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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT JOHN OLIVER,

Petitioner,

No. CIV S-08-2282 EFB P

vs.

CALIFORNIA DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. He has paid the \$5.00 filing fee. *See* 28 U.S.C. § 1914(a).

A petitioner seeking a writ of habeas corpus must name as respondent the person having custody over him. 28 U.S.C. § 2242; Rule 2(a), Rules Governing Section 2254 Cases. This person ordinarily is the warden of the facility where petitioner is confined. *See Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Petitioner names as the respondent the California Department of Corrections, which does not have custody over petitioner.

Petitioner has not named the proper respondent.

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1 Accordingly, it is ORDERED that the September 29, 2008, petition is dismissed with
2 leave to file an amended petition naming the proper respondent within 30 days of the date of this
3 order. Petitioner's failure to file an amended petition will result in this action being dismissed
4 without prejudice. The Clerk of the Court is directed to send to petitioner the form Petition for a
5 Writ of Habeas Corpus used in this court.

6 Dated: January 14, 2009.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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