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

SENH DUONG, P18489,)	
)	
Petitioner,)	No. C 16-5048 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
KELLY SANTORO, Warden,)	(ECF No. 4)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner currently incarcerated at North Kern State Prison, has filed a second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. His first petition was denied on the merits on July 31, 2003. See Duong v. McGrath, No. 03-0127 CRB (N.D. Cal. July 31, 2003) (order).

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 obtained such an order from the Ninth Circuit. The petition accordingly is DISMISSED without prejudice to refile if petitioner obtains the necessary order.

But based solely on petitioner’s affidavit of poverty, his application to proceed in forma pauperis (ECF No. 4) under 28 U.S.C. § 1915 is GRANTED.

The clerk shall close the file, terminate all pending motions as moot and enter judgment in accordance with this order.

SO ORDERED.

DATED: Oct. 14, 2016



CHARLES R. BREYER
United States District Judge