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7	UNITED STATES DISTRICT COURT
8	FOR THE EASTERN DISTRICT OF CALIFORNIA
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10	CHRISTOPHER F. HERINA, No. 2:16-cv-2964-EFB P
11	Petitioner,
12	v. <u>ORDER</u>
13	CALIFORNIA DEPARTMENT OF
14	CORRECTIONS, et al.,
15	Respondents.
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17	Petitioner is a state prisoner proceeding without counsel. This action was opened when he
18	filed the first page of an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.
19	ECF No. 1. The "petition" is incomplete and is not signed. Petitioner also filed a document with
20	the words "requesting dismissal" and a large "X" drawn across the page. It is not clear whether
21	petitioner intends to proceed with an application for a writ of habeas corpus or if he wishes to
22	abandon this action.
23	Regardless, petitioner has not properly commenced this action. To commence a civil
24	action, a party is required to file a complaint or a petition. Fed. R. Civ. P. 3; Rule 3, Rules
25	Governing § 2254 Cases; Woodford v. Garceau, 538 U.S. 202, 203 (2003). Moreover, Rule 11 of
26	the Federal Rules of Civil Procedure requires that "[e]very pleading, written motion, and other
27	paper be signed by at least one attorney of record in the attorney's name—or by a party
28	personally if the party is unrepresented." Fed. R. Civ. P. 11(a).

1	If petitioner wishes to abandon this action, he may file a notice of voluntary dismissal in
2	accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure. If, however, petitioner
3	wishes to challenge a judgment of conviction entered against him in state court, he must file an
4	application for a writ of habeas corpus using this court's form petition. In addition, he must either
5	file an in forma pauperis affidavit or pay the required filing fee (\$5.00). See 28 U.S.C. §§
6	1914(a); 1915(a). Until he submits a petition and either pays the filing fee or meets the
7	requirements of 28 U.S.C. § 1915(a), there is simply no case before the court.
8	Accordingly, it is hereby ORDERED that:
9	1. The Clerk of the Court shall send to petitioner the court's forms for application for writ
10	of habeas corpus and application for leave to proceed in forma pauperis.
11	2. Within 30 days of the date of this order, petitioner shall either pay the \$5 filing fee or
12	submit a complete application for leave to proceed in forma pauperis.
13	3. Within 30 days of the date of this order, petitioner shall file a petition for writ of
14	habeas corpus.
15	4. Failure to comply with this order may result in this case being closed.
16	DATED: January 17, 2017.
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18	EDMUND F. BRENNAN UNITED STATES MAGISTRATE JUDGE
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