



1 on the merits of this action as to defendant Kaur.

2           However, plaintiff's allegations against defendants Williams and Ditto are solely based on  
3 a theory of respondeat superior. Defendant Williams was Principal of the Solano Education  
4 Department, and defendant Ditto was the acting Vice Principal. Such defendants cannot be held  
5 liable on the ground that, as supervisors, they are liable for the conduct of their subordinate.  
6 Under section 1983, plaintiff must prove that the defendants holding supervisory positions  
7 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th  
8 Cir. 2002). There is no respondeat superior liability, and each defendant is only liable for his or  
9 her own misconduct. Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). A supervisor may be held  
10 liable for the constitutional violations of his or her subordinates only if he or she "participated in  
11 or directed the violations, or knew of the violations and failed to act to prevent them." Taylor v.  
12 List, 880 F.2d 1040, 1045 (9th Cir. 1989); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009).  
13 Plaintiff makes no such allegation here. Indeed, he fails to allege that either defendant was aware  
14 plaintiff filed a form 22 against defendant Kaur, or knew Kaur was retaliating against plaintiff by  
15 pressing the charges.<sup>1</sup>

16           Plaintiff has had multiple opportunities to amend his complaint. Because it appears  
17 plaintiff can allege no facts setting forth a cognizable civil rights claim against defendants Ditto  
18 and Williams, it is recommended that plaintiff's claims against defendants Ditto and Williams be  
19 dismissed without leave to amend.

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

21           1. Service is appropriate for defendant Kaur.

22  
23 <sup>1</sup> As plaintiff was previously advised, an amended complaint supersedes the prior pleading, and  
24 the court cannot refer to a prior pleading to make plaintiff's second amended complaint complete.  
25 (ECF No. 20 at 8.) In his first amended complaint, plaintiff claimed that defendants Williams and  
26 Ditto were "on notice" of Kaur's alleged retaliation because both the 128 report and the RVR  
27 require supervisory screening and approval. (ECF No. 19 at 6.) Plaintiff included no such  
28 allegation in his second amended complaint. But in any event, simply being "on notice" of the  
128 report and the subsequent RVR does not establish that Williams or Ditto knew that Kaur's  
charges against plaintiff were false, or that Kaur was issuing the charges in retaliation for plaintiff  
filing a form-22 against Kaur, let alone establish that Williams or Ditto knowingly participated in  
Kaur's alleged retaliatory acts.

1           2. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an  
2 instruction sheet and a copy of the second amended complaint (ECF No. 23).

3           3. Within thirty days from the date of this order, plaintiff shall complete the attached  
4 Notice of Submission of Documents and submit the following documents to the court:

- 5                   a. The completed Notice of Submission of Documents;  
6                   b. One completed summons;  
7                   c. One completed USM-285 form; and  
8                   d. Two copies of the endorsed second amended complaint (ECF No. 23).


9           4. Plaintiff need not attempt service on defendants and need not request waiver of service.  
10 Upon receipt of the above-described documents, the court will direct the United States Marshal to  
11 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment  
12 of costs.

13           5. The Clerk of the Court is directed to assign a district judge to this case.

14           IT IS RECOMMENDED that plaintiff's claims against defendants Ditto and Williams be  
15 dismissed without leave to amend.

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

23 Dated: January 19, 2018

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25 \_\_\_\_\_  
26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,  
Plaintiff,  
v.  
G. KAUR, et al.,  
Defendants.

No. 2:16-cv-1828 KJN P

NOTICE OF SUBMISSION OF  
DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's order  
filed \_\_\_\_\_ :  
\_\_\_\_\_ completed summons form  
\_\_\_\_\_ completed USM-285 forms  
\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff