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

E. CHILDS,

Plaintiff,

No. 2:13-cv-0670 EFB P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner confined to the Richard J. Donovan Correctional Facility. He is proceeding pro se and it appears that he is attempting to commence a civil action under 42 U.S.C. § 1983. Although he has not filed a complaint and has no action currently pending, on April 5, 2013 plaintiff filed a motion for a temporary restraining order. Dckt. No. 1. A complaint is necessary for the commencement of a civil action and without a pending civil action there is no basis for granting a temporary restraining order.

Plaintiff also has not paid the filing fee nor has he sought leave to proceed *in forma pauperis*. 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). 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, in  
5 addition to submitting a complain, either pay the filing fee or comply with the *in forma pauperis*  
6 statute.

7         If plaintiff submits a complaint it must contain a short and plain statement of plaintiff’s  
8 claim showing that he is entitled to relief. Fed. R. Civ. P. 3; Fed. R. Civ. P. 8. A complaint must  
9 also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a). To state a  
10 claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right  
11 secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
12 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487  
13 U.S. 42, 48 (1988). A complaint must identify as a defendant only persons who personally  
14 participated in a substantial way in depriving the plaintiff of a federal constitutional right.  
15 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the  
16 deprivation of a constitutional right if he does an act, participates in another’s act or omits to  
17 perform an act he is legally required to do that causes the alleged deprivation). A complaint  
18 must allege with at least some degree of particularity overt acts which defendants engaged in that  
19 support plaintiff’s claim. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

20         Plaintiff may draft his claims on the form complaint used by this court.

21         Until plaintiff submits a complaint and either pays the filing fee or meets the  
22 requirements of 28 U.S.C. § 1915(a), there simply is no case before the court.

23         Accordingly, it hereby is ORDERED that:

24         1. The Clerk of the Court shall send to plaintiff the form complaint and application for  
25 leave to proceed in forma pauperis used in this court.

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1           2. Within 30 days of the date of this order, plaintiff shall either pay the \$350 filing fee or  
2 submit a complete application for leave to proceed in forma pauperis.

3           3. Within 30 days of the date of this order, plaintiff shall submit a complaint stating the  
4 nature of the action and his belief that he is entitled to redress. Failure to comply with this order  
5 may result in a recommendation that this action be dismissed.

6 Dated: April 15, 2013.

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8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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