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

MICHAEL E. SCHINKEL,

Petitioner,

No. CIV S-09-2247 DAD P

vs.

BOARD OF PAROLE HEARINGS,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. In accordance with the court’s September 11, 2009 order, petitioner has filed an amended petition.

As the court previously advised petitioner, “[a] petitioner for habeas corpus relief must name the state officer having custody of him or her as the respondent to the petition.”

Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Petitioner has named the G. Swarthout as the respondent in his amended petition. G. Swarthout, however, is not the proper respondent. Accordingly, the instant petition must be dismissed with leave to amend. See Stanley, 21 F.3d at 360. Again, petitioner is advised that the proper respondent in the usual habeas action is the warden of the institution

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1 where the petitioner is currently incarcerated. See Stanley, 21 F.3d at 360. John W. Haviland is
2 the current warden at California State Prison, Solano.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Petitioner's amended petition for writ of habeas corpus (Doc. No. 6) is
5 dismissed with leave to file a second amended petition within thirty days from the date of this
6 order;

7 2. Any second amended petition must be filed on the form employed by this
8 court, must name the proper respondent, and must state all claims and prayers for relief on the
9 form. It must bear the case number assigned to this action and must bear the title "Second
10 Amended Petition"; and

11 3. The Clerk of the Court is directed to send petitioner the form for habeas corpus
12 application.

13 DATED: October 8, 2009.

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16 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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