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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

HARES AHMADZAI,  
Petitioner,  
v.  
ALEX VILLANUEVA,  
Respondent.

No. 2:19-cv-01718-CAS (JDE)  
ORDER ACCEPTING FINDINGS  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (Dkt. 1), the Order to Show Cause (Dkt. 3, "OSC"), Petitioner's Response to the OSC (Dkt. 5), the Report and Recommendation of the United States Magistrate Judge (Dkt. 8, "R&R"), and the Objection to the R&R filed by Petitioner (Dkt. 13).

In his Objections, Petitioner contends, among other things, that he exhausted all state remedies, citing to a Petition for Review submitted to the California Supreme Court. However, the California Supreme Court's response, which is attached to Petitioner's Objections, reflects that the state supreme court returned this petition for review on April 23, 2019 as unfiled because it

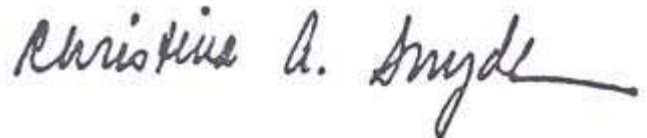
1 was untimely and the state supreme court "lost jurisdiction to act on any  
2 petition for review after February 21, 2019." Dkt. 13-1 at 16 (CM/ECF  
3 pagination). The California Supreme Court's online docket confirms Petitioner  
4 has not filed any pleadings in that court since 2011. See Appellate Courts Case  
5 Information at <https://appellatecases.courtinfo.ca.gov>. Exhaustion requires  
6 that the petitioner's claims be fairly presented to the state courts and be  
7 disposed of on the merits by the highest court of the state. James v. Borg, 24  
8 F.3d 20, 24 (9th Cir. 1994); Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir.  
9 1979). Because the California Supreme Court did not consider the Petition for  
10 Review on the merits and instead, returned it as unfiled, Petitioner has not  
11 exhausted his state remedies. Further, as noted in the R&R, failure to exhaust  
12 was one of, but not the only, the reason why the case did not fall into the  
13 "special circumstances" exception to Younger abstention under Braden v. 30th  
14 Judicial Circuit Court of Ky., 410 U.S. 484, 488-93 (1973). See R&R at 5-6.

15 Having engaged in a de novo review of all of the portions of the R&R to  
16 which objections have been made, the Court concurs with and accepts the  
17 findings and recommendation of the Magistrate Judge.

18 IT IS THEREFORE ORDERED that:

- 19 1. Petitioner's request for discovery is denied; and
- 20 2. Judgment shall be entered dismissing this action without  
21 prejudice.  
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23 Dated: June 4, 2019



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26 CHRISTINA A. SNYDER  
27 United States District Judge  
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