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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HILLERY ALLEN,

Petitioner,

v.

RONALD RACKLEY, Warden, et al.,

Respondents.

Civil 16cv1941-AJB (NLS)
No.

**ORDER DENYING IN FORMA
PAUPERIS APPLICATION AND
DISMISSING CASE WITHOUT
PREJUDICE**

On July 29, 2016, Petitioner, a state prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, along with a motion for tolling of the statute of limitations. (ECF Nos. 1-2.) On August 2, 2016, the Court denied the motion for tolling and dismissed this case due to Petitioner's failure to satisfy the filing fee requirement. (ECF No. 3.) Petitioner was informed that if he wished to proceed with this action he was required to either pay the \$5.00 filing fee or file a motion to proceed in forma pauperis indicating his inability to pay the fee on or before October 3, 2016. (Id.)

Petitioner has now filed a request to proceed in forma pauperis which reflects a \$612.06 balance in his prison trust account. (ECF No. 5.) The filing fee associated with this type of action is \$5.00. See 28 U.S.C. § 1914(a). It appears Petitioner can pay the requisite filing fee. Accordingly, the Court **DENIES** the request to proceed in forma pauperis, and **DISMISSES** the

1 case without prejudice; Petitioner may submit a copy of this order along with the requisite fee
2 no later than **October 3, 2016**, to have the case reopened.

3 **IT IS SO ORDERED.**

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5 DATED: September 15, 2016

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Hon. Anthony J. Battaglia
U.S. District Judge

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CC: ALL PARTIES

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