

1 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without an order from
2 the appellate court, the district court is without jurisdiction to consider a second or successive
3 petition. *See Burton*, 549 U.S. 147.

4 In the present action, petitioner challenges his 2008 conviction for domestic violence
5 entered in the Shasta County Superior Court in case number 08F2568. ECF No. 1 at 1, 6.² The
6 court has examined its records, and finds that petitioner challenged the same judgment of
7 conviction in an earlier action. Specifically, in *Patel v. Swarthout*, No. 2:09-cv-2923-MCE-CMK
8 (E.D. Cal.), the court considered petitioner’s challenge to the same judgment of conviction. *See*
9 *Patel*, ECF No. 31 (magistrate judge’s December 1, 2010 findings and recommendations to deny
10 petitioner’s application for a writ of habeas corpus on the merits); ECF No. 33 (district judge’s
11 February 1, 2011 order adopting findings and recommendations and denying petitioner’s
12 application for a writ of habeas corpus). Petitioner challenges the same judgment now that he
13 previously challenged in his earlier petition which has been adjudicated on the merits.
14 Accordingly, his current petition is second or successive.

15 Petitioner offers no evidence that the appellate court has authorized this court to consider
16 a second or successive petition. Since petitioner has not demonstrated that the appellate court has
17 authorized this court to consider a second or successive petition, this action must be dismissed for
18 lack of jurisdiction. *See Burton*, 549 U.S. 147; *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
19 Cir. 2001) (per curiam).³

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. This action is dismissed for lack of jurisdiction;
- 22 2. The Clerk is directed to close the case; and

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24 ² For ease of reference, all references to page numbers in the petition are to those assigned
25 via the court’s electronic filing system.

26 ³ The court appears to also lack subject matter jurisdiction because petitioner was not in
27 custody pursuant to the 2008 judgment of conviction when he filed his petition. *See* ECF No. 1 at
28 7 (stating that “petitioner has completed 100% of his sentence”); *see also Woodall v. Beauchamp*,
450 F. App’x 655, 657 (9th Cir. 2011) (habeas petitioner must be in custody as a result of the
challenged conviction, not on unrelated charges).

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3. The court declines to issue a certificate of appealability.

DATED: April 19, 2017.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE