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

DAVID T. ATZET,

Petitioner,

No. 2:13-cv-00709 DAD P

vs.

GERALD BENITO,

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. Petitioner has not, however, filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Petitioner will be provided the opportunity to either submit the appropriate affidavit in support of a request to proceed in forma pauperis or submit the appropriate filing fee.

In addition, the court will order petitioner to file an amended petition because he has failed to name a proper respondent in this federal habeas proceeding. “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); 28 U.S.C. § 2242 (habeas petition must name “the person who has custody over [the petitioner]”); Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); see Rule 2(a), Rules Governing

1 Section 2254 Cases in the United States District Courts. The failure to name the proper
2 respondent deprives the Court of personal jurisdiction. Smith v. Idaho, 392 F.3d 350, 352-55
3 (9th Cir. 2004). “[W]hen a habeas petitioner has failed to name the proper respondent pursuant
4 to § 2242 [the Court] must ask *sua sponte* whether the respondent who *is* named has the power to
5 order the petitioner’s release.” Id. at 355 n.3. “If not, the court may not grant effective relief,
6 and thus should not hear the case unless the petition is amended to name a respondent who can
7 grant the desired relief.” Id. Thus, petitioner must name the warden of the facility where he is
8 incarcerated, rather than Gerald Benito who petitioner describes as “Appointed Trustee.” (Doc.
9 No. 1 at 1.)

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

11 1. Petitioner shall submit, within thirty days from the date of this order, an
12 affidavit in support of his request to proceed in forma pauperis or the appropriate filing fee;

13 2. Within thirty days from the date of this order, petitioner shall file an amended
14 habeas petition that complies with the requirements of the Federal Rules of Civil Procedure; the
15 amended petition must bear the docket number assigned this case and must be labeled “Amended
16 Petition;” petitioner must use the form petition provided by the Clerk of the Court and answer
17 each question in the form petition; petitioner shall limit the exhibits and attachments to no more
18 than twenty pages;

19 3. Petitioner’s failure to comply with this order will result in the dismissal of this
20 action; and

21 4. The Clerk of the Court is directed to send petitioner a copy of the in forma
22 pauperis form used by this district and a copy of the form habeas petition for a state prisoner.

23 DATED: April 17, 2013.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE