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

JOE DENHAM,

No. CIV S-07-0968-LKK-CMK-P

Petitioner,

vs.

ORDER

D.K. SISTO, et al.,

Respondents.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.


On August 17, 2007, the magistrate judge filed findings and recommendations recommending this action be dismissed for failure to prosecute and failure to comply with court rules and orders. The basis of this recommendation was that petitioner had previously been ordered to either submit an application to proceed in forma pauperis or pay the filing fee. As of September 25, 2007, plaintiff had not complied. On September 25, 2007, the undersigned adopted the findings and recommendations. This action was dismissed and judgment was entered on September 26, 2007.

1 However, on September 25, 2007, prior to the entry of judgment, but after the
2 undersigned reviewed the case and signed the order adopting the findings and recommendations,
3 petitioner filed his application to proceed in forma pauperis (Doc. 5). As petitioner has now
4 complied with the order to pay his filing fee or submit an application to proceed in forma
5 pauperis, the undersigned will order the judgment be vacated pursuant to Federal Rule of Civil
6 Procedure 60(a). The findings and recommendations and order adopting will also be vacated and
7 the case will be referred back to the magistrate judge to consider petitioner's application for
8 leave to proceed in forma pauperis.

9 Good cause appearing therefor, IT IS HEREBY ORDERED that:

- 10 1. The judgment entered on September 26, 2007 is vacated;
- 11 2. This case is reopened;
- 12 3. The Findings and Recommendations (Doc. 4) and the Order Adopting
13 Findings and Recommendations (Doc. 6) are vacated; and
- 14 4. This matter is referred back to the magistrate judge for further
15 proceedings.

16 DATED: October 9, 2007.

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19 LAWRENCE K. KARLTON
20 SENIOR JUDGE
21 UNITED STATES DISTRICT COURT
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