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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,  
Plaintiff,  
v.  
ROESSER,  
Defendant.

No. 2:16-cv-2362 MCE CKD P

ORDER

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. On December 8, 2016, plaintiff’s original complaint was dismissed with leave to amend, as plaintiff’s claim appeared to be barred by Heck v. Humphrey, 512 U.S. 477 (1994). (ECF No. 7.)

Plaintiff’s first amended complaint (“FAC”) is now before the court for screening. See 28 U.S.C. § 1915A(a). In the FAC, plaintiff indicates that his 2015 disciplinary conviction for Obstructing A Peace Officer was vacated, and the disciplinary charge was subsequently reheard and dismissed. (ECF No. 10.) If so, any federal challenge concerning the 2015 disciplinary conviction would not be Heck-barred.

However, plaintiff does not state a First Amendment retaliation claim against defendant Roesser, who in 2015 issued plaintiff a Rules Violation Report (RVR) for refusing to share a cell

1 with a particular inmate. To establish a claim for retaliation, a prisoner must show that a prison  
2 official took some adverse action against an inmate because of that prisoner's protected conduct,  
3 that the action chilled the inmate's exercise of his constitutional rights, and the action did not  
4 advance a legitimate correctional goal. Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir.  
5 2005). Plaintiff does not explain what “protected conduct” led to Roesser's alleged retaliation, or  
6 why Roesser's action did not advance a legitimate correctional goal.

7 The FAC fails to state a cognizable claim and will be dismissed. The court will, however,  
8 grant leave to file a second amended complaint.

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

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
19 make plaintiff's second amended complaint complete. Local Rule 220 requires that an amended  
20 complaint be complete in itself without reference to any prior pleading. This is because, as a  
21 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
22 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the original  
23 pleading no longer serves any function in the case. Therefore, in a second amended complaint, as  
24 in an original complaint, each claim and the involvement of each defendant must be sufficiently  
25 alleged.

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

- 27 1. Plaintiff's amended complaint (ECF No. 10) is dismissed; and
- 28 2. Plaintiff is granted thirty days from the date of service of this order to file a second

1 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
2 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the  
3 docket number assigned this case and must be labeled "Second Amended Complaint"; plaintiff  
4 must file an original and two copies of the second amended complaint;  
5 failure to file a second amended complaint in accordance with this order will result in a  
6 recommendation that this action be dismissed.

7 Dated: January 30, 2017



8 CAROLYN K. DELANEY  
9 UNITED STATES MAGISTRATE JUDGE

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