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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY N. NIXON,
Petitioner,
v.
STU SHERMAN, Warden,
Respondent.

Case No. 1:14-cv-00525-SAB-HC
ORDER GRANTING PETITIONER'S
MOTION TO AMEND TO NAME A
PROPER RESPONDENT
ORDER DIRECTING CLERK OF COURT
TO CHANGE NAME OF RESPONDENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

On May 22, 2014, after conducting a preliminary review of the petition, the Court granted Petitioner leave to amend the petition to name a proper respondent. On June 6, 2014, Petitioner filed a motion to amend the petition to name Stu Sherman, who is the Warden at his institution, as Respondent. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v.

1 United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360. Accordingly,
2 Petitioner has named the appropriate respondent and his motion will be granted.

3 **ORDER**

4 Accordingly, IT IS HEREBY ORDERED:

5 1) Petitioner's motion to amend the petition to name a proper respondent is GRANTED;

6 and

7 2) The Clerk of Court is DIRECTED to change the name of Respondent to Stu Sherman.

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9 IT IS SO ORDERED.

10 Dated: June 9, 2014

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13 UNITED STATES MAGISTRATE JUDGE
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