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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHNNY LEE BRIGGS,

 Petitioner,

 v.

FRESNO SUPERIOR COURT, et al.,

 Respondents.

Case No. 1:12-cv-01549-SKO-HC

ORDER DISMISSING THE THIRD AMENDED
PETITION WITHOUT LEAVE TO AMEND
(DOC. 19)

ORDER DECLINING TO ISSUE A
CERTIFICATE OF APPEALABILITY
AND DIRECTING THE CLERK TO CLOSE
THE CASE

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting his consent in a writing signed by Petitioner and filed on October 1, 2012.

Pending before the Court is the third amended petition (TAP), filed by Petitioner on August 2, 2013.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States

1 District Courts (Habeas Rules) requires the Court to make a
2 preliminary review of each petition for writ of habeas corpus. The
3 Court must summarily dismiss a petition "[i]f it plainly appears
4 from the petition and any attached exhibits that the petitioner is
5 not entitled to relief in the district court...." Habeas Rule 4;
6 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
7 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
8 2(c) requires that a petition 1) specify all grounds of relief
9 available to the Petitioner; 2) state the facts supporting each
10 ground; and 3) state the relief requested. Notice pleading is not
11 sufficient; the petition must state facts that point to a real
12 possibility of constitutional error. Rule 4, Advisory Committee
13 Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420 (quoting
14 Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)). Allegations in
15 a petition that are vague, conclusory, or palpably incredible are
16 subject to summary dismissal. Hendricks v. Vasquez, 908 F.2d at
17 491.

18 The Court may dismiss a petition for writ of habeas corpus
19 either on its own motion under Habeas Rule 4, pursuant to the
20 respondent's motion to dismiss, or after an answer to the petition
21 has been filed. Advisory Committee Notes to Habeas Rule 8, 1976
22 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.
23 2001). However, a petition for habeas corpus should not be
24 dismissed without leave to amend unless it appears that no tenable
25 claim for relief can be pleaded were such leave granted. Jarvis v.
26 Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

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1 II. Background

2 Petitioner filed the petition on September 20, 2012. The
3 Court's initial screening order dismissed Petitioner's state law
4 claims without leave to amend, found that some of Petitioner's
5 claims were unclear and uncertain, and granted leave to file a first
6 amended petition to allege claims as to which Petitioner had
7 exhausted his state court remedies. (Doc. 8, filed October 22,
8 2012.)

9 On February 13, 2013, the Court dismissed Petitioner's first
10 amended petition (FAP) because two claims were uncertain and
11 Petitioner had failed to allege exhaustion of his state court
12 remedies as to his claims. Petitioner was given leave to file a
13 second amended petition. Petitioner subsequently moved to file a
14 second amended petition, but his motion was dismissed as moot
15 because he had already been given leave to file a second amended
16 petition. Petitioner was directed to file a second amended petition
17 within thirty days.

18 Petitioner filed a second amended petition on March 25, 2013.
19 However, on April 24, 2013, Petitioner filed another petition for
20 writ of habeas corpus in a new case, Briggs v. C. Gibson, case
21 number 1:13-cv-00592-BAM. Because the new petition addressed the
22 same detention as the petition pending in this action, the two
23 actions were consolidated on April 29, 2013; the later action was
24 closed; and the parties were instructed to file all further
25 documents in the present case, case number 1:12-cv-1549-SKO-HC.

26 In an order dated June 21, 2013, the Court reviewed the second
27 amended petition as well as the new petition, which challenged the
28 same convictions. The Court construed the new petition as a motion

1 to amend the previous petition but noted that the new petition did
2 not contain the claims in the previously filed second amended
3 petition. The Court noted that it was uncertain whether or not
4 Petitioner intended to raise all the claims that were in both
5 petitions. Thus, the Court construed Petitioner's new petition as a
6 motion to file an amended petition and provided Petitioner with an
7 opportunity to file a third amended petition to cure the
8 deficiencies in the previous petitions and to set forth all the
9 claims he sought to raise in this Court. The Court noted the delay
10 that had transpired in the case and the need to avoid an indefinite
11 succession of amendments of the petition, and informed Petitioner
12 that he would be given one, final opportunity to file an amended
13 petition.

14 Further, because one of the later petitions requested monetary
15 damages and civil penalties in addition to reversal of convictions,
16 the Court informed Petitioner of the difference between a civil
17 rights action and a petition for writ of habeas corpus.

18 III. The Third Amended Petition

19 Petitioner submitted a third amended petition (TAP) on a form
20 for a complaint under 42 U.S.C. § 1983. In the TAP, Petitioner
21 complains of a prohibited violation of an international trade
22 agreement which constituted a denial of fundamental fairness and due
23 process by an unauthorized sentence on reversal of revocation
24 proceedings. (Doc. 19, 3.) One form of relief sought is to secure
25 and declare freedom, but the remainder of the statement of relief is
26 unintelligible. (Id.)

27 Thus, the TAP sets forth an unclear claim or claims without an
28 intelligible factual basis. As set forth above, in habeas corpus

1 proceedings, notice pleading is not sufficient. The petition must
2 state facts that point to a real possibility of constitutional
3 error, and the Court must be apprised of the factual and legal basis
4 of the claim with sufficient clarity to permit intelligent screening
5 of a petition. Here, Petitioner's claim or claims are
6 unintelligible or uncertain, and his request for relief is similarly
7 uncertain.

8 While this Court must construe liberally and deferentially the
9 allegations of a prisoner proceeding without counsel, see Roy v.
10 Lampert, 465 F.3d 964, 970 (9th Cir. 2006), the Court cannot grant
11 relief based on conclusory allegations not supported by any specific
12 facts, Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995); James v.
13 Borg, 24 F.3d 20, 26 (9th Cir. 1994).

14 The Court has provided Petitioner numerous opportunities to
15 file amended pleadings after informing him of the defects in his
16 petitions. Substantively, there was little or no correspondence
17 between the amended pleadings or development of the stated claims.
18 It does not appear that if leave to amend were granted, Petitioner
19 could allege a tenable claim for relief. Therefore, the petition
20 will be dismissed without leave to amend.

21 III. Certificate of Appealability

22 Unless a circuit justice or judge issues a certificate of
23 appealability, an appeal may not be taken to the Court of Appeals
24 from the final order in a habeas proceeding in which the detention
25 complained of arises out of process issued by a state court. 28
26 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537 U.S. 322, 336
27 (2003). A certificate of appealability may issue only if the
28 applicant makes a substantial showing of the denial of a

1 constitutional right. § 2253(c)(2). Under this standard, a
2 petitioner must show that reasonable jurists could debate whether
3 the petition should have been resolved in a different manner or that
4 the issues presented were adequate to deserve encouragement to
5 proceed further. Miller-El v. Cockrell, 537 U.S. at 336 (quoting
6 Slack v. McDaniel, 529 U.S. 473, 484 (2000)). A certificate should
7 issue if the Petitioner shows that jurists of reason would find it
8 debatable whether: (1) the petition states a valid claim of the
9 denial of a constitutional right, or (2) the district court was
10 correct in any procedural ruling. Slack v. McDaniel, 529 U.S. at
11 483-84.

12 In determining this issue, a court conducts an overview of the
13 claims in the habeas petition, generally assesses their merits, and
14 determines whether the resolution was wrong or debatable among
15 jurists of reason. Id. An applicant must show more than an absence
16 of frivolity or the existence of mere good faith; however, the
17 applicant need not show that the appeal will succeed. Miller-El v.
18 Cockrell, 537 U.S. at 338.

19 A district court must issue or deny a certificate of
20 appealability when it enters a final order adverse to the applicant.
21 Rule 11(a) of the Rules Governing Section 2254 Cases. Here, it does
22 not appear that reasonable jurists could debate whether the petition
23 should have been resolved in a different manner. Petitioner has not
24 made a substantial showing of the denial of a constitutional right.

25 Accordingly, the Court will decline to issue a certificate of
26 appealability.

27 IV. Disposition

28 Accordingly, it is ORDERED that:

1 1) The petition for writ of habeas corpus is DISMISSED without
2 leave to amend; and

3 2) The Court DECLINES to issue a certificate of appealability;
4 and

5 3) The Clerk is DIRECTED to close the action because the
6 dismissal terminates the action in its entirety.

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9 IT IS SO ORDERED.

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Dated: October 11, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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