

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re

No. C-12-5368 EMC (pr)

MARCELLUS COOKSEY,

Plaintiff.

**ORDER OF DISMISSAL**

This action was opened on October 17, 2012, when the Court received from Marcellus Cooksey a letter complaining about the conditions of confinement at the High Desert State Prison. On that date, the Court notified Mr. Cooksey in writing that his action was deficient in that he had not filed a complaint and had not filed an *in forma pauperis* application. The Court further notified Mr. Cooksey that this action would be dismissed if he did not submit a complaint within thirty days.

Mr. Cooksey did not file a complaint. Instead, he requested a ninety-day extension of the deadline to file the complaint, so that he could complete the exhaustion of his administrative remedies. The problem for Mr. Cooksey is that administrative remedies need to be exhausted before an action is filed, and his request plainly shows they were not. *See Vaden v. Summerhill*, 449 F.3d 1047, 1051 (9th Cir. 2006) (where administrative remedies are not exhausted before the prisoner sends his complaint to the court it will be dismissed even if exhaustion is completed by the time the complaint is actually filed). The request for an extension of time is **DENIED** because he has not shown cause to grant the extension. (Docket # 6.)

There is another problem for Mr. Cooksey: even if he did file a complaint, the Northern District would not be the correct venue for this action. His letter (Docket # 1) shows that his concerns are about medical care at High Desert State Prison. High Desert State Prison is in Lassen County, and therefore within the venue of the Eastern District of California. *See* 28 U.S.C.

1 § 1391(b) (a civil action may be brought in a judicial district "in which a substantial part of the  
2 events or omissions giving rise to the claim occurred"). If and when Plaintiff is ready to file a civil  
3 rights complaint about the conditions of confinement at High Desert State Prison, he should file his  
4 complaint in the U.S. District Court for the Eastern District of California in Sacramento, California.

5 Plaintiff has failed to file a complaint by the deadline. Accordingly, this action is  
6 **DISMISSED** without prejudice for failure to submit a pleading showing the Court has subject  
7 matter jurisdiction. Plaintiff's *in forma pauperis* applications are **GRANTED**. (Docket # 5, # 7.)  
8 The Clerk shall close the file.

9  
10 IT IS SO ORDERED.

11  
12 Dated: February 8, 2013

13  
14   
15 \_\_\_\_\_  
16 EDWARD M. CHEN  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28