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

THOMAS ALFRED USHER,

Plaintiff,

No. CIV S-10-3366 EFB P

vs.

TIM VIRGA,

Defendant.

ORDER

_____/

Plaintiff is a prisoner confined at California State Prison Sacramento. In the action he seeks to commence, he is without counsel. It appears that he intends to seek relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On December 17, 2010, he filed a motion for a temporary restraining order. Plaintiff has not paid the filing fee or sought leave to proceed *in forma pauperis*. Neither has he filed a complaint or other documents that this court requires in order to issue a temporary restraining order. *See* E. D. Local Rule 65-231(c). Plaintiff is hereby informed of the materials necessary to obtain a temporary restraining order.

To proceed with a civil action, a plaintiff must pay the \$350 filing fee required by 28 U.S.C. § 1914(a) or request leave to proceed *in forma pauperis* and submit the affidavit and trust account statement required by 28 U.S.C. § 1915(a)(1). Section 1915(a)(2) requires “a prisoner seeking to bring a civil action without prepayment of fees or security therefor, in addition to

1 filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund
2 account statement (or institutional equivalent) for the prisoner for the 6-month period
3 immediately preceding the filing of the complaint . . . , obtained from the appropriate official of
4 each prison at which the prisoner is or was confined.” In order to proceed, plaintiff must either
5 pay the filing fee or comply with the *in forma pauperis* statute.

6 Furthermore, a complaint is necessary for the commencement of a civil action. Fed. R.
7 Civ. P. 3. Any complaint must contain “a short and plain statement of plaintiff’s claim showing
8 that he is entitled to relief.” Fed. R. Civ. P. 8. Plaintiff may draft his claims on the form
9 complaint used by this court.

10 In addition to the materials listed above, a prisoner moving for a temporary restraining
11 order must, at a minimum, file a brief on the legal issues presented in the motion and an affidavit
12 detailing the notice, or efforts to effect notice, to the affected parties or their counsel. E. D.
13 Local Rule 65-231(c). In the alternative, he must make a showing of good cause why notice
14 should not be given. *Id.*

15 Accordingly, it hereby is ORDERED that:

16 1. Within 15 days of the date this order is served, plaintiff shall submit the required
17 documents listed above. In lieu of submitting a complete application to proceed *in forma*
18 *pauperis*, plaintiff may pay the \$350 filing fee. Failure to comply with this order will result in an
19 order denying the motion for a temporary restraining order and directing the Clerk of Court to
20 close this case.

21 2. The Clerk of the Court shall send to plaintiff the form complaint and application for
22 leave to proceed *in forma pauperis* used in this court.

23 DATED: January 5, 2011.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE