the court that he  
12 wishes to proceed on the complaint filed March 2, 2015, which the court will proceed to screen  
13 pursuant to 28 U.S.C. § 1915A(a).

14 Dated: May 19, 2015



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE