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

JOHNNY BEE MILTON,

No. 2:15-CV-0537-CMK-P

Plaintiff,

vs.

ORDER

F. FOULK,

Defendant.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff’s complaint (Doc. 5).

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). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied

1 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
2 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
3 allege with at least some degree of particularity overt acts by specific defendants which support  
4 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
5 impossible for the court to conduct the screening required by law when the allegations are vague  
6 and conclusory.

7 In this case, plaintiff complains of various problems with his criminal trial and  
8 seeks release from prison. When a state prisoner challenges the legality of his custody and the  
9 relief he seeks is a determination that he is entitled to an earlier or immediate release, such a  
10 challenge is not cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a  
11 petition for a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also  
12 Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583,  
13 586 (9th Cir. 1995) (per curiam). On February 24, 2016, the court directed plaintiff to show  
14 cause why the action should not be dismissed for failure to state a claim. Plaintiff has not  
15 responded. Because it does not appear possible that the deficiencies identified herein can be  
16 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of  
17 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. This action is dismissed for failure to state a claim; and
- 20 2. The Clerk of the Court is directed to enter judgment and close this file.

21  
22 DATED: May 16, 2016

23   
24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE  
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