

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 **III. Screening Order**

25 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds it
26 must be dismissed for failure to state a viable claim. First, the complaint names various
27 defendants but includes no allegations against them. The complaint lists Warden Fox, Brian

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1 Duffy, and officer Tabbs as defendants. ECF No. 1 at 3, 9.¹ The complaint fails to state a claim
2 against any of these defendants because there are no allegations referencing them or otherwise
3 linking them to a violation of plaintiff's federal constitutional or statutory rights. Second, the
4 allegations in the complaint are too vague and conclusory to state a cognizable claim for relief.
5 The complaint lists Lasseiter, Montemayor, and B.J. as defendants, but the only reference to them
6 is in a third party declaration, submitted with the complaint, which states that each of these
7 defendants made disparaging or threatening comments to plaintiff. *Id.* at 5. It is not clear whether
8 these alleged statements are intended to serve as a basis for any § 1983 claims. If they are, they
9 are not sufficient, as verbal harassment, by itself, does not violate the Eighth Amendment. *See*
10 *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996). In the body of the complaint, plaintiff
11 alleges that officer Ballenger, who is not identified as a defendant, failed to protect him from an
12 attack by another inmate and that officer Mendoza, who is also not identified as a defendant,
13 retaliated against plaintiff. However, a complaint must provide defendants with fair notice of the
14 claims against them. If plaintiff wishes to pursue a claim against officers Ballenger or Mendoza,
15 he must properly identify them as defendants. *See* Fed. R. Civ. P. 10(a).

16 Based on the foregoing, plaintiff fails to state a claim for relief and his complaint must be
17 dismissed. Plaintiff may, if he chooses, amend his complaint to correct these deficiencies. *Lopez*
18 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro se
19 litigants an opportunity to amend to correct any deficiency in their complaints). Should plaintiff
20 choose to file an amended complaint, the amended complaint shall clearly set forth the claims and
21 allegations against each defendant. Any amended complaint must cure the deficiencies identified
22 above and also adhere to the following requirements:

23 Any amended complaint must identify as a defendant only persons who personally
24 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
25 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a

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28 ¹ This and subsequent page number citations to plaintiff's complaint are to the page
number reflected on the court's CM/ECF system and not to page numbers assigned by plaintiff.

1 constitutional right if he does an act, participates in another's act or omits to perform an act he is
2 legally required to do that causes the alleged deprivation).

3 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

4 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
5 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

6 Any amended complaint must be written or typed so that it so that it is complete in itself
7 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
8 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
9 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
10 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
11 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
12 1967)).

13 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
14 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
15 *See* E.D. Cal. L.R. 110.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.
- 18 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
19 in accordance with the notice to the California Department of Corrections and
20 Rehabilitation filed concurrently herewith.
- 21 3. The complaint is dismissed with leave to amend within 30 days. The complaint
22 must bear the docket number assigned to this case and be titled “Amended
23 Complaint.” Failure to comply with this order will result in dismissal of this
24 action for failure to prosecute. If plaintiff files an amended complaint stating a
25 cognizable claim the court will proceed with service of process by the United
26 States Marshal.

27 Dated: November 14, 2017.

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EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE