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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUDY MORENO,
Plaintiff,
v.
GREG D. LEWIS,
Defendant.

Case No. [13-cv-03848-JD](#)

ORDER DISMISSING CASE
Re: Dkt. Nos. 10, 11

This is a habeas case brought pro se by a state prisoner under 28 U.S.C. § 2254. Petitioner challenges an administrative decision while he has been incarcerated that denied him time credits. Respondent has filed a motion to dismiss on the grounds that the claims have not been exhausted and the petition is barred by the statute of limitations. Petitioner has filed a response conceding that the claims in the petition were not exhausted in state court and seeks to dismiss the case without prejudice. The case will be therefore dismissed for failure to exhaust.¹

CONCLUSION

1. The motions to dismiss (Docket Nos. 10, 11) are **GRANTED** and this case is **DISMISSED** for failure to exhaust.
2. A certificate of appealability will not issue because this is not a case in which “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a


¹ While it does appear that this petition is untimely, the Court will not address that issue as petitioner did not respond to the argument or present any reasons for tolling.

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constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

Dated: August 5, 2014



JAMES DONATO
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 8/6/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rudy Moreno
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: 8/6/2014

Richard W. Wieking
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO