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

CHRISTOPHER CERVANTES,

Petitioner,

No. 2:10-cv-2906 KJN P

vs.

McDONALD,

Respondent.

ORDER

_____/

Petitioner, a state prisoner at High Desert State Prison, has filed a document styled “Request for writ of habeas corpus and request to stay action.” No other pleadings have been filed by the petitioner. In order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases, and petitioner must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until an action has been properly commenced. Therefore, petitioner’s request will be denied without prejudice. Petitioner will be provided the opportunity to file his petition, and to submit an application requesting leave to proceed in forma pauperis or to submit the appropriate filing fee. If petitioner does not file a federal petition within thirty days, this case will be dismissed. Also, if the petition does not contain at least one claim for which state court

1 remedies have been exhausted, the petition will be dismissed. See 28 U.S.C. § 2254(b)(1).


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

3 1. Petitioner's October 28, 2010 request is denied without prejudice.

4 2. Petitioner is granted thirty days from the date of service of this order to file a
5 petition that complies with the requirements of the Rules Governing Section 2254 Cases, the
6 Federal Rules of Civil Procedure, and the Local Rules of Practice; the petition must bear the
7 docket number assigned this case; petitioner must file an original and two copies of the petition.
8 If the petition does not contain at least one claim where state court remedies have been
9 exhausted, the petition will be dismissed. Petitioner shall also submit, within thirty days from
10 the date of this order, the application to proceed in forma pauperis on the form provided by the
11 Clerk of Court, or the filing fee in the amount of \$5.00. Petitioner's failure to comply with this
12 order will result in a recommendation that this matter be dismissed.

13 3. The Clerk of the Court is directed to send petitioner the court's form for filing
14 a petition for writ of habeas corpus, and the application to proceed in forma pauperis by a
15 prisoner.

16 DATED: November 3, 2010

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20 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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