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

CARL F. HARRISON,

Petitioner,

No. CIV-S-10-0547 FCD KJM P

vs.

DIRECTOR OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION, et al.,

Respondents.

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

Examination of the request to proceed in forma pauperis reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

An application for writ of habeas corpus filed under 28 U.S.C. § 2254 can only be considered if the habeas petitioner alleges he is in custody in violation of the United States Constitution. Petitioner makes no such allegation in his petition. Rather, he challenges his conditions of confinement, specifically, his ability to access courts under the First Amendment.

1 Allegations of unconstitutional conditions of confinement generally must be brought in an action
2 filed under 42 U.S.C. § 1983.

3 For these reasons, petitioner's habeas petition should be dismissed. Petitioner
4 may bring a different action under § 1983 to challenge the matters asserted in his petition. He is
5 advised that he will be required to pay the \$350 filing fee, for a § 1983 action, in installments at
6 least.

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

- 8 1. Petitioner is granted leave to proceed in forma pauperis; and
9 2. The Clerk of the Court is directed to send plaintiff the form for a civil rights
10 action by a prisoner.

11 IT IS HEREBY RECOMMENDED that petitioner's application for writ of
12 habeas corpus be dismissed.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
15 one days after being served with these findings and recommendations, petitioner may file written
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." Petitioner is advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
19 F.2d 1153 (9th Cir. 1991).

20 DATED: May 7, 2010.

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23 U.S. MAGISTRATE JUDGE

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25 harr0547.114(3.8.10)
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