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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANNY TORRES,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

Case No. 15-CV-00369-LHK

**ORDER GRANTING MOTION TO
DISMISS WITHOUT PREJUDICE**

Re: Dkt. No. 9

On January 27, 2015, Petitioner Danny Torres (“Petitioner”), represented by counsel, filed a Petition for Writ of Habeas Corpus challenging his detention at the California State Prison, Solano, in Vacaville, California. ECF No. 1 (“Petition”). On March 29, 2016, the Court ordered Respondent to show cause why the Petition should not be granted. ECF No. 8.

On May 31, 2016, Respondent filed the instant motion to dismiss, which contends that the Court lacks jurisdiction to hear the Petition “on the grounds that the [P]etition is a second or successive [habeas corpus] petition.” ECF No. 9 at 1; *see* 28 U.S.C. § 2244(b)(3)(A) (“Before a second or successive [habeas corpus] application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”); *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (per curiam) (“Burton neither

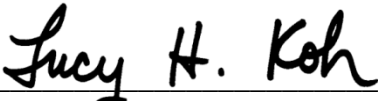
1 sought nor received authorization from the Court of Appeals before filing his 2002 petition, a
2 ‘second or successive’ petition challenging his custody, and so the District Court was without
3 jurisdiction to entertain it.”).

4 On June 15, 2016, Petitioner responded to Respondent’s motion to dismiss. ECF No. 12.
5 In Petitioner’s response, Petitioner agrees with Respondent that his Petition is a second or
6 successive petition and that “he must [therefore] seek permission from the United States Ninth
7 Circuit Court of Appeals to file a successive petition before proceeding in this matter.” *Id.* at 1.
8 Accordingly, Petitioner requests that this action be dismissed without prejudice. Respondent has
9 not filed a reply to Petitioner’s response, and the time for filing a reply has now passed.

10 In light of the parties’ positions, the Court hereby GRANTS without prejudice
11 Respondent’s motion to dismiss. The Clerk shall close the file.

12 **IT IS SO ORDERED.**

13 Dated: June 30, 2016

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16 LUCY H. KOH
17 United States District Judge