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1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 8 9 10 WILLIAM CHAPMAN, No. 2:16-cv-2108 GGH P 11 Petitioner, 12 **ORDER AND FINDINGS AND** v. **RECOMMENDATIONS** 13 J. PRICE, 14 Respondent. 15 16 Petitioner, a state prisoner proceeding pro se, has filed a motion for relief from judgment 17 pursuant to Fed. R. Civ. P. 60(b)(6), together with a request to proceed in forma pauperis pursuant 18 to 28 U.S.C. § 1915. The court has not ruled on the application to proceed in forma pauperis. 19 The motion will be construed as an application for a writ of habeas corpus pursuant to 28 20 U.S.C. § 2254 as it does not seek to challenge a prior judgment, but seeks to raise new claims. 21 Rule 60(b) is not a vehicle in which to raise new claims. 22 The court's records reveal that petitioner has previously filed an application for a writ of 23 habeas corpus attacking the conviction and sentence challenged in this case. The previous 24 application was filed on March 9, 2009, and was denied on the merits on May 11, 2010. See 25 Chapman v. Small, No. 2:09-cv-0639 (ECF No. 16). The current filing seeks to raise a new claim 26 not previously raised in the prior habeas petition. Whether purposeful or unintentional, petitioner 27 has characterized his filing such that it evades the requirements of the rules on successive

petitions. 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 consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's application must be dismissed without prejudice to its re-filing upon obtaining authorization from the United States Court of Appeals for the Ninth Circuit. In accordance with the above, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a district judge to this action; and IT IS RECOMMENDED that this action be dismissed without prejudice. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, petitioner may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). Dated: September 26, 2016 /s/ Gregory G. Hollows UNITED STATES MAGISTRATE JUDGE Chap2108.success