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

HUNG DUONG NGUON,

Petitioner,

No. CIV S-10-1104 KJM P

vs.

TIM V. VIRGA, et al.,

Respondents.

ORDER

_____/

Petitioner is a state prison inmate proceeding with an action he has filed using a form for a petition for a writ of habeas corpus. In the body of the petition, however, he complains that prison officials did not allow him to receive 2000 pages of legal documents sent by his brother and, as a result, he was not able to provide adequate support for a pending lawsuit, which was dismissed.

In the federal system, unlike the state, a habeas petition must challenge an inmate’s confinement, while a civil rights action challenges conditions of confinement. A denial of access to the courts, which is the gravamen of petitioner’s claim, should be raised in a civil rights action. Bounds v. Smith, 430 U.S. 817, 820-21 (1977). The complaint must allege in specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.

1 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
2 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167
3 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and
4 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v.
5 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

6 Finally, petitioner's request to proceed in forma pauperis is insufficient because
7 the certificate portion of the request which must be completed by plaintiff's institution of
8 incarceration has not been filled out. Also, plaintiff has not filed a certified copy of his prison
9 trust account statement for the six month period immediately preceding the filing of the
10 complaint. See 28 U.S.C. § 1915(a)(2). Plaintiff will be provided the opportunity to submit a
11 completed in forma pauperis application and a certified copy of his trust account statement in
12 support of his application.

13 IT IS THEREFORE ORDERED:

- 14 1. Petitioner's request to proceed in forma pauperis (docket no. 2) is denied
15 without prejudice;
- 16 2. The petition is dismissed and petitioner is granted thirty days in which to file
17 an amended complaint;
- 18 3. The Clerk of the Court is directed to send petitioner a packet for a civil rights
19 action by a prisoner; and
- 20 4. The Clerk of the Court is directed to change the designation of this action from
21 habeas to civil rights by a prisoner.

22 DATED: June 11, 2010.

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24 _____
25 U.S. MAGISTRATE JUDGE
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