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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHARLES R. BRAND,
Petitioner,

No. 2:16-cv-2550-JAM-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

_____/

Petitioner, a pretrial detainee in the Rio Consumnes Correctional Center, is proceeding pro se. He has filed a pro se petition for a writ of mandamus, requesting this court issue an order requiring the Sacramento County Superior Court hear his motions.

Under 28 U.S.C. § 1651(a), all federal courts may issue writs “in aid of their respective jurisdictions. . .” In addition, the district court has original jurisdiction under 28 U.S.C. § 1361 to issue writs of mandamus. That jurisdiction is limited, however, to writs of mandamus to “compel an officer or employee of the United States or any agency thereof to perform a duty. . .” 28 U.S.C. § 1361 (emphasis added). It is also well-established that, with very few exceptions specifically outlined by Congress, the federal court cannot issue a writ of mandamus commanding action by a state or its agencies. See e.g. Demos v. U.S. Dist. Court for

1 Eastern Dist. of Wash., 925 F.2d 1160 (9th Cir. 1991).

2 Here, petitioner is not requesting any action on behalf of any officer or employee
3 of the United States or an agency thereof. Plaintiff is requesting this court to compel the
4 Sacramento County Superior Court to hear motions related to criminal proceedings against him.
5 This court has no jurisdiction to do so under 28 U.S.C. § 1361.

6 Based on the foregoing, the undersigned recommends that petitioner's petition for
7 issuance of a writ of mandate be denied and this action be dismissed for lack of jurisdiction.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court. The document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendations." Failure to file objections within the specified time may waive
13 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 DATED: May 2, 2017

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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