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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 JAMES CHAVEZ,

12 Petitioner,

13 v.

14 WARDEN,

15 Respondent.

Case No. 1:17-cv-01045-SAB-HC

ORDER TO SHOW CAUSE

16  
17 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254. Petitioner seeks to obtain the benefits of Proposition 57.

19 **I.**

20 **DISCUSSION**

21 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a  
22 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
23 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
24 petitioner is not entitled to relief in the district court.”

25 A petitioner in state custody who is proceeding with a petition for writ of habeas corpus  
26 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based  
27 on comity to the state court and gives the state court the initial opportunity to correct the state’s  
28 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.

1 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by  
2 providing the highest state court with a full and fair opportunity to consider each claim before  
3 presenting it to the federal court. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.  
4 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

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

13 **II.**

14 **ORDER**

15 Accordingly, Petitioner is ORDERED to SHOW CAUSE within **THIRTY (30) days**  
16 from the date of service of this order why the petition should not be dismissed for failure to  
17 exhaust state court remedies.

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

21 IT IS SO ORDERED.

22 Dated: **September 6, 2017**

23   
24 UNITED STATES MAGISTRATE JUDGE

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28 <sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.