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

ROBIN STARR,

Petitioner,

No. 2:13-cv-0006 AC P

vs.

STATE OF CALIFORNIA, et al.,

ORDER AND

Respondents.

FINDINGS AND 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.

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. The previous application was filed on January 10, 2012, and was denied on the merits on December 5, 2012. See Starr v. State of California, No. 2:12-cv-0457 MCE KJN. Before petitioner can proceed with the instant application he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's application must be dismissed without prejudice to its refiling upon obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

1 In accordance with the above, IT IS HEREBY ORDERED that the Clerk
2 randomly assign a district judge to this action; and

3 IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice.

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

12 DATED: February 26, 2013.

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14 _____
15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE

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