

1 the appellate court, the district court is without jurisdiction to consider a second or successive
2 petition. *See Burton*, 549 U.S. 147.

3 In the present action, petitioner challenges his murder conviction entered against him in
4 the California Superior Court, County of Sacramento, on December 10, 2010. ECF No. 1 at 1.
5 Court records reflect that petitioner previously challenged this judgment of conviction in this
6 court. *See Wallace v. Barnes*, No. 2:14-cv-157-MCE-EFB (E.D. Cal.). On December 12, 2017,
7 the court denied the petition on the merits. *See id.*, ECF Nos. 86, 93, 94. Since petitioner
8 challenges the same judgment now that he previously challenged and which was adjudicated on
9 the merits, the petition now pending is second or successive. Petitioner fails to show that the
10 appellate court has authorized this court to consider a second or successive petition. Therefore,
11 this action must be dismissed for lack of jurisdiction. *See Burton*, 549 U.S. 147; *Cooper v.*
12 *Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam).

13 Accordingly, IT IS HEREBY ORDERED that petitioner's application for leave to proceed
14 in forma pauperis (ECF No. 2) is granted.

15 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for lack of
16 jurisdiction.


17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
22 shall be served and filed within fourteen days after service of the objections. Failure to file
23 objections within the specified time may waive the right to appeal the District Court's order.
24 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
25 1991). In his objections petitioner may address whether a certificate of appealability should issue
26 in the event he files an appeal of the judgment in this case. *See Rule 11, Rules Governing Section*

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1 2254 Cases in the United States District Courts (the district court must issue or deny a certificate
2 of appealability when it enters a final order adverse to the applicant).

3 DATED: April 13, 2020.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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