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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIGUEL DIAZ,  
Plaintiff,  
v.  
MATTHEW STAINER, et al.,  
Defendants.

No. 2:15-cv-2173 JAM KJN P (TEMP)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a document styled “Emergency Motion for TRO and Preliminary Injunction.” Therein, plaintiff complains that a Dr. McAlister refuses to re-schedule plaintiff’s previously-authorized shoulder surgery. Plaintiff has not filed any other pleadings or documents with the court.

In order to commence an action, plaintiff must file a complaint as required by Rule 3 of the Federal Rules of Civil Procedure, and plaintiff must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis.<sup>1</sup> See 28 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until plaintiff properly commences this action. Therefore, the court will deny plaintiff’s pending motion without prejudice. The

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<sup>1</sup> If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments.

1 court will provide plaintiff with an opportunity to file a complaint and to submit an application  
2 requesting leave to proceed in forma pauperis or to submit the appropriate filing fee.


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

4 1. Plaintiff's Emergency Motion for TRO and Preliminary Injunction (Doc. No. 1) is  
5 denied without prejudice;

6 2. Plaintiff is granted thirty days from the date of service of this order to file a complaint  
7 that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure,  
8 and the Local Rules of Practice; the complaint must bear the docket number assigned this case.  
9 Plaintiff shall also submit, within thirty days from the date of this order, the application to  
10 proceed in forma pauperis on the form provided by the Clerk of Court, or the filing fee in the  
11 amount of \$400.00.<sup>2</sup> Plaintiff's failure to comply with this order will result in a recommendation  
12 that this action be dismissed; and

13 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a civil  
14 rights action and the application to proceed in forma pauperis by a prisoner.

15 Dated: November 10, 2015

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18 KENDALL J. NEWMAN  
19 UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup> The \$400.00 is comprised of the \$350.00 filing fee and a \$50.00 administrative fee. If the court  
28 grants plaintiff leave to proceed in forma pauperis, plaintiff will not need to pay the \$50.00  
administrative fee.