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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM RAY BARTON,
Petitioner,
v.
DAVID BAUGHMAN,
Respondent.

Case No. [17-cv-00945-JCS](#) (PR)

**ORDER REOPENING ACTION;
ORDER DENYING APPLICATION
TO PROCEED IN FORMA
PAUPERIS;
ORDER DIRECTING PETITIONER
TO PAY FILING FEE BY OCTOBER
2, 2017**

This federal habeas action was dismissed because petitioner failed to pay the filing fee or perfect his application to proceed *in forma pauperis* (“IFP”). He since has filed a complete IFP application. This action is REOPENED. The Clerk is directed to amend the docket accordingly. The judgment (Dkt. No. 7) and the order of dismissal (Dkt. No. 6) are VACATED.

In support of his IFP application, petitioner submitted a certificate of funds. The certificate shows that the average deposits to petitioner’s account for the six months preceding the filing of the IFP application were \$143.33, and the average balance in his account for the same time period was \$83.69.

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Based on the above, the Court finds that petitioner is able to afford the \$5.00 filing fee in this action. Accordingly, his application to proceed IFP is DENIED. **Petitioner shall pay the \$5.00 filing fee in this matter by submitting payment to the Clerk of the Court on or before October 2, 2017. No extensions of time will be granted.** Failure to comply with this order will result in the dismissal of this action.

The Clerk shall amend the docket to reflect that David Baughman, the warden of the prison in which petitioner is housed, is the sole respondent in this action. Petitioner erroneously named the People of the State of California. Baughman, not the People, is the sole proper respondent in this action, as he is the custodian having day-to-day control over petitioner, the only person who can produce “the body” of the petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)).

IT IS SO ORDERED.

Dated: August 28, 2017



JOSEPH C. SPERO
Chief Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM RAY BARTON,
Plaintiff,
v.
PEOPLE OF THE STATE OF
CALIFORNIA,
Defendant.

Case No. [17-cv-00945-JCS](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 28, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William Ray Barton ID: B71646
Cal. State Prison-Sacramento
P.O. Box 290066
Represa, CA 95671

Prison Trust Account for William Ray Barton
Cal. State Prison-Sacramento
P.O. Box 290066
Represa, CA 95671

USDC- Finance

Dated: August 28, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO