

1 has not filed a federal habeas petition challenging his conviction or sentence, this action
2 presents no case or controversy, and the Court lacks subject matter jurisdiction. *Id.*; *see*
3 *also Smith v. Warden*, No. EDCV 08-1684 VBF (RZ), 2008 WL 5103207, at *1-2 (C.D.
4 Cal. Dec. 1, 2008) (cited pursuant to 9th Cir. R. 36-3) (court lacked subject matter
5 jurisdiction to entertain state inmate’s request for tolling of the limitations period
6 governing § 2254 actions because the inmate had not filed a habeas petition, and
7 therefore, had “not properly initiated a ‘case’ or ‘controversy.’”); *Grissom v. Barnes*, No.
8 CV 13-3593 SJO (SS), 2013 WL 3053059, at *1 (C.D. Cal. June 14, 2013) (also cited
9 pursuant to 9th Cir. R. 36-3) (motion requesting that the Court determine whether federal
10 habeas petition would be time-barred if filed failed to satisfy the case or controversy
11 requirement of Article III).

12 Further, in light of the fact the Court is without subject matter jurisdiction, this
13 action must be dismissed. Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time
14 that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *see also*
15 *Scholastic Entm’t, Inc. v. Fox Entm’t Group, Inc.*, 336 F.3d 982, 985 (9th Cir. 2003)
16 (“While a party is entitled to notice and an opportunity to respond when a court
17 contemplates dismissing a claim on the merits, it is not so when the dismissal is for lack
18 of subject matter jurisdiction.”) (citations omitted).

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1 Based upon the foregoing, this action is DISMISSED without prejudice to
2 Petitioner filing a § 2254 petition to seek relief from his current state custody. Any other
3 pending motions are terminated and the clerk shall close the file.

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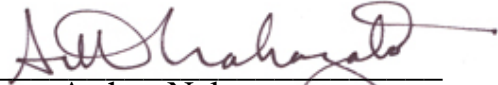
IT IS SO ORDERED.

DATED: August 22, 2014



JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

Presented by:



Arthur Nakazato
United States Magistrate Judge