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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 BRUCE SENATOR,)
11 Petitioner,) No C 08-4122 VRW (PR)
12 vs.) ORDER OF DISMISSAL
13 UNITED STATES SECURITIES AND)
14 EXCHANGE COMMISSION,)
15 Respondent.)

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17 Petitioner, a state prisoner incarcerated at the California Men's Colony in
18 San Luis Obispo, has filed a pro se petition for a writ of mandate compelling the
19 United States Securities and Exchange Commission ("SEC") to investigate and
20 account for allegedly missing registered securities.

21 The federal mandamus statute provides that "[t]he district courts shall have
22 original jurisdiction of any action in the nature of mandamus to compel an officer
23 or employee of the United States or any agency thereof to perform a duty owed to
24 the plaintiff." 28 USC § 1361. Mandamus relief is only available to compel an
25 officer of the United States to perform a duty if: (1) the petitioner's claim is clear
26 and certain; (2) the duty of the officer is ministerial and so plainly prescribed as
27 to be free from doubt; and (3) no other adequate remedy is available. Fallini v
28 Hodel, 783 F2d 1343, 1345 (9th Cir 1986). Mandamus relief is not in order here

1 because the investigation petitioner seeks is discretionary. See Stang v IRS, 788
2 F2d 564, 565 (9th Cir 1986) (mandamus writs appropriate only when federal
3 officer, employee or agency owes a "nondiscretionary duty" to petitioner that is
4 so plainly prescribed as to be free from doubt).

5 The petition for a writ of mandate is DENIED. The clerk shall enter
6 judgment in accordance with this order and close the file.

7 SO ORDERED.

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9 VAUGHN R WALKER
10 United States District Chief Judge
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