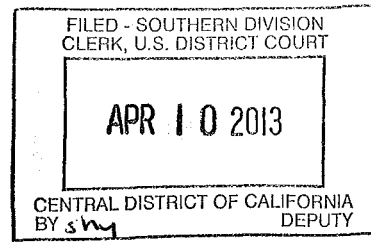


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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 EASTERN DIVISION

KIM PACE-WHITE,  
 Petitioner,  
 v.  
 DEBRA K. JOHNSON, WARDEN,  
 Respondent.

Case No. EDCV 13-589 SJO (AN)

ORDER DISMISSING ACTION  
WITHOUT PREJUDICE

**I. Background**

On April 1, 2013, Kim Pace-White, a state prisoner, submitted a “notice to file petition for writ of habeas corpus by a person in state custody” to the clerk’s office, which was construed and filed as a federal habeas petition brought pursuant to 28 U.S.C. § 2254 (“Petition”). The Petition does not raise any habeas claims. Instead, it simply notifies the Court that Petitioner has filed a state habeas petition with the California Supreme Court (case no. S209486).

For the reasons discussed below, the action is dismissed without prejudice.

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1 **II. Discussion**

2 **A. Standard of Review**

3 Habeas petitions brought pursuant to § 2254 are subject to the Rules Governing  
4 Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (“Habeas  
5 Rules”) and this Court’s Local Rules. The Habeas Rules expressly provide that a district  
6 court must promptly examine a § 2254 petition before service and “[I]f it plainly appears  
7 from the petition and any attached exhibits that the petitioner is not entitled to relief in  
8 the district court, the judge must dismiss the petition and direct the clerk to notify the  
9 petitioner.” Habeas Rule 4; *Mayle v. Felix*, 545 U.S. 644, 656, 125 S. Ct. 2562 (2005);  
10 *see also* Local Rule 72-3.2 (authorizing magistrate judge to prepare proposed order for  
11 summary dismissal and proposed judgment for district judge if it plainly appears from the  
12 face of petition that petitioner is not entitled to relief).

13 Further, in *Felix*, the United States Supreme Court emphasized that a § 2254  
14 petition must provide “a more detailed statement” than a standard civil complaint and  
15 “specify all the grounds for relief available to the petitioner [and] state the facts  
16 supporting each ground[;]” typical notice pleading under Fed. R. Civ. P. 8(c) is  
17 insufficient. *Felix*, 545 U.S. at 656; *see also* Habeas Rule 4, Advisory Committee Notes  
18 (1976 Adoption) (stating “it is the duty of the court to screen out frivolous applications  
19 and eliminate the burden that would be placed on the respondent by ordering an  
20 unnecessary answer . . . . In addition, ‘notice’ pleading is not sufficient, for the petition  
21 is expected to state facts that point to a ‘real possibility of constitutional error’”).

22 **B. Analysis**

23 Federal courts are limited in the exercise of their judicial power to “cases” or  
24 “controversies.” U.S. CONST. Art. III, § 2. A justiciable case or controversy does not  
25 include a dispute of a hypothetical or abstract character. *Aetna Life Ins. Co. v. Haworth*,  
26 300 U.S. 227, 240, 57 S. Ct. 461, 81 L. Ed. 617 (1937). The case or controversy must be  
27 definite and concrete. *Id.* That is, it must be a real and substantial controversy admitting  
28 of specific relief through a decree of a conclusive character. *Id.* at 241. Courts do not sit

1 to decide hypothetical issues or to give advisory opinions. *Princeton University v.*  
2 *Schmid*, 455 U.S. 100, 102, 102 S. Ct. 867, 70 L. Ed. 2d 855 (1982). Consequently, a  
3 court may not toll the statute of limitations with respect to claims not yet filed. *United*  
4 *States v. Cook* 795 F.2d 987, 994 (Fed. Cir. 1986).

5 In light of the foregoing, the Court finds it must dismiss Petitioner's "Petition"  
6 because it does not raise any justiciable federal habeas claims and, as such, it does not  
7 raise an actual case or controversy for this Court to adjudicate. Nor does it set forth any  
8 facts that point to a real possibility of constitutional error.

9 Accordingly, the reference to the magistrate judge is vacated and the action is  
10 dismissed without prejudice. The clerk is directed to enter a judgment dismissing the  
11 action without prejudice and notify Petitioner.

12  
13 IT IS SO ORDERED.

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16 Dated: April 9, 2013

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S. JAMES OTERO  
UNITED STATES DISTRICT JUDGE

18  
19 Presented by:

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Arthur Nakazato  
United States Magistrate Judge