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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TREVER NEIL RHONE,
Petitioner,
v.
BUTTE COUNTY JAIL,
Respondent.

No. 2:18-cv-288-EFB P

ORDER

Petitioner is a county jail inmate without counsel. This action was opened when he filed a “petition for writ of habeas corpus” concerning “medical misconduct and neglect.” ECF No. 1. It is not clear whether he intended to file an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 or a civil rights complaint pursuant to 42 U.S.C. § 1983. Habeas petitions and civil rights complaints provide exclusive vehicles for relief and may not be pursued concurrently in a single action. *See Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (holding that if a state prisoner’s claim would not necessarily lead to immediate or speedier release, it may not be brought in habeas corpus but must be brought, if at all, under § 1983).

In addition, petitioner has not filed an in forma pauperis application or paid the required filing fee (\$5.00 for a habeas action; \$400 for a civil action). *See* 28 U.S.C. §§ 1914(a); 1915(a). To proceed with this action, petitioner must pay the required filing fee or request leave to proceed in forma pauperis and submit the affidavit and trust account statement required by 28 U.S.C. § 1915(a).

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Accordingly, it is hereby ORDERED that:

1. Petitioner may file a civil rights complaint pursuant to 42 U.S.C. § 1983 within 30 days from the date of service of this order. If he fails to do so, this action will proceed on his initial filing as a habeas case.
2. Petitioner has 30 days from the date of service of this order to submit either the applicable filing fee or the application required by § 1915(a). Failure to comply with this order will result in a recommendation that this action be dismissed.
3. The Clerk of the Court is directed to send petitioner the court's form application for leave to proceed in forma pauperis and the prisoner civil rights complaint form.

DATED: February 8, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE