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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEKSANDER GORBATENKO,  
Petitioner,  
v.  
SWAIN, et al.,  
Respondents.

No. 2:16-cv-0537 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner challenges his conditions of confinement, alleging that correctional officers at FCI Herlong retaliated against petitioner and unnecessarily harassed him by planting narcotics in his shoe and issuing an incident report about the find. On May 23, 2017, the court screened the petitioner and dismissed it with leave to amend because the claims, as stated, were not within federal habeas jurisdiction. (ECF No. 9.) The court ordered petitioner, within thirty days, to file an amended petition. (Id. at 5) Petitioner was warned that his failure to comply with the order may result in dismissal of the action. (Id. at 6.)

The 30 day deadline has expired and petitioner did not submit an amended petition. Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign a United States District Judge to this action and IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice for failure to prosecute and failure to comply with this court’s orders.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
3 after being served with these findings and recommendations, plaintiff may file written objections  
4 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings  
5 and Recommendations.” Any response to the objections shall be filed and served within fourteen  
6 days after service of the objections. Plaintiff is advised that failure to file objections within the  
7 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951  
8 F.2d 1153 (9th Cir. 1991).

9 Dated: September 26, 2017

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13 DEBORAH BARNES  
14 UNITED STATES MAGISTRATE JUDGE

15 TIM-DLB:10  
16 DB / ORDERS / ORDERS.PRISONER.HABEAS / gorb.0537.dismiss.fr.v2  
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