

1 Petitioner has now filed a First Amended Petition in which he repeats his claim
2 challenging his restitution order, but adds a claim alleging the trial judge was biased. (ECF
3 No. 3 at 6.)

4 **PETITION BARRED BY GATEKEEPER PROVISION**

5 This is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to
6 this Court challenging his August 31, 2006 conviction in San Diego County Superior Court
7 Case No. SCD195407. On September 28, 2011, Petitioner filed in this Court a Petition for
8 a Writ of Habeas Corpus in which he challenged his August 31, 2006 conviction in San
9 Diego County Superior Court Case No. SCD195407. (See Pet. filed 9/28/11 [ECF No. 1]
10 in So.Dist.Ca. Civil Case No. 11cv2270-LAB (WMC).) On August 26, 2013, this Court
11 denied the petition on the basis that it was not filed within the one-year statute of limitations
12 applicable to § 2254 habeas petitions. (See Order filed 8/26/13 [ECF No. 38] in So.Dist.Ca.
13 Civil Case No. 11cv2270-LAB (WMC).) The Ninth Circuit Court of Appeals denied a
14 Certificate of Appealability on November 20, 2013. (See ECF No. 42 in So.Dist.Ca. Civil
15 Case No. 11cv2270-LAB (WMC).)

16 Petitioner is now seeking to challenge the same conviction and sentence he
17 challenged in his prior federal habeas petition. The prior dismissal of his previous petition
18 for failure to comply with the one-year statute of limitations renders subsequent petitions
19 challenging the same conviction or sentence “second or successive” under 2244(b).
20 McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009). Unless a petitioner shows he or
21 she has obtained an Order from the appropriate court of appeals authorizing the district
22 court to consider a successive petition, the petition may not be filed in the district court.
23 See 28 U.S.C. § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of
24 Appeals has granted Petitioner leave to file a successive petition.

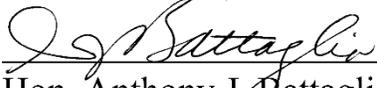
25 **CONCLUSION**

26 Because there is no indication Petitioner has obtained permission from the Ninth
27 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
28 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner

1 filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court
2 of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application for*
3 *Leave to File a Second or Successive Petition Under 28 U.S.C. § 2254 or § 2255 together*
4 *with a copy of this Order.*

5 **IT IS SO ORDERED.**

6 Dated: March 9, 2017

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8 Hon. Anthony J. Battaglia
9 United States District Judge
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