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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 ROGER WAYNE ROBERTSON,  
12                   Petitioner,  
13           v.  
14 MARIPOSA SUPERIOR COURT,<sup>1</sup>  
15                   Respondent.

Case No. 1:16-cv-01326-DAD-SAB-HC  
**FINDINGS AND RECOMMENDATION  
RECOMMENDING DISMISSAL OF  
PETITION FOR WRIT OF HABEAS  
CORPUS**

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17           Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254.

19 **I.**

20 **DISCUSSION**

21           On August 31, 2016, Petitioner filed the instant petition for writ of habeas corpus in the  
22 Sacramento Division of the United States District Court for the Eastern District of California.  
23 (ECF No. 1). On September 8, 2016, the matter was transferred to the Fresno Division. (ECF No.  
24 6). In the instant petition, Petitioner challenges his 2010 convictions in the Mariposa County  
25 Superior Court.

26 <sup>1</sup> The Court notes that Petitioner has not named a proper Respondent, such as the warden of the facility in which he  
27 is held or the chief officer in charge of state penal institutions. See Rule 2(a) of the Rules Governing Section 2254  
28 Cases; Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004); Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996).  
While the Court generally would give Petitioner an opportunity to amend the name of Respondent, amendment is  
futile because the Court recommends that the petition be dismissed as an unauthorized successive petition.

1 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a  
2 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
3 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
4 petitioner is not entitled to relief in the district court.” A federal court must dismiss a second or  
5 successive petition that raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). The  
6 court must also dismiss a second or successive petition raising a new ground unless the petitioner  
7 can show that (1) the claim rests on a new, retroactive, constitutional right or (2) the factual basis  
8 of the claim was not previously discoverable through due diligence, and these new facts establish  
9 by clear and convincing evidence that but for the constitutional error, no reasonable factfinder  
10 would have found the applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)–(B).

11 However, it is not the district court that decides whether a second or successive petition  
12 meets these requirements. Section 2244(b)(3)(A) provides: “Before a second or successive  
13 application permitted by this section is filed in the district court, the applicant shall move in the  
14 appropriate court of appeals for an order authorizing the district court to consider the  
15 application.” In other words, Petitioner must obtain leave from the Ninth Circuit before he can  
16 file a second or successive petition in the district court. See Felker v. Turpin, 518 U.S. 651, 656–  
17 657 (1996). This Court must dismiss any second or successive petition unless the Court of  
18 Appeals has given Petitioner leave to file the petition because a district court lacks subject-matter  
19 jurisdiction over a second or successive petition. Burton v. Stewart, 549 U.S. 147, 157 (2007).

20 In the instant petition, Petitioner challenges his 2010 convictions in Mariposa County  
21 Superior Court Case No. 8240. (ECF No. 1). Petitioner previously filed a federal habeas petition  
22 in this Court challenging the same convictions in Robertson v. Beard, No. 1:14-cv-00924-AWI-  
23 MJS.<sup>2</sup> On July 27, 2016, this previous petition was denied on the merits. Order, Robertson, No.  
24 1:14-cv-00924-AWI-MJS (E.D. Cal. July 27, 2016), ECF No. 65. The Court finds that the instant  
25 petition is “second or successive” under § 2244(b). Petitioner makes no showing that he has  
26 obtained prior leave from the Ninth Circuit to file this petition. Accordingly, this Court has no

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28 <sup>2</sup> The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119  
(9th Cir. 1980).

1 jurisdiction to consider Petitioner’s renewed application for relief under 28 U.S.C. § 2254 and  
2 must dismiss the petition. See Burton, 549 U.S. at 157.

3 **II.**

4 **RECOMMENDATION**

5 Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas  
6 corpus be DISMISSED as successive.

7 This Findings and Recommendation is submitted to the United States District Court  
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304  
9 of the Local Rules of Practice for the United States District Court, Eastern District of California.  
10 Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may  
11 file written objections with the Court and serve a copy on all parties. Such a document should be  
12 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned  
13 District Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §  
14 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may  
15 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)  
16 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

18 Dated: November 14, 2016

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20 UNITED STATES MAGISTRATE JUDGE