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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE IAN OSBAND,
Plaintiff,
v.
SAN QUENTIN STATE PRISON
WARDEN,
Defendant.

No. 2:13-cv-1755-EFB P

ORDER

Plaintiff is state prisoner proceeding without counsel. He has filed a document that references the case number for the habeas (death penalty) action that he is pursuing in this court, but the subject matter of the document does not relate to those proceedings. Rather, it seems that plaintiff wishes to pursue a civil action challenging a rules violation report charging him with “sexual behavior (masturbation w/ exposure)” that he received on July 23, 2013 at California State Prison, San Quentin. *See* ECF No. 1.

To proceed with a civil action a plaintiff must pay the \$400 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). Plaintiff has neither paid the fee nor submitted a proper application for leave to proceed in forma pauperis. Plaintiff has 30 days to either pay the fee or file a proper application.

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1 To properly commence a civil action, plaintiff must also file a signed complaint. Fed. R.
2 Civ. P. 3. Rule 8 requires that a complaint include “a short and plain statement of the claim”
3 showing entitlement to relief. Fed. R. Civ. P. 8(a)(2). A complaint must identify as a defendant
4 only persons who personally participated in a substantial way in depriving plaintiff of a federal
5 constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects
6 another to the deprivation of a constitutional right if he does an act, participates in another’s act or
7 omits to perform an act he is legally required to do that causes the alleged deprivation). The
8 complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

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

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The Clerk of the Court is directed to mail to plaintiff a form application for leave to
13 proceed in forma pauperis and a form for filing a civil rights action under 42 U.S.C. § 1983.

14 2. Plaintiff has 30 days from the date of service of this order to submit either the filing fee
15 or the application required by § 1915(a).

16 3. Plaintiff has 30 days from the date of service of this order to submit a complaint.

17 4. Failure to comply with this order may result in this action being dismissed.

18 DATED: August 29, 2013.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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