

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT BARRY ROBERTS,
Plaintiff,

v.

SENIOR U.S. DISTRICT COURT
JUSTICE, et al.,
Defendants.

Case No. [18-cv-00369-JD](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Re: Dkt. No. 5

Plaintiff, a state prisoner, has filed a pro se petition for writ of mandamus. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

United States District Court
Northern District of California

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
 2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
 3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
 4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
 5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
 6 should assume their veracity and then determine whether they plausibly give rise to an entitlement
 7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 LEGAL CLAIMS

9 Plaintiff states that pursuant to Proposition 47 his felony convictions were reduced to
 10 misdemeanors. In the superior court he requested a new restitution hearing, but the request was
 11 denied. Plaintiff seeks this Court to order the state court to vacate his restitution and plaintiff
 12 seeks a pardon from the President of the United States.

13 Federal district courts are without power to issue mandamus to direct state courts, state
 14 judicial officers, or other state officials in the performance of their duties. A petition for a writ of
 15 mandamus to compel a state court or official to take or refrain from some action is frivolous as a
 16 matter of law. *See Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir. 1991)
 17 (imposing no filing in forma pauperis order); *Clark v. Washington*, 366 F.2d 678, 681 (9th Cir.
 18 1966) (attorney contested disbarment and sought reinstatement).

19 Pursuant to the legal standards set forth above, plaintiff may not proceed with his petition
 20 for writ of mandamus. The complaint is dismissed and plaintiff will be provided one opportunity
 21 to amend. With respect to his request for a presidential pardon, he must petition the president and
 22 not this Court.

23 CONCLUSION

- 24 1. The motion to proceed in forma pauperis (Docket No. 5) is **GRANTED**.
- 25 2. The complaint is **DISMISSED** with leave to amend. The amended complaint must
 26 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
 27 and civil case number used in this order and the words AMENDED COMPLAINT on the first
 28 page. Because an amended complaint completely replaces the original complaint, plaintiff must

1 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
2 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
3 amend within the designated time will result in the dismissal of this case.

4 3. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
5 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
6 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
7 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
8 Civil Procedure 41(b).

9 **IT IS SO ORDERED.**

10 Dated: June 26, 2018

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT BARRY ROBERTS,
Plaintiff,

v.

SENIOR U.S. DISTRICT COURT
JUSTICE, et al.,
Defendants.

Case No. [18-cv-00369-JD](#)

CERTIFICATE OF SERVICE

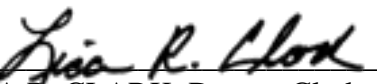
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 26, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Barry Roberts
H.C.C.F.
F33425
826 4th Street
Eureka, CA 95501

Dated: June 26, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28