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

HERBERT C. VICE,

Petitioner,

No. CIV S-09-2647 EFB P

vs.

JAMES WALKER,

Respondent.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner without counsel, has filed a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. On February 25, 2010, the court ordered petitioner to, within 30 days, 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. The 30 days have passed and petitioner has not responded to the court's order.

As explained in the February 25, 2010 order, the instant petition is second or successive because petitioner challenges the same judgment now that he previously challenged and which

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1 was adjudicated on the merits. *See Vice v. Plier*, No. Civ. S-04-0044 GEB CMK.¹ Since
2 petitioner has not demonstrated that the appellate court has authorized this court to consider a
3 second or successive petition, this action must be dismissed for lack of jurisdiction. *See Burton*
4 *v. Stewart*, 549 U.S. 147 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per
5 curiam).

6 Accordingly, it is hereby ORDERED that the Clerk of the Court randomly assign a
7 United States District Judge to this case.

8 Further, it is hereby RECOMMENDED that this action be dismissed for lack of
9 jurisdiction.

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

17 Dated: April 12, 2010.

18 
19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE

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¹ The court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,
803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).