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E-Filed 8/26/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DIETRICH PENNINGTON,

No. C 13-1725 RS (PR)

Petitioner,

**ORDER DENYING APPLICATION
TO PROCEED IN FORMA
PAUPERIS;**

v.

G. LEWIS, Warden,

**ORDER DIRECTING PETITIONER
TO PAY THE FILING FEE BY
OCTOBER 1, 2013**

Respondent.

United States District Court
For the Northern District of California

_____ /
This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. Presently before the Court is petitioner’s application to proceed *in forma pauperis* (“IFP”). (See Docket No. 5.)

In support of such application, petitioner submitted a Certificate of Funds in Prisoner’s Account signed by an authorized state official. The Certificate of Funds shows that the average deposits to petitioner’s account for the six months preceding the filing of the IFP application were \$83.38, and the average balance in petitioner’s account for the same time period was \$301.59.

Based on the above, the Court finds that petitioner is able to afford the \$5.00 filing fee in this action. Accordingly, petitioner’s application to proceed IFP is DENIED. Petitioner

No. C 13-1725 RS (PR)
ORDER DENYING IFP APPLICATION

1 shall pay the \$5.00 filing fee in this matter by submitting such payment to the Clerk of the
2 Court on or before October 1, 2013. Petitioner's failure to do so will result in the dismissal
3 of this action for failure to prosecute under Federal Rule of Civil Procedure 41(b), and
4 without further notice to petitioner.

5 Petitioner's motion for the appointment of counsel (Docket No. 2) is DENIED without
6 prejudice. Petitioner may refile this motion when he pays his filing fee. This order
7 terminates Docket Nos. 2 and 5.

8 **IT IS SO ORDERED.**

9 DATED: August 26, 2013


RICHARD SEEBORG
United States District Judge

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