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

CHRISTOPHER ISAAC SIMMONS,

Petitioner,

No. 11-cv-2639-MCE-JFM (HC)

vs.

KATHLEEN DICKINSON,

Respondent.

FINDINGS & RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 30, 2011, 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 cautioned petitioner that failure to comply with the order would result in a recommendation that this action be dismissed on the ground that it is a successive petition filed without authorization from the appellate court. Petitioner has not responded to the court order.

As discussed in the December 30, 2011 order, petitioner is challenging the same judgment that he previously challenged and which was adjudicated on the merits, which renders the instant petition successive. See Burton v. Stewart, 549 U.S. 147 (2007); see also Slack v. McDaniel, 529 U.S. 473, 485-86 (2000). Petitioner has failed to demonstrate that his petition is

1 not second or successive. He also offers no evidence that the appellate court has authorized this
2 court to consider a second or successive petition.

3 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed on
4 the ground that the petition is second or successive and petitioner has not demonstrated that the
5 United 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
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, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
11 shall be served and filed within fourteen days after service of the objections. The parties are
12 advised that failure to file objections within the specified time may waive the right to appeal the
13 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: February 16, 2012.

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17 UNITED STATES MAGISTRATE JUDGE

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