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

BERTRAND THOMPSON,

Petitioner,

No. 2:10-cv-1214 GEB KJN P

vs.

LARRY SCRIBNER,

Respondent.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

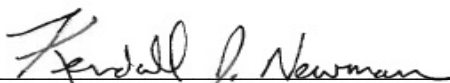
The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. The previous application was filed on June 27, 2003, and was denied on the merits on September 18, 2007. Before petitioner can proceed with the instant application he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to

1 consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's application must be
2 dismissed without prejudice to its refiling upon obtaining authorization from the United States
3 Court of Appeals for the Ninth Circuit.

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed
5 without prejudice.

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

14 DATED: June 14, 2010

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

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