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

GERALD J. PAYNE

Petitioner,

No. CIV S-10-3016 GEB GGH

vs.

TIMOTHY VIRGA

Respondents.

ORDER

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

On December 8, 2010, the undersigned issued findings and recommendations that this case be dismissed as petitioner was only seeking habeas relief for a 90 day suspension of visiting privileges for a prison disciplinary finding.

On December 14, 2010, petitioner filed objections and indicated for the first time that he was also placed in the SHU for a year.

On December 21, 2010, petitioner filed additional objections, and indicated for

1 the first time that he was assessed a 150 days loss of credits as a result of the disciplinary finding.

2 In addition, petitioner does not raise any actual claims in the petition, instead he  
3 wishes the court to obtain a videotape that may or may not reveal he is innocent of the charges.  
4 While petitioner can raise a discovery request at the suitable time, this does not present a viable  
5 claim for habeas relief.

6 As petitioner was assessed a loss of credits, he may seek habeas relief, however,  
7 petitioner has still failed to provide a suitable petition, instead submitting piecemeal filings. The  
8 December 8, 2010, order and findings and recommendations (Doc. 7) are vacated. Petitioner's  
9 petition is dismissed with leave to file an amended petition within 21 days of service of this  
10 order, no extensions will be granted. Petitioner must present all of his facts in one filing and  
11 present a viable claim. The court will not refer to multiple filings nor is it clear why petitioner  
12 did not present his case in the original petition.

13 Petitioner is informed that pursuant to the Local Rules, "every pleading to which  
14 an amendment or supplement is permitted as a matter of right or has been allowed by Court order  
15 shall be retyped and filed so that it is complete in itself without reference to the prior or  
16 superseded pleading." L.R. 220. This is because, as a general rule, an amended complaint  
17 supersedes an earlier complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.1967).

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

- 19 1. Petitioner's application to proceed in forma pauperis is granted;
- 20 2. The December 8, 2010, order and findings and recommendations (Doc. 7) are  
21 vacated;
- 22 3. The petition is dismissed and petitioner is granted leave to file an amended  
23 petition within 21 days of service of this order, no extensions will be granted.

24 DATED: January 31, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

26 GGH: AB - payn3016.vac