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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JILBRAUN D. AGNEW,

12 Petitioner,

13 v.

14 SCOTT KERNAN, Secretary et al.,

15 Respondents.
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Case No.: 16-2251 JAH (KSC)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

17 Petitioner, Jilbraun D. Agnew, a state prisoner proceeding pro se, has filed a
18 Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request
19 to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed
20 in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C.
21 § 2244(b)(3)(A) as indicated below.

22 **PETITION BARRED BY GATEKEEPER PROVISION**

23 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner
24 has submitted to this Court challenging his December 17, 2009 conviction in San Diego
25 Superior Court case No. SCD220189. On April 11, 2011, Petitioner filed in this Court a
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1 Petition for Writ of Habeas Corpus in case No. 11cv0757 RBB.¹ In that petition,
2 Petitioner challenged his conviction in San Diego Superior Court case No. SCD220189
3 as well. On September 4, 2012, this Court denied the petition on the merits. (*See* Order
4 filed Sept. 4, 2012 in case No. 11cv0757 RBB [Doc. No. 12].) Petitioner appealed that
5 determination. On February 7, 2014, the Ninth Circuit Court of Appeals denied
6 Petitioner's request for a certificate of appealability. (*See* Order in *Agnew v. Cate*, No.
7 12-57335 (9th Cir. Feb. 7, 2012).)

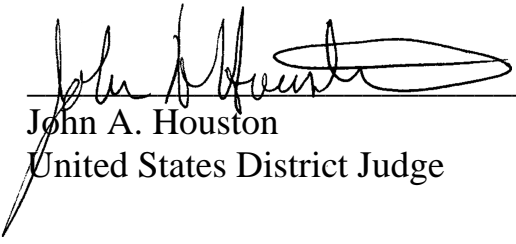
8 Petitioner is now seeking to challenge the same conviction he challenged in his
9 prior federal habeas petition. Unless a petitioner shows he or she has obtained an Order
10 from the appropriate court of appeals authorizing the district court to consider a
11 successive petition, the petition may not be filed in the district court. *See* 28 U.S.C.
12 § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has
13 granted Petitioner leave to file a successive petition.

14 CONCLUSION

15 Because there is no indication Petitioner has obtained permission from the Ninth
16 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
17 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner
18 filing a petition in this court if he obtains the necessary order from the Ninth Circuit
19 Court of Appeals. *The Clerk of Court shall mail Petitioner a blank Application for*
20 *Leave to File Second Or Successive Petition or Motion Under 28 U.S.C. § 2254 OR*
21 *§ 2255 together with a copy of the Order.*

22 **IT IS SO ORDERED.**

23 DATED: September 12, 2016

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25 _____
26 John A. Houston
27 United States District Judge

28 ¹ The parties consented to Magistrate Judge jurisdiction in case no. 11cv0757 RBB.