1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 8 9 10 **ALAMIN SAMAD** No. 2:15-cv-2040-WBS-EFB P 11 Petitioner, 12 FINDING AND RECOMMENDATIONS v. 13 COURT OF APPEAL OF THE STATE OF CALIFORNIA IN THE THIRD 14 APPELLATE DISTRICT, et al., 15 Respondents. 16 17 Petitioner is a state prisoner proceeding without counsel. He seeks a "PETITION FOR PEREMTORY WRIT OF MANDATE" to vacate orders of the state courts and to instruct the 18 19 state court of appeal to set petitioner's matter for hearing. ECF No. 1. In a mandamus action, the 20 court can only issue orders against employees, officers or agencies of the United States. See 28 21 U.S.C. § 1361. Thus, the court cannot issue a writ of mandamus commanding state courts to act 22 in accordance with petitioner's requests. See Demos v. United States Dist. Court for the E. Dist. 23 of Wash., 925 F.2d 1160, 1161 (9th Cir. 1991); Clark v. Washington, 366 F.2d 678, 681-82 (9th 24 Cir. 1966). Therefore, the court cannot afford petitioner the relief he requests. If petitioner 25 contends that he is in custody in violation of the Constitution or laws or treaties of the United 26 States, he may commence a new action by filing an application for a writ of habeas corpus 27 pursuant to 28 U.S.C. § 2254. 28 /////

Accordingly, it is hereby recommended that:

- 1. The petition for a writ of mandamus be dismissed for lack of jurisdiction, without prejudice to filing an application for a writ of habeas corpus in a new action; and
  - 2. The Clerk be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 2, 2015.

EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE