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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ENRIQUEZ DIAZ, K-70268,	)	
	)	
Petitioner,	)	No. C 13-2441 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
R. T. GROUNDS, Warden,	)	(Docket #3)
	)	
Respondent.	)	
_____	)	

I.

Petitioner, a state prisoner incarcerated at Salinas Valley State Prison, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a prison disciplinary finding that resulted in the loss of 30 days of time credit. He also seeks leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915.

II.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999)

1 (state's highest court must be given opportunity to rule on claims even if review  
2 is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995)  
3 (Supreme Court of California must be given at least one opportunity to review  
4 state prisoners' federal claims). The petition for a writ of habeas corpus must be  
5 dismissed without prejudice to refile after state judicial remedies are exhausted.

6 III.

7 Based solely on his affidavit of poverty, petitioner's motion to proceed  
8 IFP (docket #3) is GRANTED. But the petition for a writ of habeas corpus is  
9 DISMISSED for failure to exhaust state judicial remedies.

10 The clerk shall enter judgment in accordance with this order and close the  
11 file.

12 SO ORDERED.

13 DATED: July 31, 2013

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16 CHARLES R. BREYER  
17 United States District Judge  
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