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

SIMCO MORRIS,

No. 2:12-CV-2116-CMK-P

Petitioner,

vs.

ORDER

GARY SWARTHOUT,

Respondent.

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action.

Pending before the court is petitioner’s application for leave to proceed in forma pauperis (Docs. 4,8). Under 28 U.S.C. § 1915(a), the court may grant in forma pauperis status to parties who submit an affidavit showing that the party is unable to pay the filing fee. In this case, the filing fee is \$5.00. Petitioner has submitted a copy of his prison trust account statement reflecting that he has had an average monthly balance of \$114.38 and average monthly deposits in the amount of \$186.77. Given the available funds in his prison trust account, the court cannot

1 find that petitioner is unable to pay the \$5.00 filing fee. Therefore, petitioner's application for  
2 leave to proceed in forma pauperis will be denied and petitioner shall be required to pre-pay the  
3 filing fee before this action can proceed. Petitioner is cautioned that failure to pay the filing fee  
4 within the time provided by this order may result in dismissal of the action. See Local Rule 110.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Petitioner's applications for leave to proceed in forma pauperis (Docs. 4,8)  
7 are denied; and  
8 2. Petitioner shall pay the \$5.00 filing fee within 30 days of the date of this  
9 order.

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11 DATED: April 23, 2014

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
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