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

DANIEL CARREON, JR.,

Plaintiff,

No. CIV S-11-2952 WBS EFB P

vs.

S. BANKE, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

**I. Request to Proceed In Forma Pauperis**

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 2. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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1 **II. Screening Requirement and Standards**

2 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
7 relief.” *Id.* § 1915A(b).

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
10 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words,  
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
12 statements do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

13 Furthermore, a claim upon which the court can grant relief has facial plausibility.  
14 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
15 content that allows the court to draw the reasonable inference that the defendant is liable for the  
16 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a  
17 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
18 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to  
19 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

20 A *pro se* plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal  
21 Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain  
22 statement of the claim showing that the pleader is entitled to relief, in order to give the defendant  
23 fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,  
24 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

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1 **III. Screening Order**

2 The court has reviewed plaintiff's complaint and for the limited purposes of § 1915A  
3 screening, finds that it states cognizable Eighth Amendment claims against defendants Banke  
4 and Golden, based on the allegations that they knew plaintiff faced an immediate threat to his  
5 safety and failed to take reasonable measures in response. However, the complaint does not  
6 state a cognizable claim against the other named defendants, Warden Hill and Matthew Cate, and  
7 those defendants will therefore be dismissed with leave to amend.

8 An individual defendant is not liable on a civil rights claim unless the facts establish the  
9 defendant's personal involvement in the constitutional deprivation or a causal connection  
10 between the defendant's wrongful conduct and the alleged constitutional deprivation. *See*  
11 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th  
12 Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for  
13 the unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948  
14 (2009). Because respondeat superior liability is inapplicable to § 1983 suits, "a plaintiff must  
15 plead that each Government-official defendant, through the official's own individual actions, has  
16 violated the Constitution." *Id.* It is plaintiff's responsibility to allege facts to state a plausible  
17 claim for relief. *Iqbal*, 129 S. Ct. at 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
18 2009). Here, plaintiff has not alleged that either Hill or Cate were personally involved in the  
19 alleged deprivation of his Eighth Amendment rights.

20 Thus, plaintiff may proceed only on his Eighth Amendment claims against defendants  
21 Banke and Golden, or he may amend his complaint to attempt to cure the deficiencies identified  
22 above. Plaintiff is not obligated to amend his complaint. Should plaintiff chose to amend,  
23 however, he is hereby reminded that any amended complaint must be complete in itself without  
24 reference to any prior pleading, E.D. Cal. Local Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th  
25 Cir. 1967), and that once plaintiff files an amended complaint, the original pleading is  
26 superseded. Additionally, plaintiff may not change the nature of this suit by alleging new,

1 unrelated claims in an amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)  
2 (no “buckshot” complaints).

3 If plaintiff chooses to proceed only on his Eighth Amendment claims against defendants  
4 Banke and Golden as identified herein, the court will construe plaintiff’s election as his  
5 voluntary dismissal of defendants Hill and Cate, without prejudice.

6 Accordingly, the court hereby orders that:

7 1. Plaintiff’s request to proceed in forma pauperis (Dckt. No. 2) is granted.

8 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in  
9 accordance with the notice to the Director of the California Department of Corrections and  
10 Rehabilitation filed concurrently herewith.

11 3. Claims against defendants Hill and Cate are dismissed. Within 30 days of service of  
12 this order, plaintiff may amend his complaint in accordance with this Screening Order.


13 4. The allegations in the pleading are sufficient at least to state cognizable Eighth  
14 Amendment claims against defendants Banke and Golden. *See* 28 U.S.C. § 1915A. With this  
15 order the Clerk of the Court shall provide to plaintiff a blank summons, a copy of the complaint  
16 filed November 7, 2011, two USM-285 forms and instructions for service of process on  
17 defendants Banke and Golden. Within 30 days of service of this order plaintiff may return the  
18 attached Notice of Submission of Documents with the completed summons, the completed  
19 USM-285 forms, and three copies of the complaint. The court will transmit them to the United  
20 States Marshal for service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure.  
21 Defendants Banke and Golden will be required to respond to plaintiff’s allegations within the  
22 deadlines stated in Rule 12(a)(1) of the Federal Rules of Civil Procedure. In this event, the court  
23 will construe plaintiff’s election to proceed forthwith as his voluntary dismissal of defendants  
24 Hill and Cate, without prejudice.

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1           5. Failure to comply with this order will result in a recommendation that this action be  
2 dismissed.

3 Dated: April 23, 2012.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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Plaintiff,

No. CIV S-11-2952 WBS EFB P

vs.

S. BANKE, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

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In accordance with the court’s Screening Order, plaintiff hereby elects to:

(1) \_\_\_\_\_ dismiss defendants Hill and Cate without prejudice, and submits the following documents:

1 completed summons form

2 completed forms USM-285

3 copies of the complaint

**OR**

(2) \_\_\_\_\_ delay serving any defendant and files an amended complaint in accordance with the court’s Screening Order.

Dated:

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Plaintiff