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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK LEON PEREZ,)	1:12-cv-01920-SKO-HC
)	
Petitioner,	)	ORDER VACATING ORDER AND JUDGMENT
	)	OF DISMISSAL OF THE PETITION
	)	(DOCS. 10, 11)
v.)	
	)	ORDER DIRECTING PETITIONER TO
ON HABEAS CORPUS,	)	FILE A MOTION TO AMEND THE
	)	PETITION TO NAME A PROPER
Respondent.	)	RESPONDENT NO LATER THAN THIRTY
	)	(30) DAYS AFTER SERVICE OF THIS
<hr style="width: 35%; margin-left: 0;"/>	)	ORDER OR SUFFER DISMISSAL OF THE
	)	ACTION (DOCS. 5, 7)

Petitioner is a state prisoner who has proceeded pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by

¹Although Petitioner has submitted his petition on a form for prisoners proceeding pursuant to 28 U.S.C. § 2241, the Court notes that Petitioner is serving a sentence imposed by a state court. Thus, the Court understands Petitioner to be proceeding pursuant to § 2254.

1 manifesting consent in a signed writing filed by Petitioner on
2 December 12, 2012 (doc. 6).

3 Petitioner filed the petition on November 27, 2012. On
4 December 7, 2012, the Court issued an initial screening order
5 with respect to the petition in which the Court noted that
6 Petitioner had not named a proper respondent and granted
7 Petitioner leave to file a motion to amend the petition and name
8 a proper respondent no later than thirty (30) days after the date
9 of service of the order. The order warned Petitioner that a
10 failure to move to amend the petition and state a proper
11 respondent would result in a recommendation that the petition be
12 dismissed for lack of jurisdiction. The order was served by mail
13 on Petitioner on December 7, 2012. However, Petitioner failed to
14 file a motion to amend the petition.

15 On January 24, 2013, the Court issued an order to Petitioner
16 to show cause within twenty-one days why the petition should not
17 be dismissed for failure to follow a court order. The order was
18 served on Petitioner by mail on the same date. On February 25,
19 2013, Petitioner responded to the order. On February 27, 2013,
20 the Court signed an order dismissing the petition for
21 Petitioner's failure to comply with the Court's previous orders.
22 The order was docketed on February 28, 2013. Petitioner's
23 response to the order to show cause was late. However, it
24 appears that Petitioner's response and the order of dismissal
25 crossed because the dismissal was for Petitioner's failure to
26 respond, whereas Petitioner had actually responded.

27 Pursuant to Fed. R. Civ. P. 60(a), a court may correct a
28 clerical mistake or a mistake arising from oversight or omission

1 whenever one is found in a judgment, order, or other part of the
2 record, either on its own motion or on the motion of a party,
3 with or without notice. However, after an appeal has been
4 docketed in the appellate court and while it is pending, such a
5 mistake may be corrected only with the appellate court's leave.

6 Here, no appeal has been filed. Accordingly, on the Court's
7 own motion, the Court will vacate the order and the judgment of
8 dismissal of the petition.

9 However, Petitioner remains in disobedience of the Court's
10 order of December 7, 2012, in which the Court noted the absence
11 of a proper respondent from Petitioner's petition and directed
12 Petitioner to file a request to amend the petition to name a
13 proper respondent, such as the warden in charge of his custodial
14 institution, or the Secretary of the California Department of
15 Corrections and Rehabilitation (CDCR). See, Ortiz-Sandoval v.
16 Gomez, 81 F.3d 891, 894-96 (9th Cir. 1996); Cal. Pen. Code
17 § 5050. A failure to comply with an order of the Court may
18 result in sanctions, including dismissal, pursuant to the
19 inherent power of the Court or the Federal Rules of Civil
20 Procedure. Fed. R. Civ. P. 41(b), 11; Local Rule 110; Chambers
21 v. NASCO, Inc., 501 U.S. 31, 42-43 (1991).

22 Petitioner stated in his response to the order to show cause
23 that he had been subject to an institutional lock down, lacked
24 access to a law library, and was transferred to another custodial
25 institution. However, those circumstances do not explain why
26 Petitioner has not performed the simple act of submitting a
27 request to amend the petition to name a proper respondent.
28 Therefore, Petitioner has failed to comply with a court order,

1 and the Court is unable to screen the petition further or to
2 proceed to ready the case for disposition on the merits.

3 Petitioner will be given one more opportunity to file a
4 motion to amend the petition. If Petitioner fails to comply with
5 this order in a timely fashion, the petition will be dismissed
6 **without further notice** for failure to comply with a court order
7 and failure to prosecute.

8 Accordingly, it is ORDERED that:

9 1) The order and judgment of dismissal of the petition,
10 filed on February 28, 2013, are VACATED for clerical mistake and
11 oversight; and

12 2) Petitioner is ORDERED to file no later than thirty (30)
13 days after the date of this order a motion to amend the petition
14 to name a proper respondent; and

15 3) Petitioner is INFORMED that a failure to comply with
16 this order will result in dismissal of the action.

17
18
19 IT IS SO ORDERED.

20 **Dated: March 1, 2013**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE