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

FRANK CHEUNG,

Petitioner,

No. CIV S-09-3535 DAD P

vs.

D.K. SISTO, Warden,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In accordance with the court’s December 31, 2009, petitioner has filed an application to proceed in forma pauperis.¹

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

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¹ Petitioner has filed a second motion for an extension of time to file his application to proceed in forma pauperis. However, petitioner timely filed his application to proceed in forma pauperis in accordance with the court’s February 10, 2010 order, granting his first motion for an extension of time. Accordingly, the court will deny petitioner’s second motion for an extension of time as unnecessary.

1 Since petitioner may be entitled to relief if the claimed violation of constitutional
2 rights is proved, respondent will be directed to file a response to petitioner's habeas petition.

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

4 1. Petitioner's application to proceed in forma pauperis (Doc. No. 7) is granted;

5 2. Petitioner's motion for an extension of time to file an application to proceed in
6 forma pauperis (Doc. No. 6) is denied as unnecessary;

7 3. Respondent is directed to file a response to petitioner's habeas petition within
8 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer
9 shall be accompanied by all transcripts and other documents relevant to the issues presented in
10 the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

11 4. If the response to the habeas petition is an answer, petitioner's reply, if any,
12 shall be filed and served within thirty days after service of the answer;

13 5. If the response to the habeas petition is a motion, petitioner's opposition or
14 statement of non-opposition to the motion shall be filed and served within thirty days after
15 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days
16 thereafter; and

17 6. The Clerk of the Court shall serve a copy of this order, a copy of the petition
18 for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a copy of the form regarding consent
19 or request for reassignment on Michael Patrick Farrell, Senior Assistant Attorney General.

20 DATED: February 16, 2010.

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23 _____
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE
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DAD:9
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