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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOBBY RAY SAVAGE

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS & REHABILITATION,

Respondents.

No. 2:18-cv-01571-GGH

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner filed a petition for a writ of habeas corpus on May 11, 2018 in the Northern District of California District Court. ECF No. 1. That court transferred the matter to this district on May 21, 2018. ECF No. 3. On June 12, 2018 this court issued an Order dismissing the petition and directing the petitioner to file an amended complaint seeking relief under 42 U.S.C. section 1983 insofar as his petition did not seek release from prison, but rather sought reinstatement of his right to conjugal visits while incarcerated, or to voluntarily dismiss that petition.¹ ECF No. 6. The Order further warned petitioner that a failure to obey the order could

¹ That Order also directed petitioner either to apply for in forma pauperis status or pay the filing fee required by the court. In fact, he did pay a filing fee at the time he filed in the Northern District so that element of the Order is now inoperative.

1 result in dismissal of his case. Petitioner filed objections to the Order on July 15, 2018. ECF No.
2 7.² In essence petitioner has refused to amend his pleading to seek relief under 42 U.S.C. section
3 1983, instead rearguing his position that the claim he has raised is properly a matter for habeas
4 corpus relief. This court disagrees.

5 Accordingly, IT IS HEREBY ORDERED:

6 The Clerk of the Court shall randomly assign this matter to a district court judge.

7 IT IS HEREBY RECOMMENDED that:

- 8 1. The petition be DISMISSED;
- 9 2. No certificate of appealability should be issued;
- 10 3. The Clerk of the Court should close this case.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days
13 after being served with these findings and recommendations, petitioner may file written
14 objections with the court. Such a document should be captioned “Objections to Magistrate
15 Judge’s Findings and Recommendations.” The petitioner is advised that failure to file objections
16 within the specified time may waive the right to appeal the District Court's order. Martinez v.
17 Ylst, 951 F.2d 1153 (9th Cir. 1991), 951 F.2d 1153 (9th Cir. 1991

18 Dated: August 22, 2018

19 /s/ Gregory G. Hollows

20 UNITED STATES MAGISTRATE JUDGE