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

JOSE SORIA,

Petitioner,

No. CIV S-06-0517 FCD EFB P

vs.

EDWARD ALAMEIDA,

Respondent.

FINDINGS AND RECOMMENDATIONS

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Petitioner, a state prisoner without counsel, has filed a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. On June 29, 2009, the court ordered petitioner to demonstrate either that the petition is not second or successive or submit evidence that the appellate court has authorized this court to consider the petition. The court warned petitioner that failure to comply with the order would result in a recommendation that this action be dismissed upon the ground that petitioner has filed a successive petition without authorization from the appellate court.

On August 26, 2009, petitioner responded to the court’s order. In his response, petitioner states that he has requested that the appellate court authorize this court to consider his second or successive petition, but that his request has not yet been granted. Petitioner requests that the court “freeze” this case pending a response from the appellate court. However, in the absence of proper authorization from the appellate court, this court may not consider the second or

1 successive petition, and must dismiss it for lack of jurisdiction. *See Cooper v. Calderon*, 274  
2 F.3d 1270, 1274 (9th Cir. 2001) (per curiam).

3 Accordingly, it is hereby RECOMMENDED that this action be dismissed on the ground  
4 that the petition is second or successive and petitioner has not demonstrated that the United  
5 States Court of Appeals for the Ninth Circuit has granted him leave to file it in this court.

6 These findings and recommendations are submitted to the United States District Judge  
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days after  
8 being served with these findings and recommendations, any party may file written objections  
9 with the court and serve a copy on all parties. Such a document should be captioned “Objections  
10 to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the  
11 specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158  
12 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: September 3, 2009.

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15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE  
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