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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS MARTINEZ,

No. C 13-3655 WHA (PR)

Petitioner,

**ORDER DENYING CERTIFICATE
OF APPEALABILITY;
INSTRUCTIONS TO CLERK**

v.

MARION E. SPEARMAN, Warden,

Respondents.

(Dkt. Nos. 10, 11)

Petitioner, a California state prisoner, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. The petition was dismissed for failure to exhaust state court remedies, *see* 28 U.S.C. § 2254(b),(c), because petitioner stated that he had not presented his claims to “any” state court. His subsequent motion “for exhaustion exemption and motion for expedited federal action” (dkt. 8), construed as a motion for reconsideration, was denied because petitioner did not present exceptional circumstances to excuse his failure to exhaust. Petitioner has filed two identical for reconsideration directed to the United States Court of Appeals for the Ninth Circuit seeking “remand” of the case to the District Court to consider the petition on its merits. The motions (dkt. 10, 11) are construed as a notice of appeal and a request for a certificate of appealability. So construed, a certificate of appealability is **DENIED** because petitioner has not made a substantial showing that a reasonable jurist would find the dismissal of his petition on exhaustion grounds debatable or wrong. *Slack v. McDaniel*, 529

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U.S. 473, 484 (2000).

The clerk shall process the appeal and forward a copy of this order to the United States Court of Appeals.

IT IS SO ORDERED.

Dated: January 14, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE