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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 GERALD A. HARPER,

11 Petitioner,

12 v.

13 FRANK CHAVEZ,

14 Respondent.
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No. 2:13-cv-0711 GGH P

ORDER

16 Petitioner, a state prisoner proceeding pro se, has filed a document styled “motion for
17 F.R.C.P. Rule 60(b)(1)(2)(3), for Discovery of Exculpatory Evidence Lost/Found” which the
18 court construes as an application for relief from final judgment, pursuant to Federal Rule of Civil
19 Procedure 60(b).

20 By his motion, plaintiff seeks all records, files and evidence pertaining to his underlying
21 conviction and his previous habeas petition filed in this court, case number 2:06-cv-1190, as well
22 as an order directing the superior court to provide these (now located) files to petitioner in order
23 to substantiate his innocence. (ECF No. 16 at 2, 6.) The court’s order dismissing the current
24 action as successive on May 29, 2013, noted that petitioner had previously filed two applications
25 for a writ of habeas corpus attacking the same conviction and sentence challenged in this case.
26 (Harper v. Tilton, CIV-06-1190 GHK P (denied on the merits), and Harper v. Tilton, case no. 12-
27 cv-1032 CMK P (filed April 19, 2012 and transferred to the Ninth Circuit Court of Appeals as
28 successive on July 6, 2012)).

1 Petitioner now challenges this same state court conviction under Rule 60(b)(1)(2) and/or
2 (3). He is not, however, attacking the judgment in this case finding the petition successive.
3 Rather, he is attacking the 2006 judgment by appearing to claim that the state court intentionally
4 withheld files from him, and incorrectly claimed those files were lost, which adversely impacted
5 the outcome of his 2006 habeas petition. (ECF No. 16 at 3-5.) Therefore, it appears that
6 petitioner's motion for relief from judgment was inadvertently filed in the instant action, and
7 should have been filed in the 2006 action.

8 Accordingly, IT IS ORDERED that: the Clerk of the Court shall transfer petitioner's
9 motion for relief from judgment under Rule 60(b), filed October 6, 2014, (ECF no. 16), from this
10 case and file it in Harper v. Tilton, No. 2:06-cv-1190 GHK.

11 Dated: November 21, 2014

12 /s/ Gregory G. Hollows

13 UNITED STATES MAGISTRATE JUDGE
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16 GGH:076/Harp0711.60b(2)
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