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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 JAMES D. HARRISON,
9 Plaintiff,

No. C 11-155 SI (pr)

ORDER OF DISMISSAL

10 v.

11 M. GARNER and F. GARNER; et al.,
12 Defendants.
13 _____/

14 On January 11, 2011, this action was opened when the court received from plaintiff a
15 document with a case caption not matching any of his other cases that was labeled "Before 2005
16 # Untitled" on the first page and had attached a trust withdrawal form, a copy of a CDC-115 rule
17 violation report, a "personal package program" list from the prison, and a life prisoner
18 documentation hearing notice. That day, the court sent written notices to plaintiff that he
19 needed to file a civil rights complaint form and an in forma pauperis application, or the action
20 would be dismissed. He then sent the civil rights complaint form back to the court, leaving it
21 blank except that he filled in the case caption and his address on the first page, dated and signed
22 the last page, and attached to it a copy of his inmate trust account statement. (Docket # 4.) He
23 also sent in an in forma pauperis application that was left blank, except for his name and case
24 caption on the first page and signature on the last page. (Docket # 5.) He also sent in his inmate
25 trust account statement and certification form. (Docket # 6.) He also sent in a motion for leave
26 to file an amended complaint, in which he stated that he wanted to amend his complaint to
27 substitute M. Garner and F. Garner for the Jon Doe defendants, but provided no allegations
28 against those defendants (and those defendants' names do not appear on the rule violation report

1 attached to the original complaint) and attached to his motion several blank forms for prison
2 visitors. (Docket #7.)

3 The motion to amend is GRANTED. (Docket # 7.) M. Garner and F. Garner have been
4 substituted in as defendant in place of John Doe defendants.


5 The action is DISMISSED for failure to state a claim upon which relief may be granted.
6 Leave to amend will not be granted because it would be futile. Harrison already notified by the
7 clerk that he needed to submit a complaint, and chose to respond by filing a complaint that was
8 mostly blank and did not state any claim for relief, and followed that with a motion to amend
9 where he merely identified names for Doe defendants but provided no allegations against those
10 persons.

11 To the extent Harrison wants to challenge the CDC-115 rule violation report attached to
12 his first filing, he must file a petition for writ of habeas corpus to do so. This is because the
13 discipline imposed included a 90-day credit forfeiture and a favorable decision would affect the
14 duration of his confinement. A petition for writ of habeas corpus is the exclusive method by
15 which he may challenge the execution of his sentence in this court. See Preiser v. Rodriguez,
16 411 U.S. 475, 500 (1973). Before he may file a federal petition for writ of habeas corpus,
17 Harrison must exhaust state judicial remedies by presenting the highest state court available with
18 a fair opportunity to rule on the merits of each and every issue he seeks to raise in federal court.
19 See 28 U.S.C. § 2254(b)(1)(A),(c); Duckworth v. Serrano, 454 U.S. 1, 3 (1981). He might, for
20 example, file a habeas petition in the California Supreme Court to exhaust state judicial
21 remedies.

22 The clerk shall close the file.

23 IT IS SO ORDERED.

24 DATED: June 3, 2011



SUSAN ILLSTON
United States District Judge

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