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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BENNY A. ESPINOZA,

No. C 13-0035 JSW (PR)

Petitioner,

ORDER OF DISMISSAL

v.

G. LEWIS,

Respondent.

Petitioner, a state prisoner currently, has filed a petition for a writ of habeas corpus pursuant challenging a conviction and sentence obtained in state court. Petitioner's prior petition to this Court challenging the same conviction and sentence was denied. *Espinoza v. Walker* No. 07-1741 JSW (PR) (N.D. Cal., Nov. 2, 2009). Both this Court and the United States Court of Appeals denied his requests for a certificate of appealability. A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Petitioner has not sought or obtained such an order from the United States Court of Appeals for the Ninth Circuit. Even if Petitioner has new claims, he must still obtain the necessary authorization under Section 2244(b) from the United States Court of Appeals before he may proceed. The petition is accordingly DISMISSED without prejudice to

1 refiling if Petitioner obtains the necessary order.

2 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
3 court to rule on whether a Petitioner is entitled to a certificate of appealability in the
4 same order in which the petition is decided. Petitioner has failed to make a substantial
5 showing that a reasonable jurist would find this Court's denial of his claim on procedural
6 grounds debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
7 Consequently, no certificate of appealability is warranted in this case.

8 The Clerk shall enter judgment and close the file.

9 IT IS SO ORDERED.

10 DATED: February 26, 2013



JEFFREY S. WHITE
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BENNY ESPINOZA,
Plaintiff,

Case Number: CV13-00035 JSW
CERTIFICATE OF SERVICE

v.
G. LEWIS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 26, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Benny A. Espinoza
V90095
P.O. Box 7500
Crescent City, CA 95532

Dated: February 26, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk