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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE K. HENDERSON,
Petitioner,
v.
DAVE DAVEY,
Respondent.

No. 2: 14-cv-2757 KJN P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner consented to the jurisdiction of the undersigned. (ECF No. 3.)

On December 29, 2014, the undersigned ordered petitioner to either pay the filing fee or file an application to proceed in forma pauperis within thirty days. (ECF No. 5.) On February 3, 2015, petitioner filed a copy of his trust account statement. (ECF No. 7.) The undersigned construes petitioner’s trust account statement to contain an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

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1 In this action, petitioner challenges his 2004 conviction from the Sacramento County
2 Superior Court. Court records indicate that petitioner has previously brought a habeas petition in
3 this court challenging the same conviction, CIV No. 06-cv-2369 JAM CMK P.¹ On October 15,
4 2008, the court denied 06-2369, and the Ninth Circuit denied petitioner's appeal on March 8,
5 2010. Thus, in the instant case, petitioner is attempting to bring a second or successive petition.

6 Before a second or successive petition is filed in the district court, the applicant is required
7 to move in the appropriate court of appeals for an order authorizing the district court to consider
8 the application. 28 U.S.C. § 2244(b)(3)(A). Here, petitioner has not obtained an order from the
9 Ninth Circuit authorizing the district court to consider this second or successive petition.
10 Petitioner cannot proceed with this action unless and until he obtains such an order from the
11 Ninth Circuit. Accordingly, this action is dismissed without prejudice to its refiling with a copy
12 of an order from the Ninth Circuit authorizing petitioner to file a second or successive petition.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Petitioner's application to proceed in forma pauperis is granted;
- 15 2. This action is dismissed without prejudice.

16 Dated: March 9, 2015

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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28 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d
500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).