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

THOMAS EUGENE MOORE,

Petitioner,

No. 2:12-cv-0805 MCE KJN P

vs.

V. SINGH,

Respondent.

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 20, 2012, petitioner filed a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the 2000 conviction and sentence challenged in this case. The previous application was filed on January 3, 2002, and was denied on the merits on April 1, 2011. Moore v. Lamarque, 2:02-cv-0007 JAM DAD P. Before petitioner can proceed with the instant application he must move in the United States Court of Appeals for the Ninth Circuit for

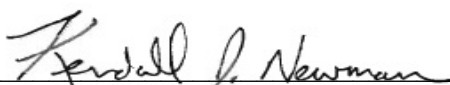
1 an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3).
2 Therefore, petitioner’s application must be dismissed without prejudice to its refiling upon
3 obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

4 In accordance with the above, IT IS HEREBY ORDERED that petitioner’s
5 application to proceed in forma pauperis is granted; and

6 IT IS HEREBY RECOMMENDED that this action be dismissed without
7 prejudice.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
10 days after being served with these findings and recommendations, petitioner may file written
11 objections with the court. The document should be captioned “Objections to Magistrate Judge's
12 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
14 F.2d 1153 (9th Cir. 1991).

15 DATED: May 11, 2012

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

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