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

PHANHAHA XABANDITH,

Petitioner,

No. CIV S-09-2550 DAD P

vs.

ROBERT A. HOREL,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In accordance with the court’s September 16, 2009 order, petitioner has filed an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

“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 Robert Horel as the respondent in this action. Robert Horel, however, is not the proper respondent. Accordingly, the instant petition must be dismissed with leave to amend. See Stanley, 21 F.3d at

1 360. Petitioner is advised that the proper respondent in the usual habeas action is the warden of
2 the institution where the petitioner is currently incarcerated. See Stanley, 21 F.3d at 360.

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

4 1. Petitioner's application to proceed in forma pauperis (Doc. No. 6) is granted;

5 2. Petitioner's application for writ of habeas corpus is dismissed with leave to file
6 an amended petition within thirty days from the date of this order;

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

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

12 DATED: October 8, 2009.

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15 _____
16 DALE A. DROZD
17 UNITED STATES MAGISTRATE JUDGE

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