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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENNY TREVELL COUSER,	)	Case No. EDCV 11-0894-DDP (DTB)
	)	
Plaintiff,	)	ORDER DISMISSING COMPLAINT
vs.	)	WITH LEAVE TO AMEND
L. DONALDSON, et al.,	)	
	)	
Defendants.	)	

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Plaintiff, a California state prisoner incarcerated at the Desert View Modified Community Corrections Facility, filed a pro se civil rights action herein pursuant to 42 U.S.C. § 1983 on June 13, 2011, after being granted leave to proceed in forma pauperis.

The Complaint alleges violations of plaintiff’s constitutional rights under the Fourth, Fifth, Eighth and Fourteenth Amendments. Plaintiff purports to name five defendants: Correctional Case Records Manager, L. Donaldson; Correctional Case Records Analyst, Kathy Smith; Correctional Case Records Specialist, N. Castellon; Correctional Counsel 1, R. Issac; and Warden, Wanda Wilson. Plaintiff names all the defendants both in their individual and official capacities. Plaintiff purports to be seeking monetary relief and a permanent injunctive order.

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1           Insofar as the Court can glean, the gravamen of plaintiff’s allegations is that  
2 the defendants, all of whom are employees of the California Department of  
3 Corrections and Rehabilitation, failed to adequately ensure that plaintiff’s underlying  
4 sentence, which was imposed in his felony criminal proceeding in San Bernardino  
5 County Superior Court, was lawful. (Complaint at 6-8.)

6           In accordance with the terms of the “Prison Litigation Reform Act of 1995,”  
7 the Court now has screened the Complaint prior to ordering service, for purposes of  
8 determining whether the action is frivolous or malicious; or fails to state a claim on  
9 which relief may be granted; or seeks monetary relief against a defendant who is  
10 immune from such relief. See 28 U.S.C. §§ 1915(e)(2), 1915A(b); 42 U.S.C. §  
11 1997e(c)(1).

12           The Court’s screening of the Complaint under the foregoing statutes is  
13 governed by the following standards. A complaint may be dismissed as a matter of  
14 law for failure to state a claim for two reasons: (1) Lack of a cognizable legal theory;  
15 or (2) insufficient facts under a cognizable legal theory. See Balistreri v. Pacifica  
16 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). In determining whether a complaint  
17 states a claim on which relief may be granted, allegations of material fact are taken  
18 as true and construed in the light most favorable to the plaintiff. See Love v. United  
19 States, 915 F.2d 1242, 1245 (9th Cir. 1989). Moreover, since plaintiff is appearing  
20 pro se, the Court must construe the allegations of the Complaint liberally and must  
21 afford plaintiff the benefit of any doubt. See Karim-Panahi v. Los Angeles Police  
22 Dep’t, 839 F.2d 621, 623 (9th Cir. 1988). However, “the liberal pleading standard  
23 ... applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319,  
24 330 n.9, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). “[A] liberal interpretation of a  
25 civil rights complaint may not supply essential elements of the claim that were not  
26 initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir.  
27 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.1982)).

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1 Pursuant to Fed. R. Civ. P. 8(a), a complaint must contain “a short and  
2 complete statement of the claim showing that the pleader is entitled to relief.” As the  
3 Supreme Court has held, Rule 8(a) “requires a ‘showing,’ rather than a blanket  
4 assertion, of entitlement to relief,” and that “a plaintiff’s obligation to provide the  
5 ‘grounds’ of his ‘entitlement to relief requires more than labels and conclusions, and  
6 a formulaic recitation of the elements of a cause of action will not do. . . . Factual  
7 allegations must be enough to raise a right to relief above the speculative level.” See  
8 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1964-65, 167 L. Ed.  
9 2d 929 (2007) (internal citations omitted). Where the allegations in a complaint “do  
10 not permit the court to infer more than the mere possibility of misconduct, the  
11 complaint has alleged - but it has not ‘show[n]’ - ‘that the pleader is entitled to  
12 relief’.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009), quoting  
13 Fed. R. Civ. P. 8(a)(2). Thus, plaintiff must allege a minimum factual and legal basis  
14 for each claim that is sufficient to give each defendant fair notice of what plaintiff’s  
15 claims are and the grounds upon which they rest. See, e.g., Brazil v. United States  
16 Dep’t of the Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d  
17 795, 798 (9th Cir. 1991). Moreover, failure to comply with Rule 8(a) constitutes an  
18 independent basis for dismissal of a complaint that applies even if the claims in a  
19 complaint are not found to be wholly without merit. See McHenry v. Renne, 84 F.3d  
20 1172, 1179 (9th Cir. 1996); Nevijel v. Northcoast Life Ins. Co., 651 F.2d 671, 673  
21 (9th Cir. 1981).

22 After careful review and consideration of the Complaint under the foregoing  
23 standards, the Court finds that it suffers from the pleading deficiencies discussed  
24 below. Accordingly, the Complaint is dismissed with leave to amend. See Noll v.  
25 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (holding that a pro se litigant must be  
26 given leave to amend his complaint unless it is absolutely clear that the deficiencies  
27 of the complaint cannot be cured by amendment). If plaintiff still desires to pursue

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1 this action, he is ORDERED to file a First Amended Complaint within thirty (30)  
2 days of the date of this Order remedying the deficiencies discussed below.

### 4 DISCUSSION

5 **A. Plaintiff's allegations are insufficient to state a federal civil rights claim**  
6 **against any of the named defendants.**

7 While it is not clear to the Court what the factual basis is for any purported  
8 civil rights claim, or even what specific claims plaintiff is purporting to raise, it does  
9 appear that plaintiff is challenging the length and duration of this custodial  
10 confinement. (Complaint at 6-8.)

11 However, to the extent that plaintiff is purporting to claim that his continued  
12 incarceration is unlawful, a petition for writ of habeas corpus is a prisoner's sole  
13 judicial remedy when "attacking the validity of the fact or length of [his]  
14 confinement." Preiser v. Rodriguez, 411 U.S. 475, 490, 93 S. Ct. 1827, 36 L. Ed. 2d  
15 439 (1973); Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1990). Therefore, plaintiff  
16 may not use a civil rights action to challenge the validity of his continued  
17 incarceration. Such relief only is available in a habeas corpus action.

18 Further, to the extent that plaintiff is seeking monetary damages as a remedy  
19 for allegedly being held beyond a lawful release date, his claim is not cognizable  
20 under § 1983 unless and until he can show that the administrative action that he  
21 alleges resulted in his allegedly unlawful continued incarceration already has been  
22 invalidated (e.g., declared invalid by a state tribunal authorized to make such  
23 determination, or called into question by a federal court's issuance of a writ of habeas  
24 corpus). See Wilkinson v. Dotson, 544, U.S. 74, 125 S. Ct. 1242, 1248, 161 L. Ed.  
25 2d 253 (2005) ("[A] state prisoner's § 1983 action is barred (absent prior  
26 invalidation) – no matter the relief sought (damages or equitable relief), no matter the  
27 target of the prisoner's suit (state conduct leading to conviction or internal prison  
28 proceedings) – if success in that action would necessarily demonstrate the invalidity

1 of confinement or its duration.” (emphasis in original)); Edwards v. Balisok, 520 U.S.  
2 641, 646, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997) (barring a civil rights challenge  
3 to a prison disciplinary hearing because success on the claim would “necessarily  
4 imply the invalidity of the deprivation of his good-time credits”); Heck v. Humphrey,  
5 512 U.S. 477, 486-87, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994) (holding that, if a  
6 judgment in favor of plaintiff on his civil rights damages action necessarily will imply  
7 the invalidity of his conviction or sentence, the complaint must be dismissed unless  
8 plaintiff can demonstrate that the conviction or sentence already has been  
9 invalidated); see also Ramirez v. Galaza, 334 F.3d 850, 856 (9th Cir. 2003), cert.  
10 denied, 541 U.S. 1063 (2004). Plaintiff has not alleged that the underlying state court  
11 judgment of conviction has been invalidated.

12 The Court notes that plaintiff has a pending federal habeas corpus petition in  
13 which he raises the assertions contained in the Complaint. (Case No. EDCV11-0788-  
14 DDP (DTB).)

15 Although the Court is extremely dubious that the Complaint’s deficiencies can  
16 be overcome, the Court will afford plaintiff the opportunity to attempt to do so. See  
17 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (holding that a pro se litigant  
18 must be given leave to amend his Complaint unless it is absolutely clear that the  
19 deficiencies of the Complaint cannot be cured by amendment). The Complaint  
20 therefore is dismissed with leave to amend. If plaintiff desires to pursue this action,  
21 he is ORDERED to file a First Amended Complaint within thirty (30) days of the  
22 service date of this Order, remedying the deficiencies discussed above.

23 If plaintiff chooses to file a First Amended Complaint, it should bear the docket  
24 number assigned in this case; be labeled “First Amended Complaint”; and be  
25 complete in and of itself without reference to the original Complaint or any other  
26 pleading, attachment or document. **Plaintiff is admonished that, if he fails to timely**

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1 **file a First Amended Complaint, the Court will recommend that the action be**  
2 **dismissed with prejudice on the grounds set forth above and for failure to**  
3 **diligently prosecute.**

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5 DATED: July 18, 2011



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8 DAVID T. BRISTOW  
9 UNITED STATES MAGISTRATE JUDGE

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