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11 UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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14 MATTHEW JENNINGS, ) 2:08-cv-01305-HDM-RAM  
15 Plaintiff, )  
16 vs. ) ORDER  
17 A. MORELAND, et al., )  
18 Defendants. )  
19 \_\_\_\_\_ )

20 Plaintiff is a state prisoner proceeding pro se. He seeks  
21 relief pursuant to 42 U.S.C. § 1983 and has requested authority to  
22 proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

23 Plaintiff has submitted a declaration that makes the showing  
24 required by 28 U.S.C. § 1915(a). Accordingly, the request to  
25 proceed *in forma pauperis* will be granted.

26 Plaintiff is required to pay the statutory filing fee of  
27 \$350.00 for this action. 28 U.S.C. § 1914(a), 1915(b)(1). An  
28 initial partial filing fee of \$1.77 will be assessed by this order.

1 28 U.S.C. § 1915(b) (1). By separate order, the court will direct  
2 the appropriate agency to collect the initial partial filing fee  
3 from plaintiff's trust account and forward it to the Clerk of the  
4 Court. Thereafter, plaintiff will be obligated for monthly  
5 payments of twenty percent of the preceding month's income credited  
6 to plaintiff's prison trust account. These payments will be  
7 forwarded by the appropriate agency to the Clerk of the Court each  
8 time the amount in plaintiff's account exceeds \$10.00, until the  
9 filing fee is paid in full. 28 U.S.C. § 1915(b) (2).

10 The court is required to screen complaints brought by  
11 prisoners seeking relief against a governmental entity or officer  
12 or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
13 court must dismiss a complaint or portion thereof if the prisoner  
14 has raised claims that are legally "frivolous or malicious," that  
15 fail to state a claim upon which relief may be granted, or that  
16 seek monetary relief from a defendant who is immune from such  
17 relief. 28 U.S.C. § 1915A(b) (1), (2).

18 A claim is legally frivolous when it lacks an arguable basis  
19 in either law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325  
20 (1989). The court may, therefore, dismiss a claim as frivolous  
21 where it is based on an indisputably meritless legal theory or  
22 where the factual contentions are clearly baseless. *Id.* at 327.

23 Dismissal of a complaint for failure to state a claim upon  
24 which relief may be granted is provided for in Federal Rule of  
25 Civil Procedure 12(b) (6), and the court applies the same standard  
26 under Section 1915(e) (2) when reviewing the adequacy of a complaint  
27 or amended complaint. Such review is essentially a ruling on a  
28 question of law. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719,

1 723 (9th Cir. 2000). Dismissal for failure to state a claim is  
2 proper only if it is clear that the plaintiff cannot prove any set  
3 of facts in support of the claim that would entitle him or her to  
4 relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).  
5 In making this determination, the court takes as true all  
6 allegations of material fact stated in the complaint, and the court  
7 construes them in the light most favorable to plaintiff. See  
8 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).  
9 Allegations in a pro se complaint are held to less stringent  
10 standards than formal pleadings drafted by lawyers. *Haines v.*  
11 *Kerner*, 404 U.S. 519, 520-21 (1972).

#### 12 **Plaintiff's Claims**

13 In his complaint, plaintiff asserts that he was threatened by  
14 two inmates on July 31, 2007, and attacked by one of them on August  
15 1, 2007. During the attack, plaintiff was shot in the shoulder.  
16 The "shot tore [his] shoulder open causing bleeding, immediate  
17 swelling and extreme pain." Plaintiff was taken to see defendant  
18 nurse M. Valente, who treated him by dabbing his shoulder with a  
19 saline solution, and then was placed in administrative segregation.

20 During his time in administrative segregation, plaintiff  
21 complained to numerous prison officials and medical staff members  
22 that he had been shot, was in extreme pain, and needed to see a  
23 doctor. He filled out numerous medical request forms, giving them  
24 to staff members who were administering medication. On August 8,  
25 2007, plaintiff was taken to see defendant nurse Kitty Craddock.  
26 Defendant Craddock's treatment consisted of administering plaintiff  
27 some ointment and a "bandaid"; plaintiff maintains Craddock ignored  
28 his complaints of pain.

1 On August 9, 2007, plaintiff was released from administrative  
2 segregation into the general population. There, plaintiff  
3 complained to another nurse, who examined his shoulder and  
4 scheduled him an appointment with a doctor the next morning.  
5 Plaintiff asserts that he was not allowed to see the doctor and  
6 appears to blame this on defendant Brown and another correctional  
7 officer, who searched his cell, found his notes regarding the  
8 events underlying his complaint, and divulged the notes' contents  
9 to prison staff mentioned in the notes. Plaintiff continued to  
10 complain to correctional officers and medical staff members about  
11 his wound, but it was not until August 13, 2007, after showing a  
12 correctional officer his shoulder and explaining that he had not  
13 yet seen a doctor, that plaintiff was taken to the emergency room.  
14 In the emergency room, plaintiff was given a tetanus shot and a  
15 shot for the pain.

#### 16 **Analysis of Plaintiff's Claims**

17 Plaintiff alleges that defendants Moreland and Bartel  
18 overheard the inmates' threats against plaintiff on July 31, 2007,  
19 but failed to protect him from the August 1, 2007 attack.  
20 Plaintiff has stated a claim against defendants Moreland and Bartel  
21 for a violation of his Eighth Amendment rights.

22 Plaintiff also asserts that defendants Walker and Vance  
23 released him into the general population despite knowing he had  
24 been attacked. The Eighth Amendment requires prison officials to  
25 take reasonable measures to guarantee the safety of prisoners,  
26 including protection from violence at the hands of other prisoners.  
27 *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To prevail on such a  
28 claim, the plaintiff must show: (1) the deprivation alleged is

1 objectively, sufficiently serious; and (2) the prison official is  
2 subjectively, deliberately indifferent to inmate safety. *Id.* at  
3 834. Plaintiff does not allege that he suffered any physical harm  
4 as a result of his release into the general population, and to the  
5 extent he claims the harm suffered is mental or emotional, such  
6 claim is barred by the Prison Litigation Reform Act ("PLRA"). See  
7 42 U.S.C. § 1997e(e) ("No federal civil action may be brought by a  
8 prisoner confined in a jail, prison, or other correctional  
9 facility, for mental or emotional injury suffered while in custody  
10 without a prior showing of physical injury."). Plaintiff has  
11 therefore not alleged an objectively, sufficiently serious harm  
12 necessary to state an Eighth Amendment failure to protect claim  
13 against defendants Vance and Walker, and such claim will be  
14 dismissed.

15 Plaintiff also claims that several defendants were  
16 deliberately indifferent to his serious medical needs in violation  
17 of his Eighth Amendment rights. As to those defendants who were  
18 involved in treating plaintiff, or who were given his medical  
19 request forms, namely defendants M. Valente, Kitty Craddock,  
20 Stewart, and Carol, plaintiff has stated a claim for deliberate  
21 indifference to his serious medical needs. As to those defendants  
22 to whom plaintiff complained of his wound, his pain, and his need  
23 to see a doctor, namely defendants Vance, Brown, Miguel, and  
24 Moreland, plaintiff has also stated a claim.

25 However, plaintiff's complaint contains insufficient factual  
26 allegations to state a claim for deliberate indifference as to  
27 defendants B. Brown, Pereira, Secluna, and Lt. Goldman. To state a  
28 claim for a violation of the Eighth Amendment based on inadequate

1 medical care, plaintiff must allege "acts or omissions sufficiently  
2 harmful to evidence deliberate indifference to serious medical  
3 needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Plaintiff  
4 must show medical needs were objectively serious, and that  
5 defendants possessed a sufficiently culpable state of mind, which  
6 in the medical context is deliberate indifference. *Wilson v.*  
7 *Seiter*, 501 U.S. 294, 299 (1991); *Hudson v. McMillian*, 503 U.S. 1,  
8 4 (1992). A defendant is liable for denying needed medical care  
9 only if he "knows of and disregards an excessive risk to inmate  
10 health and safety." *Gibson v. County of Washoe*, 290 F.3d 1175,  
11 1187 (9th Cir. 2002) (internal quotation marks omitted). "Prison  
12 officials are deliberately indifferent to a prisoner's serious  
13 medical needs when they deny, delay, or intentionally interfere  
14 with medical treatment." *Hallett v. Morgan*, 296 F.3d 732, 744 (9th  
15 Cir. 2002) (internal quotation marks omitted). A "serious" medical  
16 need exists if the failure to treat a prisoner's condition could  
17 result in further significant injury or the "unnecessary and wanton  
18 infliction of pain." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th  
19 Cir. 1992), overruled on other grounds, *WMX Technologies, Inc. v.*  
20 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

21       The plaintiff alleges that defendant Lt. Goldman videotaped  
22 his shoulder and questioned him about the attack. Plaintiff does  
23 not allege that he told Lt. Goldman of his extreme pain or the fact  
24 he had not yet seen a doctor, and thus under the allegations of  
25 plaintiff's complaint there was no reason for Lt. Goldman to know  
26 of and disregard an excessive risk to plaintiff's health.  
27 Plaintiff has not stated a claim against defendant Lt. Goldman.

28       According to plaintiff, he complained to defendants B. Brown,

1 Pereira, and Secluna either during or immediately after seeing a  
2 nurse. Given that plaintiff had just received medical attention at  
3 the time he complained to these defendants, the facts are  
4 insufficient to show these defendants were deliberately indifferent  
5 to his serious medical needs.

6 Plaintiff asserts numerous factual allegations against  
7 "Moses," but does not include "Moses" in the caption of his  
8 complaint. Plaintiff is informed that if he intends to pursue his  
9 civil rights complaint against "Moses," "Moses" needs to be listed  
10 in the caption along with the other defendants.

11 The Health Care Services at CSP may be a proper defendant, but  
12 the plaintiff is advised that if Health Care Services is a state  
13 agency, it will be entitled to Eleventh Amendment immunity. See  
14 *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 889, 100  
15 (1984) (Eleventh Amendment proscribes suit against state agencies  
16 "regardless of the nature of the relief sought").

17 Plaintiff is granted leave to amend his complaint in  
18 accordance with this order. Plaintiff is informed that the court  
19 cannot refer to a prior pleading in order to make plaintiff's  
20 amended complaint complete. Local Rule 15-220 requires that an  
21 amended complaint be complete in itself without reference to any  
22 prior pleading. This is because, as a general rule, an amended  
23 complaint supersedes the original complaint. See *Loux v. Rhay*, 375  
24 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended  
25 complaint, the original pleading no longer serves any function in  
26 the case. Therefore, in an amended complaint, as in an original  
27 complaint, each claim and the involvement of each defendant must be  
28 sufficiently alleged.

1 Accordingly, IT IS HEREBY ORDERED that:

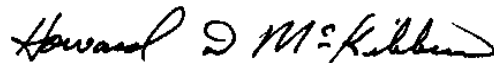
2 1. Plaintiff's request to proceed in forma pauperis is  
3 granted;

4 2. Plaintiff is obligated to pay the statutory filing fee of  
5 \$350.00 for this action. Plaintiff is assessed an initial partial  
6 filing fee of \$1.77. All fees shall be collected and paid in  
7 accordance with this court's order to the Director of the  
8 California Department of Corrections and Rehabilitation filed  
9 concurrently herewith.

10 3. Plaintiff's claims against defendants Walker, B. Brown,  
11 Pereira, Secluna, and Lt. Goldman, and his claims for failure to  
12 protect against defendant Vance, are dismissed for the reasons  
13 discussed above, with leave to file an amended complaint within  
14 thirty days from the date of service of this order. Failure to  
15 file an amended complaint will result in dismissal of those  
16 defendants from this action.

17 4. Upon filing an amended complaint or expiration of the time  
18 allowed therefor, the court will make further orders for service of  
19 process upon some or all of the defendants.

20 DATED: This 5th day of February, 2009.

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22 UNITED STATES DISTRICT JUDGE  
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