

1 **I. SCREENING AND PLEADING REQUIREMENTS**

2 A district court is required to screen a prisoner’s complaint seeking relief against a
3 governmental entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must
4 identify any cognizable claims and dismiss any portion of a complaint that is frivolous or
5 malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a
6 defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

7 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
8 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
9 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
10 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
11 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
12 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
13 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
14 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what
15 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to
16 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
17 (citations omitted).

18 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
19 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint only “if it
20 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
21 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017)
22 (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

23 **II. THE COMPLAINT¹**

24 Plaintiff is a state prisoner incarcerated at the California Substance Abuse Treatment
25 Facility, Corcoran (“SATF”). *Id.* at 1. Plaintiff names three defendants who are correctional
26 officers at SATF: Moreno, Lopez, and Doony. *Id.* at 2. Plaintiff’s fourth named defendant is

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28 ¹ The court draws the facts in this section from plaintiff’s complaint, ECF No. 1, and accepts
them as true for screening purposes.

1 California Department of Corrections and Rehabilitation (“CDCR”). *Id.*

2 Plaintiff alleges:

3 On several occasions during the month of March 2018, I
4 notified C/O Moreno that I was being threatened by an inmate by
5 the name of MacCall. I told officer Moreno that the individual was
6 threatening to do physical harm to me, and that I would like to be
7 moved, or that Mr. MacCall should be moved. I kept being told
8 that the situation would be handled and that I don’t have to worry
9 about anything. However, on April 7th, 2018, I was jumped by
10 MacCall and was seriously injured. I received stitches in [my]
11 head, and bruises all over my body. After receiving medical
12 attention to my injuries, I was then moved out of A-Yard, where the
13 beating [occurred], to B-Yard. I was informed that inmate MacCall
14 was taken to [administrative segregation] for the assault. The
15 injuries I had received required me to be ambulatory removed from
16 the scene to be treated. I had reported the abuse I was receiving
17 from MacCall to several other officers, but to no resolution from
18 any of them. Had the staff responded to my complaints and
19 notification of the abuse and threats I was receiving from MacCall,
20 I would not have the stitches in my head, nor the consistent
21 headaches I am having.

22 *Id.* at 3.

23 Plaintiff claims: “Civil Rights violation of equal protection. Discrimination, Abuse under
24 color of Authority.” *Id.* Plaintiff seeks monetary relief. *Id.* at 6.

25 **III. DISCUSSION**

26 **A. Requirements under 42 U.S.C. § 1983**

27 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
28 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
state a claim under § 1983, a plaintiff must allege that a defendant, while acting under color of
state law, personally participated in the deprivation of a right secured by federal law. *See Soo*
Park v. Thompson, 851 F.3d 910, 918 (9th Cir. 2017). A defendant personally participates in a
deprivation “if he does an affirmative act, participates in another’s affirmative acts or omits to
perform an act which he is legally required to do that causes the deprivation of which complaint is
made.” *Atayde v. Napa State Hosp.*, 255 F. Supp. 3d 978, 988 (E.D. Cal. 2017) (quoting *Lacey v.*
Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012)). Vague and conclusory allegations of

1 personal involvement in an alleged deprivation do not suffice. *Id.*

2 “The Eleventh Amendment prohibits federal courts from hearing suits brought against an
3 unconsenting state.” *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th
4 Cir. 1991) (internal citations omitted). This prohibition extends to state agencies and suits
5 seeking monetary damages for past injury. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy,*
6 *Inc.*, 506 U.S. 139, 144 (1993); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100
7 (1984). Considering the foregoing, defendant CDCR is immune from suit under the Eleventh
8 Amendment, and we will recommend that the claim against CDCR be dismissed.

9 On the other hand, the three remaining defendants—state prison employees who can be
10 inferred to have acted under color of state law—are proper defendants. *See Paeste v. Gov’t of*
11 *Guam*, 798 F.3d 1228, 1238 (9th Cir. 2015) (“[G]enerally, a public employee acts under color of
12 state law while acting in his official capacity or while exercising his responsibilities pursuant to
13 state law.” (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988))). We next consider whether plaintiff
14 has alleged that each of these three defendants—Moreno, Lopez, and Doony—personally
15 participated in the alleged constitutional deprivations as required by § 1983. *See Preschooler II*,
16 479 F.3d at 1183.

17 Plaintiff plausibly alleges that defendant Moreno personally participated in the alleged
18 deprivations. Plaintiff contends that he told Moreno about the threats he was facing from
19 MacCall, and Moreno failed to protect plaintiff.

20 Plaintiff does not plausibly allege that defendants Lopez or Doony personally participated
21 in the alleged deprivations. Indeed, plaintiff makes no allegations against them at all. If these
22 defendants were involved in the situation plaintiff describes above, plaintiff must say so
23 explicitly. Plaintiff will be given leave to amend his complaint to cure this deficiency.

24 The remaining question is whether the defendant Moreno’s alleged actions violated
25 federal law. Plaintiff seeks to bring the following claims: “Civil Rights violation of equal
26 protection. Discrimination, Abuse under color of Authority.” ECF No. 1 at 3. Plaintiff’s
27 allegations, as currently stated, do not state the claims he seeks to bring. However, the facts do
28 implicate a failure-to-protect claim under the Eighth Amendment, which we will consider below.

