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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHEN CHRISTOPHER
DUNCKHURST,

 Petitioner,

 v.

RON RACKLEY,

 Respondent.

No. 2:17-cv-2030 AC P

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The petition was originally filed in the Ninth Circuit Court of Appeal as an application to file a second or successive petition. ECF No. 2. The Ninth Circuit denied the application as unnecessary because petitioner is challenging the denial of his petition for resentencing under Proposition 36. Id. Because the petition was initially filed as an application to file a second or successive petition, it is not on the petition form used by this district and, as a result, it is missing nearly all of the necessary information regarding petitioner’s underlying conviction and state court proceedings. Because of the form petitioner used, it is also not clear whether he is challenging the denial of his petition for recall, the language of the statute, or both. The petition will therefore be dismissed with leave to amend so that petitioner can provide the necessary information regarding his conviction and clarify his grounds for relief.

1 Petitioner also has not filed an in forma pauperis application or paid the required filing fee
2 (\$5.00) and will be given an opportunity to do so. See 28 U.S.C. §§ 1914(a); 1915(a).

3 Accordingly, IT IS HEREBY ORDERED that:


4 1. Petitioner's application for writ of habeas corpus is dismissed with leave to amend.
5 Petitioner shall have thirty days from service of this order to file an amended petition on the form
6 provided by the Clerk of the Court.

7 2. Petitioner shall submit, within thirty days from service of this order, an application in
8 support of his request to proceed in forma pauperis or the appropriate filing fee.

9 3. Failure to comply with this order will result in a recommendation that this action be
10 dismissed.

11 4. The Clerk of the Court is directed to send petitioner the court's form for an application
12 for writ of habeas corpus and a copy of the in forma pauperis form used by this district.

13 DATED: March 1, 2018

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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