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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL ALLEN SANDERSON,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
et al.,

Respondents.

Case No. 1:16-cv-01679-SAB-HC

ORDER TO SHOW CAUSE

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” A petitioner in state custody who is proceeding with a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state’s alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full

1 and fair opportunity to consider each claim before presenting it to the federal court. O'Sullivan v.
2 Boerckel, 526 U.S. 838, 845 (1999); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v.
3 Connor, 404 U.S. 270, 276 (1971).

4 Here, it appears that Petitioner has not raised his claims before the California Supreme
5 Court. (ECF No. 1 at 5–6, 11).¹ If Petitioner has not sought relief in the California Supreme
6 Court, the Court cannot proceed to the merits of those claims. 28 U.S.C. § 2254(b)(1). It is
7 possible, however, that Petitioner has presented all of his claims to the California Supreme Court
8 and failed to indicate this to the Court. Thus, Petitioner must inform the Court whether each of
9 his claims has been presented to the California Supreme Court, and if possible, provide the Court
10 with a copy of the petition filed in the California Supreme Court that includes the claims now
11 presented and a file stamp showing that the petition was indeed filed in the California Supreme
12 Court.

13 Accordingly, Petitioner is ORDERED to SHOW CAUSE within thirty (30) days from the
14 date of service of this order why the petition should not be dismissed without prejudice for
15 failure to exhaust state remedies.

16 Petitioner is forewarned that failure to follow this order may result in dismissal of the
17 petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner's failure to prosecute or
18 to comply with a court order may result in a dismissal of the action).

19 IT IS SO ORDERED.

20 Dated: November 16, 2016

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23 UNITED STATES MAGISTRATE JUDGE

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28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.