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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD LATHAN,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:11-cv-27-EFB P

ORDER

Petitioner is a state prisoner proceeding in forma pauperis¹ and without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. The court’s decision to summarily dismiss this action for failure to state a cognizable claim was vacated by the U.S. Court of Appeals for the Ninth Circuit Court with instructions on remand to afford petitioner leave to amend his petition to assert claims under 42 U.S.C. § 1983. ECF No. 20 (citing *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016) (en banc)).

¹ Prisoners proceeding in forma pauperis in habeas actions are not obligated to pay the \$5 filing fee applicable to habeas actions. However, prisoners proceeding in forma pauperis in § 1983 civil rights actions are obligated to pay the \$350 filing fee applicable to civil rights actions. Therefore, if petitioner chooses to convert this action to a § 1983 civil rights action, he will be responsible for an initial partial filing fee. Thereafter, payments from his trust account will be forwarded to the Clerk of the Court any time the amount in his account exceeds \$10, until the \$350 fee is paid. *See* 28 U.S.C. § 1915(b)(1)(A), (B); § 1915(b)(2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (“Under the PLRA, all prisoners who file IFP civil actions must pay the full amount of the filing fee.”).

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Accordingly, it is hereby ORDERED that:

1. The Clerk of the Court is directed to send petitioner the court's form civil rights complaint.
2. Petitioner is granted thirty days from the date of this order in which to submit a complaint on the form provided with this order. Should petitioner choose to file a complaint asserting claims under 42 U.S.C. § 1983, the complaint must bear the docket number assigned to this case and be titled "Complaint." Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files a complaint stating a cognizable claim pursuant to § 1983 the court will proceed with service of process by the United States Marshal.

DATED: February 6, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE