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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 is a state prisoner proceeding pro se and in forma pauperis. On October 9, 2009, the court dismissed petitioner’s original petition for writ of habeas corpus with thirty days leave to file an amended petition naming the proper respondent. In response to the court’s order, petitioner has filed a confusing declaration in which he states that he believes that he has already filed a petition for writ of habeas corpus. Petitioner has attached to his declaration a copy of the first page of his original petition for writ of habeas corpus.

Petitioner is advised that the court dismissed his original petition for writ of habeas corpus because he named Robert Horel as the respondent in this action. Robert Horel, however, is not the proper respondent. As the court previously advised petitioner, the proper respondent in the usual habeas action is the warden of the institution where the petitioner is currently incarcerated. Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994)

1 (citing Rule 2(a), 28 U.S.C. foll. § 2254). In the interest of justice, the court will grant petitioner
2 an additional thirty days leave to file an amended petition naming the proper respondent.

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

4 1. Petitioner shall file an amended petition within thirty days of the date of
5 service of this order;

6 2. Any amended petition must be filed on the form employed by this court, must
7 name the proper respondent, and must state all claims and prayers for relief on the form. It must
8 bear the case number assigned to this action and must bear the title "Amended Petition." Failure
9 to comply with this order will result in a recommendation for dismissal of this action; and

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

12 DATED: November 6, 2009.

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15 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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