

1 Before a second, or successive, petition is brought a petitioner must bring a motion in the
2 Ninth Circuit Court of Appeals for an order authorizing this district court to consider the petition.
3 28 U.S.C. § 2244(b)(3)(A). According to the rule set forth in Slack v. McDaniel, 529 U.S. 473,
4 485-486 (2000) will be deemed successive for purposes of this code section only where the prior
5 petition was not adjudicated on the merits. See also Green v. White, 223 F.3d 1001, 1002 n.1
6 (9th Cir. 2000) *citing Slack*, supra. Because the prior habeas action was dismissed on the merits,
7 the instant petition is second, or successive.

8 Accordingly, IT IS ORDERED that:

- 9 1. Petitioner's motion to proceed in forma pauperis is GRANTED;
- 10 2. The Clerk of Court shall randomly assign a district judge to this action.

11 IT IS RECOMMENDED THAT:

- 12 1. This action be dismissed;
- 13 2. The Clerk of the court shall close the file.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
16 being served with these findings and recommendations, petitioner may file written objections
17 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
18 and Recommendations." Failure to file objections within the specified time may waive the right
19 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: June 8, 2017

21 /s/ Gregory G. Hollows
22 UNITED STATES MAGISTRATE JUDGE
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