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

STEVEN MICHAEL SPLAWN,

Petitioner,

No. CIV S-10-0121 EFB P

vs.

MATTHEW CATE,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner with counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. He has paid the \$5 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 respondent the Secretary of the California Department of Corrections and Rehabilitation, who does not have custody over petitioner. Petitioner has not named the proper respondent.

Accordingly, it is ORDERED that the January 14, 2010 petition is dismissed with leave to file an amended petition naming the proper respondent within 30 days of the date of this order.

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1 Petitioner's failure to file an amended petition will result in a recommendation that this action
2 be dismissed without prejudice. The Clerk of the Court is directed to send to petitioner the form
3 Petition for a Writ of Habeas Corpus used in this court.

4 Dated: January 20, 2010.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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