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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 KERRY DANA HASTINGS,

12 Petitioner,

13 v.

14 CONNIE GIPSON,

15 Respondent.
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Case No. 1:14-cv-01271-LJO-EPG-HC

ORDER DENYING PETITIONER'S
MOTION TO PROCEED

(ECF No. 36)

17 Petitioner is a state prisoner proceeding pro se whose petition for writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254 was dismissed without prejudice on August 25, 2015 for being a
19 mixed petition containing an unexhausted claim. (ECF No. 26). On August 8, 2016, the Court
20 denied Petitioner's Rule 60(b) motion for relief from judgment. (ECF No. 30). On September 2,
21 2016, Petitioner filed a notice of appeal, and the appeal is now pending before the Ninth Circuit.
22 See Hastings v. Gipson, No. 16-16569.

23 On October 18, 2016, Petitioner filed the instant motion to proceed with the federal
24 habeas petition in this case, asserting that all of his claims are now properly exhausted. (ECF No.
25 36). The Court previously dismissed the petition in the instant case without prejudice. If
26 Petitioner wishes to proceed with a federal habeas petition, Petitioner may do so by filing a new
27 petition with the Court.

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