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

JOHN ALAN PARVIN,

Petitioner,

No. 2:12-cv-1013 WBS CKD P

vs.

JAMES WALKER,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_/

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 along with an application to proceed in forma pauperis. Petitioner has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Court records for case number 2:09-cv-2198 JFM P reveal that petitioner previously filed a petition for a writ of habeas corpus attacking the convictions and sentences challenged in this case. The previous petition was filed on August 10, 2009, and was dismissed as time-barred on March 1, 2010. Before petitioner can proceed with the instant successive petition, he must obtain authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3); see Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005) (dismissal of habeas petition as time barred “constitutes an adjudication on the merits that renders future petitions under §

1 2254 challenging the same conviction ‘second or successive’ petitions under [28 U.S.C. §  
2 2244(b)].” Therefore, petitioner’s habeas petition must be dismissed without prejudice to its  
3 refiling upon obtaining the required authorization.

4           Accordingly, IT IS HEREBY ORDERED that petitioner’s request for leave to  
5 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 twenty-  
10 one 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: August 10, 2012

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17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE  
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