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

JOHN D. SVELUND,

Petitioner,

No. 2:09-cv-3259 JFM

vs.

D.K. SISTO, Warden, et al.,

Respondents.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se. On October 20, 2009, petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. However, on the first page of that form, petitioner clearly states the petition “is on conditions of confinement.” Id. Allegations concerning the conditions of petitioner’s confinement are not cognizable in a federal habeas corpus action. See Preiser v. Rodriguez, 411 U.S. 475 (1973) (federal writ of habeas corpus available only to challenge fact or duration of confinement and not conditions thereof). Moreover, if petitioner wishes to pursue a civil rights action pursuant to 42 U.S.C. § 1983 concerning the conditions of confinement, he will incur a liability in the amount of the \$350.00 federal court filing fee for a civil rights action, even if he is granted leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914, 1915(b).

1 Thus, the petition will be dismissed and petitioner will be granted leave to file a
2 civil rights complaint. The Clerk of the Court will be directed to provide petitioner with the civil
3 rights complaint form. The court notes that petitioner appended to his petition exhibits
4 demonstrating exhaustion of his administrative remedies. Petitioner may ask the court to remove
5 those exhibits from the petition and append them to his civil rights complaint if he wishes to
6 avoid making additional photocopies.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The November 23, 2009 petition is dismissed.
9 2. Within thirty days from the date of this order, petitioner shall complete the
10 attached Notice of Amendment and submit the following documents to the court:

11 a. The completed Notice of Amendment; and

12 b. An original and one copy of the Amended Complaint.

13 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
14 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
15 bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to
16 file an amended complaint in accordance with this order may result in the dismissal of this
17 action.

18 3. Upon submission of the amended complaint, the court will review petitioner's
19 motion to proceed in forma pauperis, filed December 18, 2009.

20 DATED: January 14, 2010.

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23 UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
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JOHN D. SVELUND,

Petitioner,

No. 2:09-cv-3259 JFM

vs.

D.K. SISTO, Warden, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

Petitioner hereby submits the following document in compliance with the court's
order filed _____:

_____ Amended Complaint

DATED:

Petitioner