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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WALTER SHANE LANGSTON,  
Plaintiff,  
v.  
GAMOLY, et al.,  
Defendants.

No. 2:16-CV-2361-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff’s complaint (Doc. 1). Plaintiff alleges defendants violated his Eighth Amendment rights by failing to protect him despite having knowledge that he was in danger. Plaintiff also alleges a violation of his Fourteenth Amendment rights.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

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1 subsequently provided “protection on sensitive need yard.” Additionally, Plaintiff states that the  
2 “defendants” have violated his Fourteenth Amendment rights.

## 3 4 II. ANALYSIS

5 Plaintiff alleges Dr. Gamoly failed to protect him despite knowing he was in  
6 imminent threat of harm. The treatment a prisoner receives in prison and the conditions under  
7 which the prisoner is confined are subject to scrutiny under the Eighth Amendment, which  
8 prohibits cruel and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993);  
9 Farmer v. Brennan, 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and  
10 idealistic concepts of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble,  
11 429 U.S. 97, 102 (1976). Conditions of confinement may, however, be harsh and restrictive. See  
12 Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide  
13 prisoners with “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint  
14 v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth  
15 Amendment only when two requirements are met: (1) objectively, the official’s act or omission  
16 must be so serious such that it results in the denial of the minimal civilized measure of life’s  
17 necessities; and (2) subjectively, the prison official must have acted unnecessarily and wantonly  
18 for the purpose of inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth  
19 Amendment, a prison official must have a “sufficiently culpable mind.” See id.

20 Under these principles, prison officials have a duty to take reasonable steps to  
21 protect inmates from physical abuse. See Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir.  
22 1982); Farmer, 511 U.S. at 833. Liability exists if: (1) objectively, the prisoner was incarcerated  
23 under conditions presenting a substantial risk of serious harm; and (2) subjectively, prison  
24 officials knew of and disregarded the risk. See Farmer, 511 U.S. at 837. The very obviousness of  
25 the risk may suffice to establish the knowledge element. See Wallis v. Baldwin, 70 F.3d 1074,  
26 1077 (9th Cir. 1995). Prison officials are not liable, however, if evidence is presented that they  
27 lacked knowledge of a safety risk. See Farmer, 511 U.S. at 844. The knowledge element does  
28 not require that the plaintiff prove that prison officials know for a certainty that the inmate’s

1 safety is in danger, but it requires proof of more than a mere suspicion of danger. See Berg v.  
2 Kincheloe, 794 F.2d 457, 459 (9th Cir. 1986). Finally, the plaintiff must show that prison  
3 officials disregarded a risk. Thus, where prison officials actually knew of a substantial risk, they  
4 are not liable if they took reasonable steps to respond to the risk, even if harm ultimately was not  
5 averted. See Farmer, 511 U.S. at 844.

6           Despite naming multiple defendants in his complaint, Plaintiff only alleges facts  
7 related to Dr. Gamoly. Plaintiff seems to allege Dr. Gamoly is a psychologist at the prison.  
8 Because the complaint alleges Dr. Gamoly is a physician who contracts with the prison to provide  
9 medical service, Dr. Gamoly is a proper defendant. See West v. Atkins, 487 U.S. 42, 53-54  
10 (1988). However, because there are no facts related to Defendants Blackford, Roy Dollarhide,  
11 Nyrene Clark, Mier, or Fox, they are not proper defendants and thus any claim against them must  
12 be dismissed. If Plaintiff wishes to allege additional facts related to any defendant(s) other than  
13 Dr. Gamoly, he must file an amended complaint realleging the factual allegations against Dr.  
14 Gamoly and including additional factual allegations against the other defendants.

15           In order for Plaintiff to establish the liability of a prison official for failure to  
16 protect, he must demonstrate that the prison official was deliberately indifferent to serious threats  
17 to his safety or to his health. See Farmer, 511 U.S. at 834, 837. This is satisfied, at the pleading  
18 stage, if Plaintiff can allege sufficient facts that (1) his conditions of incarceration objectively  
19 presented a substantial risk of serious harm and (2) the prison official(s) knew of and disregarded  
20 that risk. *Id.* The complaint here alleges the conditions of Plaintiff's incarceration presented a  
21 substantial risk to his safety because he is labeled as a rapist and targeted by other inmates. He  
22 further alleges that he informed Dr. Gamoly of this fact, requested more protective confinement,  
23 and was denied it. Based on this information, Plaintiff has plead sufficient fact to proceed past  
24 the screening stage on his claim against Dr. Gamoly.

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### III. CONCLUSION

Because it is possible that the deficiencies identified in this order may be cured by amending the complaint, plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be complete in itself without reference to any prior pleading. See id.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is involved, and must set forth some affirmative link or connection between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Because the complaint appears to otherwise state cognizable claim against defendant Gamoly, if no amended complaint is filed within the time allowed therefor, the court will issue findings and recommendations that the remaining defendants be dismissed, as well as such further orders as are necessary for service of process as to defendant Gamoly.

IT IS HEREBY ORDERED that plaintiff may file a first amended complaint within 30 days of the date of service of this order.

Dated: November 19, 2018



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE