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UNITED STATES DISTRICT COURT

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ERIC JOHNSON,

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Petitioner,

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v.

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SECRETARY OF CORRECTIONS,

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Respondent.

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Case No. 1:17-cv-00919-SKO HC

ORDER DENYING PETITIONER'S MOTION
FOR RECONSIDERATION

(Docs. 8)

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Petitioner is a state prisoner proceeding pro se whose petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was dismissed as second or successive on August 4, 2017. Because this Court had previously denied a petition for writ of habeas corpus arising from the same conviction and alleging the same claims, and because Petitioner had not petitioned the Ninth Circuit Court of Appeals for leave to file a second or successive petition, applicable law required the Court to dismiss the petition for lack of jurisdiction. See 28 U.S.C. § 2244(b). Petitioner has now filed a letter requesting reconsideration.

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Petitioner contends that because this Court addressed his prior petition following the direct appeal, he may again pursue a petition for writ of habeas corpus following resolution of state habeas proceedings. Petitioner misunderstands applicable law. “A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” 28 U.S.C. § 2244(b)(1). As indicated in the August 4, 2017, order dismissing

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1 the petition, Petitioner alleged the claims in both the above-captioned petition and in the prior
2 petition (Johnson v. Secretary of Corrections (1:15-cv-01771-JLT HC)).

3 Under applicable law, the District Court lacks jurisdiction to address the petition filed in this
4 case. Because Petitioner has already filed a petition for habeas corpus related to the same
5 conviction, he cannot file another petition in the District Court without first obtaining permission
6 (leave to file a second or successive complaint) from the U.S. Court of Appeals for the Ninth
7 Circuit.

8 Petitioner's motion for reconsideration of the Court's dismissal of his petition for writ of
9 habeas corpus pursuant to 28 U.S.C. § 2254 is hereby denied, without prejudice to Petitioner's
10 seeking leave to file a second or successive petition pursuant to 28 U.S.C. § 2244(b)(3)(A).

11 IT IS SO ORDERED.
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13 Dated: August 18, 2017

14 /s/ Sheila K. Oberlo
15 UNITED STATES MAGISTRATE JUDGE
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