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

DAVID WAYNE JOHNSON,

Plaintiff,

No. CIV-S-06-2383 LKK KJM P

vs.

D.K. SISTO, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed an application for writ of habeas corpus. Because plaintiff challenges the conditions of his confinement and does not seek early release, the court construes this action as one brought under 42 U.S.C. § 1983 rather than one for writ of habeas corpus under 28 U.S.C. § 2254. The court will dismiss plaintiff's application for writ of habeas corpus and grant plaintiff leave to file a complaint under 42 U.S.C. § 1983.

Plaintiff has filed a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. However, the certificate portion of the request which must be completed by plaintiff's institution of incarceration has not been filled out. Also, plaintiff has not filed a certified copy of his prison trust account statement for the six month period immediately preceding the commencement of this action. See 28 U.S.C. § 1915(a)(2). Plaintiff will be

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1 provided the opportunity to submit a completed in forma pauperis application and a certified
2 copy in support of his application.

3 Plaintiff's failure to comply with any aspect of this order will result in a
4 recommendation that this action be dismissed.

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. Plaintiff's October 27, 2006 application for writ of habeas corpus is dismissed.

7 2. Plaintiff is granted thirty days from the date of service of this order to file a
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
9 Procedure, and the Local Rules of Practice; the complaint must bear the docket number assigned
10 this case; plaintiff must file an original and two copies of the complaint.

11 3. Plaintiff shall submit, within thirty days from the date of this order, a
12 completed affidavit in support of his request to proceed in forma pauperis on the form provided
13 by the Clerk of Court

14 4. Plaintiff shall submit, within thirty days from the date of this order, a certified
15 copy of his prison trust account statement for the six month period immediately preceding the
16 filing of the commencement of this action.

17 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a
18 civil rights action, and the application to proceed in forma pauperis by a prisoner.

19 DATED: November 3, 2006.

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21 U.S. MAGISTRATE JUDGE

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