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

IGNACIO PENA,

Petitioner,

No. CIV S-10-1336 KJM P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

_____/

Petitioner, a state prisoner, is proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner has filed an in forma pauperis affidavit in which he says he has \$381.47 in his CDCR trust account. Pursuant to federal statute, a filing fee of \$5.00 is required to commence a habeas corpus action in federal district court. 28 U.S.C. § 1914(a). The court may authorize the commencement of an action “without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.” 28 U.S.C. § 1915(a).

The amount currently in petitioner’s account shows that petitioner is able to pay the filing fee. Thus, petitioner has made an inadequate showing of indigency. See Alexander v. Carson Adult High Sch., 9 F.3d 1448 (9th Cir. 1993). Petitioner will therefore be granted twenty

1 one days in which to submit the appropriate filing fee to the Clerk of the Court. Petitioner is
2 cautioned that failure to pay the fee will result in a recommendation that the application to
3 proceed in forma pauperis be denied and the instant action be dismissed without prejudice.

4 Accordingly, IT IS HEREBY ORDERED that, within twenty-one days from the
5 date of this order, petitioner shall submit the appropriate filing fee.

6 DATED: September 9, 2010.

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U.S. MAGISTRATE JUDGE

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