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PHENENO K. AUSLER,

Petitioner,

v.

ROBERT HERNANDEZ, Warden,

Respondent.

Civil No. 07cv0473-BEN (NLS)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

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Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, but has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this case, he must submit, **no later than May 21, 2007**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee. For Petitioner's convenience, a blank motion to proceed in forma pauperis is attached to this Order.

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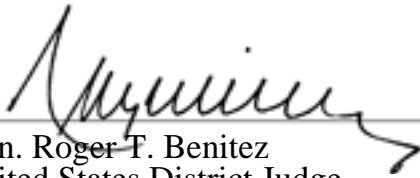
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Additionally, a Petition for Writ of Habeas Corpus must be submitted in accordance with the Local Rules of the United States District Court for the Southern District of California. See Rule 2(d), 28 U.S.C. foll. § 2254. In order to comply with the Local Rules, the petition must be submitted upon a court-approved form and in accordance with the instructions approved by the Court. Id.; S.D. CAL. CIVLR HC.2(b). Presently, Petitioner has submitted an application for writ

1 of habeas corpus on a non-approved form. Neither has Petitioner signed the Petition. Rule 2(c)
2 of the Rules Governing Section 2254 Cases provides that “[t]he petition must be printed,
3 typewritten or legibly handwritten; and be signed under penalty of perjury by the petitioner or
4 by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.” Rule 2(c), 28 U.S.C.
5 foll. § 2254 (emphasis added). Here, Petitioner has failed to sign the Petition. The Court
6 therefore **DISMISSES** the action without prejudice to refiling of a “First Amended Petition for
7 Writ of Habeas Corpus,” which is on an approved form and signed by Petitioner. The Clerk of
8 Court shall send the proper Southern District of California in forma pauperis and amended
9 petition forms to Petitioner along with this Order.

10 **IT IS SO ORDERED.**

11 DATED: March 27, 2007

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14 Hon. Roger F. Benitez
15 United States District Judge

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