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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEYMON LEWIS, JR.,
Petitioner,
v.
FELICIA PONCE,
Respondent.

No. 2:16-cv-01578-JAM-GGH
FINDINGS AND RECOMMENDATIONS

PROCEDURAL HISTORY

Petitioner appeared in this habeas matter pro se and in forma pauperis. The district court dismissed the petition by an Order entered on August 4, 2017, ECF No. 30, and judgment was entered the same day. ECF No. 31. Petitioner appealed the judgment on August 14, 2017, ECF No. 32, and sought to amend the judgment on the same date. ECF No. 33. The Ninth Circuit Court of Appeals assigned case number 17-16672 to the appeal on August 23, 2017, ECF No. 35, and on October 3, 2017 ordered the matter be held in abeyance until the district court resolution of petitioner’s motion to amend the judgment. EXF No. 37. The district court denied the motion by minute order entered on October 10, 2017, ECF No. 38, and on January 30, 2018 the Court of

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1 Appeals denied petitioner's request for a certificate of appealability, ECF No. 39, effectively
2 terminating the appeal.

3 Now pending before the court is petitioner's Motion to Set Aside the Judgment in this
4 matter filed on July 12, 2018 pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.
5 ECF No. 40.

6 *DISCUSSION*

7 Rule 60 allows the court to relief a litigant from a final judgment or order within a
8 reasonable time, not to exceed one year after its entry, if the basis for doing so is either mistake,
9 inadvertence, surprise or excusable neglect, newly discovered evidence, or the fraud,
10 misrepresentation, or misconduct of an opposing party. F. R. Civ. P. 60(c)(1). Petitioner here
11 argues that the district court made a "mistake" in finding it had no jurisdiction over his petition
12 and that he is, therefore, entitled to have the judgment set aside. The court has reviewed the
13 findings and recommendations, ECF No. 28, and the district court's adoption thereof, ECF No.
14 30, and finds no mistake or error.

15 *CONCLUSION*

16 Petitioner has not borne the burden of demonstrating that the court's and the district
17 court's rulings in this matter were the result of a mistake of law. In light thereof IT IS HEREBY
18 RECOMMENDED that:

19 1. Petitioner's Motion to set aside the judgment of this court should be denied.

20 Within fourteen days after being served with these findings and recommendations,
21 petitioner may file written objections with the court. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." The petitioner is advised
23 that failure to file objections within the specified time may waive the right to appeal the District
24 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 **IT IS SO RECOMMENDED.**

26 Dated: September 3, 2018

27 /s/ Gregory G. Hollows
28 UNITED STATES MAGISTRATE JUDGE