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

EDWARD JOHN AULT,

Petitioner,

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS,

Respondent.

No. C 10-4337 WHA (PR)

**ORDER DISMISSING WITHOUT  
PREJUDICE FOR FAILURE TO  
EXHAUST; GRANTING LEAVE TO  
PROCEED IN FORMA PAUPERIS**

(Docket No. 2)

Petitioner, a California state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court may not be granted unless the prisoner has first exhausted state judicial remedies, either by way of a direct appeal or in collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue he or she seeks to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). Petitioner has the burden of pleading exhaustion in his habeas petition. *See Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981).

In his petition, petitioner has indicated that he has not presented to the California Supreme Court on direct appeal or in a habeas petition. Petitioner has also presented no exceptional circumstances to excuse his doing so. *See Granberry*, 481 U.S. at 134. The petition is therefore **DISMISSED** without prejudice to refile after available state judicial

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remedies are exhausted.

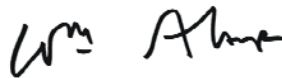
Petitioner's application for leave to proceed in forma pauperis (docket number 2) is

**GRANTED.**

The clerk shall close the file.

**IT IS SO ORDERED.**

Dated: October 28, 2010.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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