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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENNIS E. KELLOGG,
Plaintiff,

No. C 11-00118 SBA (PR)

ORDER OF DISMISSAL

v.

STATE OF CALIFORNIA,
Defendant.

This action was opened in error when the Court received a civil rights complaint form and an in forma pauperis application from Plaintiff that was intended to be filed in a previously-filed action -- Case No. C 10-5802 SBA (PR). Plaintiff had only filed a motion for leave to proceed in forma pauperis in Case No. C 10-5802 SBA (PR); therefore, he was informed by the Clerk of the Court that his action could not go forward until he filed with the Court a civil rights complaint form or a habeas corpus petition form. The Clerk also notified Plaintiff that his in forma pauperis application was deficient due to the failure to include a signed certificate of funds and a prisoner trust account statement for the previous six months. The Clerk informed him that his action could not go forward until he paid the filing fee or filed a completed prisoner's in forma pauperis application. The Clerk sent Plaintiff blank civil rights complaint, habeas corpus petition and in forma pauperis application forms and told him that he must return the completed forms within thirty days or his action would be dismissed.

Plaintiff completed and filed a civil rights complaint form and another in forma pauperis application; however, he did not indicate that they were to be filed in Case No. C 10-5802 SBA (PR). Therefore, as mentioned above, this new action was opened in error.

1 Plaintiff currently has two separate civil rights actions pending, although he meant to file
2 only one action. Accordingly, the Clerk is directed to remove Plaintiff's civil rights complaint form
3 and his in forma pauperis application from this action, to file them in his previously-filed action,
4 Case No. C 10-5802 SBA (PR), and to docket them as his "Complaint" and his "Motion for Leave to
5 Proceed In Forma Pauperis." The Clerk is further directed to mark them as filed on January 10,
6 2011, the date they was received by the Court. The Court will review the complaint and in forma
7 pauperis application in a separate written Order in Case No. C 10-5802 SBA (PR).

8 The present action is DISMISSED because it was opened in error. No filing fee is due. The
9 Clerk shall close the file.

10 IT IS SO ORDERED.

11 DATED: 2/9/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DENNIS E KELLOGG,

5 Plaintiff,

6 v.

7 CALIFORNIA STATE OF et al,

8 Defendant.

Case Number: CV11-00118 SBA

CERTIFICATE OF SERVICE

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

11 That on February 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Dennis E. Kellogg
16 3500 Data Drive
17 #233
18 Rancho Cordova, CA 95670

19 Dated: February 11, 2011

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk