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

ALTON E. DEAN,

Petitioner,

No. 2: 11-cv-2152 KJN P

vs.

E. WONG, et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed a petition for writ of habeas corpus. In this petition, petitioner challenges conditions of confinement. Petitioner alleges violations of his constitutional rights and the Americans with Disabilities Act (“ADA”). The caption of the petition states “Superior Court of California of San Joaquin.” On August 25, 2011, petitioner was ordered to inform the court whether he intended to proceed with this action in this court, or whether he meant to file this action in the San Joaquin County Superior Court. On September 14, 2011, petitioner filed a pleading indicating that he intends to proceed with this action in this court.

The purpose of a habeas corpus petition pursuant to 28 U.S.C. § 2254 is to challenge the legality of a conviction or sentence. The purpose of a civil rights action brought pursuant to 42 U.S.C. § 1983 or an action brought pursuant to the ADA is to challenge

1 conditions of confinement. Accordingly, the court construes this action as having been brought
2 pursuant to 42 U.S.C. § 1983 and the ADA.

3 Petitioner has filed a request for leave to proceed in forma pauperis pursuant to 28
4 U.S.C. § 1915. Petitioner has not, however, filed his application for leave to proceed in forma
5 pauperis on the form used by this district. Use of the form assists petitioner to establish and the
6 court to evaluate petitioner's in forma pauperis status in light of 28 U.S.C. § 1915 (b)(1) and (2).
7 Accordingly, petitioner's application will be dismissed and petitioner will be provided the
8 opportunity to submit the application on the appropriate form. Petitioner is cautioned that he
9 must also provide a certified copy of his prison trust account statement for the six month period
10 immediately preceding the filing of his complaint.¹

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

12 1. This action is construed as having been brought pursuant to 42 U.S.C. § 1983
13 and the ADA;

14 2. Petitioner's application to proceed in forma pauperis is dismissed without
15 prejudice;

16 3. The Clerk of the Court is directed to send petitioner a new Application to
17 Proceed In Forma Pauperis By a Prisoner; and

18 4. Petitioner shall submit, within thirty days from the date of this order, a
19 completed application to proceed in forma pauperis. Petitioner's failure to comply with this
20 order may result in the dismissal of this action without prejudice.

21 DATED: September 20, 2011

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23 dean2152.ifp

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

25 ¹ Petitioner has been found to have "three strikes" pursuant to 28 U.S.C. § 1915(g).
26 After reviewing the petition, the undersigned finds that petitioner may meet the "imminent
danger" exception to this rule.