

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

ALFRED J. ANDERSON,  
Plaintiff,  
v.  
SAN FRANCISCO PROBATION  
DEPARTMENT, et al.,  
Defendants.

Case No. [16-cv-04509-JD](#)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. 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

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 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by  
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was  
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **LEGAL CLAIMS**

12 Plaintiff alleges that probation officers and judges improperly handled his case. A state  
13 judge is absolutely immune from civil liability for damages for acts performed in his judicial  
14 capacity. *See Pierson v. Ray*, 386 U.S. 547, 553-55 (1967) (applying judicial immunity to actions  
15 under 42 U.S.C. § 1983). Judicial immunity is an immunity from suit for damages, not just from  
16 an ultimate assessment of damages. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Whether  
17 an act by a judge is a judicial one relates to (1) the nature and function of the act and not the act  
18 itself, i.e., whether it is a function normally performed by a judge, and to (2) the expectations of  
19 the parties, i.e., whether they dealt with the judge in his judicial capacity. *Stump v. Sparkman*, 435  
20 U.S. 349, 362 (1978). “A judge will not be deprived of immunity because the action he took was  
21 in error, was done maliciously, or in excess of his authority; rather, he will be subject to liability  
22 only when he has acted in the ‘clear absence of all jurisdiction.’” *Id.* at 356-57 (citing *Bradley v.*  
23 *Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872)).

24 The Ninth Circuit has held that probation officers possess an absolute judicial immunity  
25 from damage suits under § 1983 for official functions bearing a close association to the judicial  
26 process. *Demoran v. Witt*, 781 F.2d 155, 156-58 (9th Cir. 1985). The United States Supreme  
27 Court has taken a “functional approach” to the question of whether absolute immunity applies in a  
28 given situation, meaning that it looks to “the nature of the function performed, not the identity of

1 the actor who performed it.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993) (quoting  
2 *Forrester v. White*, 484 U.S. 219, 229 (1988)). Thus, state actors are granted absolute immunity  
3 from damages liability in suits under § 1983 only for actions taken while performing a duty  
4 functionally comparable to one for which officials were immune at common law. *Miller v.*  
5 *Gammie*, 335 F.3d 889, 897 (9th Cir. 2003). Under the common law, judges, prosecutors, trial  
6 witnesses, and jurors were absolutely immune for such critical functions. *Id.* at 896.

7 Plaintiff states that he was arrested, booked, and arraigned without a proper case number,  
8 case tracking, and no bail. He states that the judge refused to supply a warrant with her signature  
9 or a minute order, but still continued the arraignment. He contends that he was illegally  
10 committed to a Behavioral Health Court and that the Department of Probation is not using a  
11 proper authorization form in supervising him. Plaintiff seeks money damages and to be released  
12 from custody. To the extent plaintiff seeks to be released from custody he must file a habeas  
13 petition. Plaintiff’s claims for money damages are dismissed with leave to amend to address the  
14 immunity legal standards described above. Plaintiff must also provide more information regarding  
15 the specific actions of the defendants and how they violated his constitutional rights.

16 **CONCLUSION**

17 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must  
18 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption  
19 and civil case number used in this order and the words AMENDED COMPLAINT on the first  
20 page. Because an amended complaint completely replaces the original complaint, plaintiff must  
21 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th  
22 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to  
23 amend within the designated time will result in the dismissal of this case.

24 2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
25 Court informed of any change of address by filing a separate paper with the clerk headed “Notice  
26 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to  
27  
28

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

do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: November 18, 2016



---

JAMES DONATO  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 ALFRED J. ANDERSON,  
4 Plaintiff,

5 v.

6 SAN FRANCISCO PROBATION  
7 DEPARTMENT, et al.,  
8 Defendants.

Case No. [16-cv-04509-JD](#)

**CERTIFICATE OF SERVICE**

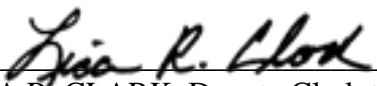
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
10 District Court, Northern District of California.

11  
12 That on November 18, 2016, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.

16  
17 Alfred J. Anderson  
18 850 Bryant Street  
19 Room 442  
20 San Francisco, CA 94103

21 Dated: November 18, 2016

22  
23 Susan Y. Soong  
24 Clerk, United States District Court

25  
26 By:   
27 LISA R. CLARK, Deputy Clerk to the  
28 Honorable JAMES DONATO