1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION 11 Case No. CV 16-07921-JAK (AS) 12 PACHECO. A. JOSEPH, 13 Petitioner, ORDER OF DISMISSAL 14 ∇ . 15 THE PEOPLE OF THE STATE OF 16 CALIFORNIA, 17 Respondent. 18 19 **BACKGROUND** 20 21 On October 25, 2016, pro se Petitioner, Joseph A. Pacheco, 22 currently located at Centinela State Prison in 23 California, filed a two-page motion for an extension of time to 24 file a petition for writ of habeas corpus by a person in state 25 26 27 28 1

custody pursuant to 28 U.S.C. § 2254 ("Motion").¹ Petitioner contends that the statute of limitations is set to expire on October 21, 2016, and that he needs 60 days of additional time, until December 20, 2016, to file his federal habeas petition. (Docket Entry No. 1).

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A Petition for Writ of Habeas Corpus can only be issued if Petitioner is in state custody and such custody is in violation of the Constitution, laws or treaties of the United States. 28 U.S.C. § 2254(c). However, Petitioner does not identify or allege any claims that he intends to raise in any petition filed in this Court. Thus, the Court is unable to determine whether Petitioner intends to raise claims that are even cognizable on federal habeas review and whether Petitioner might be entitled to statutory tolling and/or equitable tolling of the AEDPA statute of limitations.²

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According to the attached Proof of Service by Mail, Petitioner handed the Motion to prison authorities for mailing on October 13, 2016.

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), state prisoners have a one-year period within which they must seek federal habeas review of their habeas Although Petitioner contends 28 U.S.C. §2244(d)(1). that the statute of limitations to file a federal habeas petition expires on October 21, 2016, the Court notes that, according to courts' the California database (see http://appellatecases.courtinfo.ca.gov), the California Supreme Court denied Petitioner's Petition for Review on October 21, 2015 (Case No. S228219). Thus, pursuant to 28 U.S.C. § 2244(d)(1)(A) United States Supreme Court Rule 13.1, Petitioner's Therefore, the conviction became final on January 19, 2016. AEDPA limitations period began to run on January 20, 2016 (the day after the time for seeking review of the California Supreme Court's denial of his Petition for Review expired) and, absent tolling, Petitioner will be required to file a federal habeas petition no later than January 19, 2017, pursuant to 28 U.S.C. §

Petitioner's motion for an extension of time in an attempt to bypass the statute of limitations hurdle (see McQuiggin v. Perkins, 133 S.Ct. 1924, 1928 (2013)), must be denied because the Court has no basis for determining whether an extension of time and/or statutory or equitable tolling would be appropriate. Pace v. Diguglielmo, 544 U.S. 408, 416 (2005) (state petitioner may file "protective" federal habeas petition in federal court and request a stay and abey of federal habeas proceedings in order to exhaust state remedies).

Since Petitioner has not filed a federal habeas petition stating a claim for relief under 28 U.S.C. § 2254, denial of the Motion is warranted.

ORDER

ACCORDINGLY, IT IS ORDERED that the Motion be dismissed without prejudice. 3

JOHN A. KRONSTADT

UNITED STATES DISTRICT JUDGE

DATED: November 14, 2016

2244 (d) (1).

Petitioner may assert any argument for statutory and/or equitable tolling in any federal habeas petition he chooses to file, if necessary.