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

MICHAEL L. OVERTON,

Plaintiff,

No. 2:11-cv-1646 LKK JFM (PC)

vs.

WARDEN, CMF VACAVILLE,

Defendant.

ORDER

_____/

Plaintiff, a state prisoner at California Men’s Colony in San Luis Obispo, California, has filed a document styled “Petition for Order of Mandamus” seeking to recover millions of dollars. No other pleadings were filed to commence this action. In order to commence an action, plaintiff must file a complaint as required by Rule 3 of the Federal Rules of Civil Procedure, and plaintiff must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis.¹ 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, plaintiff’s petition will be denied without prejudice. Plaintiff will be provided the opportunity to file his complaint, and to submit an application requesting leave to proceed in forma pauperis or to submit the appropriate filing fee.

¹ If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments.

1 On July 18, 2011, plaintiff filed a motion to serve summons and complaint. For
2 the reasons set forth supra, that motion will be denied without prejudice.

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

4 1. Plaintiff's June 17, 2011 petition for order of mandamus is denied without
5 prejudice;

6 2. Plaintiff is granted thirty days from the date of service of this order to file a
7 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
8 Procedure, and the Local Rules of Practice; the complaint must bear the docket number assigned
9 this case; plaintiff must file an original and two copies of the complaint. Plaintiff shall also
10 submit, within thirty days from the date of this order, the application to proceed in forma
11 pauperis on the form provided by the Clerk of Court, or the filing fee in the amount of \$350.00.
12 Plaintiff's failure to comply with this order will result in a recommendation that this matter be
13 dismissed;

14 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a
15 civil rights action, and the application to proceed in forma pauperis by a prisoner; and

16 4. Plaintiff's July 18, 2011 motion is denied without prejudice.

17 DATED: July 28, 2011.

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20 UNITED STATES MAGISTRATE JUDGE

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