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

CLIFFORD JOHNSON,

Petitioner,

No. CIV-S-09-3167 JAM KJN (TEMP) P

vs.

KATHLEEN L. DICKENSON,

Respondent.

ORDER

_____ /

Petitioner is a California prisoner proceeding without counsel with an application for writ of habeas corpus under 28 U.S.C. § 2254. On June 28, 2010, respondent filed a motion to dismiss which petitioner does not oppose. Therefore, petitioner’s original petition for writ of habeas corpus will be dismissed.

Petitioner seeks leave to file an amended petition and has filed a proposed amended petition. However, the petition is not filed on the proper form. Therefore, the amended petition will be dismissed and petitioner will be given twenty-one days within which to file a second amended petition. The second amended petition must be submitted on the form provided by the Clerk of the Court and must be completed accurately. When the second amended petition is submitted, the court will review it pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Respondent need not take any further action unless directed to do so by the court.

1 Petitioner is informed that he shall not include any claims in his second amended
2 petition if state court remedies have not been exhausted unless a motion to stay the petition
3 pursuant to Rhines v. Weber, 544 U.S. 269 (2005) is also submitted.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Respondent's motion to dismiss (#11) is granted;
- 6 2. Petitioner's petition for writ of habeas corpus is dismissed;
- 7 3. Petitioner's amended petition for writ of habeas corpus is dismissed;
- 8 4. The Clerk of the Court is directed to send petitioner the court's form-
9 application for writ of habeas corpus under 28 U.S.C. § 2254;
- 10 5. Petitioner is granted twenty-one days within which to submit a second
11 amended petition for writ of habeas corpus. The second amended petition must be submitted on
12 the form provided by the Clerk of the Court, completed accurately and must not include any
13 claims where state court remedies have not been exhausted unless a motion to stay the petition
14 pursuant to Rhines v. Weber, 544 U.S. 269 (2005) is also submitted. Failure to comply with the
15 terms of this order will result in a recommendation that this action be dismissed.
- 16 6. All outstanding motions are denied.
- 17 7. Respondent need take no further action unless directed to do so by the court.

18 DATED: January 12, 2011

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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