1 **B. Failure to Protect in Violation of the Eighth Amendment**

2 “Prison officials have a duty to take reasonable steps to protect inmates from physical
3 abuse.” *Hoptowit v. Ray*, 682 F.2d 1237, 1250 (9th Cir. 1982), *abrogated on other grounds by*
4 *Sandin v. Conner*, 515 U.S. 472 (1995); *see also Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

5 To establish a violation of this duty, the prisoner must prove that prison officials were
6 “deliberately indifferen[t]” to serious threats to his or her safety. *See Farmer*, 511 U.S. at 834.
7 To demonstrate that a prison official was deliberately indifferent to a serious threat to an inmate’s
8 safety, the prisoner must show that “the official [knew] of and disregard[ed] an excessive risk to
9 inmate . . . safety; the official must both be aware of facts from which the inference could be
10 drawn that a substantial risk of serious harm exists, and [the official] must also draw the
11 inference.” *Farmer*, 511 U.S. at 837; *see also Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th
12 Cir. 2016) (explaining that subjective deliberate indifference standard under the Eighth
13 Amendment is well established). To prove knowledge of the risk, however, the prisoner may rely
14 on circumstantial evidence; in fact, the very obviousness of the risk may be sufficient to establish
15 knowledge. *See Farmer*, 511 U.S. at 842; *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995).

16 Here, the court finds that plaintiff has stated a cognizable Eighth Amendment failure-to-
17 protect claim against defendant Moreno. According to the complaint, plaintiff warned Moreno on
18 several occasions of threats he received from MacCall. Plaintiff further alleges that MacCall
19 acted on those threats by seriously injuring plaintiff. These allegations are sufficient to state a
20 claim against Moreno.

21 **IV. CONCLUSION**

22 The court has screened plaintiff’s complaint and finds that plaintiff states a failure-to-
23 protect claim against defendant Moreno. The court will recommend that plaintiff’s remaining
24 claims be dismissed without prejudice and that plaintiff be granted leave to amend the complaint.

25 Should plaintiff choose to amend the complaint, the amended complaint should be brief,
26 Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of
27 plaintiff’s constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678; *Jones v. Williams*,
28 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must set forth “sufficient factual matter . . . to ‘state a

1 claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
2 at 570). There is no *respondeat superior* liability, and each defendant is only liable for his or her
3 own misconduct. *See id.* at 677. Plaintiff must allege that each defendant personally participated
4 in the deprivation of his rights. *Jones*, 297 F.3d at 934 (emphasis added). Plaintiff should note
5 that a short, concise statement of the allegations in chronological order will assist the court in
6 identifying his claims. Plaintiff should name each defendant and explain what happened,
7 describing personal acts by the individual defendant that resulted in the violation of plaintiff’s
8 rights. Plaintiff should also describe any harm he suffered from the violation of his rights.
9 Plaintiff should not fundamentally alter his complaint or add unrelated issues. *See Fed. R. Civ. P.*
10 *18; George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Unrelated claims against different
11 defendants belong in different suits . . .”).

12 Any amended complaint will supersede the original complaint, *Lacey v. Maricopa*
13 *County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be complete on its face
14 without reference to the prior, superseded pleading, *see* E.D. Cal. Local Rule 220. Once an
15 amended complaint is filed, the original complaint no longer serves any function in the case.
16 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
17 of each defendant must be sufficiently alleged. The amended complaint should be titled “First
18 Amended Complaint,” refer to the appropriate case number, and be an original signed under
19 penalty of perjury.

20 **V. ORDER**

21 The clerk of court is directed to assign this case to a district judge, who will preside over
22 this case. The undersigned will remain as the magistrate judge assigned to the case.

23 **VI. RECOMMENDATIONS**

24 Under 28 U.S.C. § 636(c)(1), all parties named in a civil action must consent to a
25 magistrate judge’s jurisdiction before that jurisdiction vests for “dispositive decisions.” *Williams*
26 *v. King*, 875 F.3d 500, 504 (9th Cir. 2017). No defendant has appeared or consented to a
27 magistrate judge’s jurisdiction, so any dismissal of a claim requires an order from a district judge.
28 *Id.* Thus, the undersigned submits the following findings and recommendations to a United

1 States District Judge under 28 U.S.C. § 636(b)(1):

- 2 1. Plaintiff states a failure-to-protect claim against defendant Moreno.
3 2. Plaintiff's remaining claims should be dismissed without prejudice, and plaintiff
4 should be granted leave to amend the complaint.
5 3. If plaintiff files an amended complaint, defendant Moreno should not be required to
6 respond until the court screens the amended complaint.

7 Within fourteen days of service of these findings and recommendations, plaintiff may file
8 written objections with the court. If plaintiff files such objections, he should do so in a document
9 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is
10 advised that failure to file objections within the specified time may result in the waiver of rights
11 on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v.*
12 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: March 20, 2019


UNITED STATES MAGISTRATE JUDGE

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19 No. 203.

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