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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMMITT LEWIS,

No. C 09-2357 WHA (PR)

Petitioner,

**ORDER OF DISMISSAL;
DENYING PENDING
MOTIONS**

vs.

LARRY SMALL, Warden,

Respondent.

(Docket Nos. 2 & 5)

Petitioner, a California prisoner, filed this pro se habeas petition under 28 U.S.C. 2254.

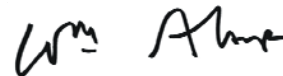
On July 27, 2009, an order to show cause was issued and petitioner's motion to proceed in forma pauperis was denied in light of the funds in his prison trust account. Petitioner was ordered to pay the five-dollar filing fee within thirty days. Petitioner was cautioned that if he did not do so, the case would be dismissed. No payment or other response has been received.

This case is therefore **DISMISSED** without prejudice to filing a new petition in which petitioner either pays the filing fee or demonstrates that he is entitled to proceed in forma pauperis.

The clerk shall close the file.

IT IS SO ORDERED.

Dated: October 6, 2009.



 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE