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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BERNARD C. HUGHES,

 Petitioner,

 v.

PEOPLE OF THE STATE OF
CALIFORNIA,

 Respondents.

Case No. 1:14-cv-01237-BAM-HC

ORDER REQUIRING PETITIONER TO
SUBMIT WITHIN THIRTY (30) DAYS OF
SERVICE A SIGNED DECLARATION
CONCERNING THE PETITION (Doc. 1)

ORDER GRANTING PETITIONER LEAVE TO
FILE A MOTION TO AMEND THE PETITION
TO NAME A PROPER RESPONDENT NO
LATER THAN THIRTY (30) DAYS AFTER
THE DATE OF SERVICE OF THIS ORDER
(Doc. 1)

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is the petition, which was filed on August 7, 2014.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly appears

1 from the petition and any attached exhibits that the petitioner is
2 not entitled to relief in the district court....” Habeas Rule 4;
3 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
4 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
5 2(c) requires that a petition 1) specify all grounds of relief
6 available to the Petitioner; 2) state the facts supporting each
7 ground; and 3) state the relief requested. Notice pleading is not
8 sufficient; rather, the petition must state facts that point to a
9 real possibility of constitutional error. Rule 4, Advisory
10 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420
11 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)).
12 Allegations in a petition that are vague, conclusory, or palpably
13 incredible are subject to summary dismissal. Hendricks v. Vasquez,
14 908 F.2d at 491.

15 Further, the Court may dismiss a petition for writ of habeas
16 corpus either on its own motion under Habeas Rule 4, pursuant to the
17 respondent's motion to dismiss, or after an answer to the petition
18 has been filed. Advisory Committee Notes to Habeas Rule 8, 1976
19 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.
20 2001).

21 A petition for habeas corpus should not be dismissed without
22 leave to amend unless it appears that no tenable claim for relief
23 can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d
24 13, 14 (9th Cir. 1971).

25 II. Failure to Sign and Verify the Petition

26 A review of the petition reveals that Petitioner did not
27 sign or date the petition. (Pet., doc. 1, 30.)

28 Local Rule 131 requires a document submitted to the Court

1 for filing to include an original signature. In addition, Habeas
2 Rule 2 requires a petition for writ of habeas corpus to "be signed
3 under penalty of perjury by the petitioner."

4 In light of the difficulty in having Petitioner submit a new
5 habeas corpus petition, Petitioner is ORDERED to submit instead a
6 separate document in which he states that he submitted the petition
7 to the Court and verifies its contents to be true under penalty of
8 perjury of the laws of the United States.¹ Petitioner must sign
9 the document under penalty of perjury; the document should
10 contain an original signature. Petitioner must state the date on
11
12

13 ¹Title 28 U.S.C. § 1746 provides:

14
15 Wherever, under any law of the United States or under any rule,
16 regulation, order, or requirement made pursuant to law, any matter
17 is required or permitted to be supported, evidenced, established,
18 or proved by the sworn declaration, verification, certificate,
19 statement, oath, or affidavit, in writing of the person making
20 the same (other than a deposition, or an oath of office, or an
oath required to be taken before a specified official other than a
notary public), such matter may, with like force and effect, be
supported, evidenced, established, or proved by the unsworn
declaration, certificate, verification, or statement, in writing
of such person which is subscribed by him, as true under penalty
of perjury, and dated, in substantially the following form:

21 (1) If executed without the United States:

22 "I declare (or certify, verify, or state) under penalty of perjury
23 under the laws of the United States of America that the foregoing
is true and correct. Executed on (date).

24 (Signature)".

25 (2) If executed within the United States, its territories,
possessions, or commonwealths:

26 "I declare (or certify, verify, or state) under penalty of perjury
27 that the foregoing is true and correct. Executed on (date).

28 (Signature)".

1 which he signed the document. Petitioner is will be granted thirty
2 (30) days from the date of service of this order to comply with the
3 Court's directive.

4 Petitioner is forewarned that failure to comply with a Court
5 order will result in dismissal of the petition pursuant to Local
6 Rule 110.

7 III. Failure to Name a Proper Respondent

8 Petitioner named as Respondent the People of the State of
9 California. Petitioner is incarcerated at the Kern Valley State
10 Prison. The official website of the California Department of
11 Corrections and Rehabilitation (CDCR) reflects that the warden at
12 that facility is Martin Biter.²

13 A petitioner who is seeking habeas corpus relief under 28
14 U.S.C. § 2254 must name the state officer having custody of him as
15 the respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.
16 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California
17 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the
18 person having custody of an incarcerated petitioner is the warden of
19 the prison in which the petitioner is incarcerated because the
20 warden has "day-to-day control over" the petitioner and thus can
21 produce the petitioner. Brittingham v. United States, 982 F.2d 378,
22 379 (9th Cir. 1992); see also, Stanley v. California Supreme Court,
23 21 F.3d at 360. However, the chief officer in charge of state penal
24 institutions, such as the Secretary of the CDCR, is also

25 _____
26 ² The Court may take judicial notice of facts that are capable of accurate and
27 ready determination by resort to sources whose accuracy cannot reasonably be
28 questioned, including undisputed information posted on official websites. Fed. R.
Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993);
Daniels-Hall v. National Education Association, 629 F.3d 992, 999 (9th Cir. 2010).
The address of the official website for the CDCR is <http://www.cdcr.ca.gov>.

1 appropriate. Ortiz-Sandoval, 81 F.3d at 894; Stanley, 21 F.3d at
2 360.

3 Petitioner's failure to name a proper respondent may require
4 dismissal of his habeas petition for a failure to name a person who
5 can produce the petitioner in response to an order of the Court and
6 thereby to secure personal jurisdiction. See, Smith v. Idaho, 392
7 F.3d 350, 355 n.3 (9th Cir. 2004). This Court must ask sua sponte
8 whether the respondent who is named has the power to order the
9 petitioner's release. If not, the Court may not grant effective
10 relief, and thus it should not hear the case unless the petition is
11 amended to name a respondent who can grant the desired relief. Id.

12 However, the Court will give Petitioner the opportunity to cure
13 this defect by amending the petition to name a proper respondent,
14 such as the warden of his facility. See, In re Morris, 363 F.3d
15 891, 893-94 (9th Cir. 2004).

16 In the interest of judicial economy, Petitioner need not file
17 an amended petition. Instead, Petitioner may file a motion entitled
18 "Motion to Amend the Petition to Name a Proper Respondent," wherein
19 Petitioner asks to amend to name the proper respondent in this
20 action.

21 IV. Disposition

22 Accordingly, Petitioner is GRANTED thirty (30) days after the
23 date of service of this order in which to 1) submit a signed
24 verification of the petition in accordance with the foregoing
25 directions, and 2) file a motion to amend the instant petition to
26 name a proper respondent.

27 Failure to proceed to submit a signed verification of the
28 petition or to move to amend the petition to state a proper

1 respondent will result in dismissal of the petition for failure to
2 comply with a court order, lack of jurisdiction, and/or failure to
3 name as respondent a person with the power to produce the
4 Petitioner.

5
6 IT IS SO ORDERED.

7 Dated: August 12, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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