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

MATTHEW W. COOK,

Petitioner,

No. CIV S-10-2489 DAD P

vs.

CALIFORNIA DEPT. OF  
CORRECTIONS, et al.,

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, together with a request to proceed in forma pauperis.<sup>1</sup>

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, petitioner’s request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

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<sup>1</sup> On September 21, 2010, the court ordered plaintiff to file a properly completed request to proceed in forma pauperis. Petitioner, however, had already filed a properly completed request to proceed in forma pauperis the previous day but it was not reflected on the court’s docket until the following day. Accordingly, the court will vacate its September 21, 2010 order.

1           “A petitioner for habeas corpus relief must name the state officer having custody  
2 of him or her as the respondent to the petition.” Stanley v. California Supreme Court, 21 F.3d  
3 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Here, petitioner has named  
4 the California Department of Corrections and the Board of Parole Hearings as respondents in this  
5 action. These entities, however, are not proper respondents. Rather, the warden of petitioner’s  
6 current institution of incarceration is the proper respondent to this action. Accordingly, the court  
7 will dismiss the instant petition with leave to amend. See Stanley, 21 F.3d at 360.

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

- 9           1. The court’s September 21, 2010 order (Doc. No. 4) is vacated;
- 10           2. Petitioner’s September 20, 2010 request to proceed in forma pauperis (Doc.  
11 No. 5) is granted;
- 12           3. Petitioner’s application for writ of habeas corpus is dismissed with leave to file  
13 an amended petition naming the proper respondent within thirty days from the date of this order;
- 14           4. Any amended petition must be filed on the form employed by this court, must  
15 name the proper respondent, and must state all claims and prayers for relief on the form. It must  
16 bear the case number assigned to this action and must bear the title “Amended Petition”; and  
17           5. The Clerk of the Court is directed to send petitioner the form for habeas corpus  
18 application.

19 DATED: September 23, 2010.

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22 \_\_\_\_\_  
23 DALE A. DROZD  
24 UNITED STATES MAGISTRATE JUDGE

24 DAD:sj  
25 cook2489.122