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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
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9 REENA CHOPRA,

No. C 09-0841 JSW (PR)

10 Petitioner,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND; DIRECTING
CLERK TO REOPEN CLOSED
CASE AND INSTRUCTIONS TO
THE CLERK**

11 v.

12 STATE OF CALIFORNIA,

13 Respondent.
14 _____/

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16 Petitioner, a California parolee, filed this action seeking a writ of habeas corpus
17 under 28 U.S.C. § 2254 regarding the constitutionality of her state conviction. On June 8,
18 2009, this Court dismissed the amended complaint with leave to file an amended
19 complaint within thirty days of the Court's order. In the Court's order, Petitioner was
20 notified that failure to amend by the designated time would result in a dismissal of the
21 case. After the original order was returned, the order was resent to Petitioner to the
22 address listed on her petition on July 22, 2008. After the Court received no response, the
23 matter was dismissed for failure to amend on October 22, 2009. Thereafter on October
24 30, 2009, Petitioner wrote the Court a letter, requesting reconsideration of the dismissal
25 on the grounds that she did not receive the order of dismissal with leave to amend.
26 Petitioner has subsequently filed another identical petition under Case No. 09-5513 JSW
27 (PR), which will be dismissed in a separate order. Based on Petitioner's representation
28 that she did not receive the Court's order, the Court now GRANTS Petitioner's request

1 for reconsideration and reopen's Petitioner's habeas case. Petitioner will be provided
2 with another opportunity to comply with the order to amend the petition within thirty
3 days, as set forth below.

4 The petition is before the Court for review pursuant to 28 U.S.C. §2243 and Rule 4
5 of the Rules Governing Section 2254 Cases. However, in the petition, Petitioner has not
6 clearly identified the claims she intends to pursue and whether all of her claims have been
7 exhausted in the state courts. Petitioner has only partially completed the Court's form
8 and has failed to clearly identify each of her claims by number on the Court's form,
9 instead attaching additional sheets that appear to be from state court briefing. She has
10 also completed that portion on page 6 of the Court's form that requests information on
11 why "any of these grounds was not previously presented to any other court" by including
12 what appears to be most, but not all, of the listed claims. Therefore, this Court cannot
13 determine whether these claims have not been exhausted, or whether Petitioner has
14 simply misread the Court's form. Petitioner must clearly identify whether all claims have
15 been exhausted and, if they have not all been exhausted, which claims remain
16 unexhausted in the state courts.

17 Moreover, Petitioner must amend to name the proper respondent. In the petition,
18 she has named as Respondent the State of California. The proper respondent in a federal
19 habeas corpus petition is the petitioner's immediate custodian. *Brittingham v. United*
20 *States*, 982 F.2d 378, 379 (9th Cir. 1992). A custodian "'is the person having a day-to-day
21 control over the prisoner. That person is the only one who can produce 'the body' of the
22 petitioner.'" *Id.* (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)). "This
23 person typically is the warden of the facility in which the petitioner is incarcerated."
24 *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Where the
25 petitioner is on probation or parole, he may name his probation or parole officer "and the
26 official in charge of the parole or probation agency, or the state correctional agency, as
27 appropriate." *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 896 (9th Cir. 1996). Failure to
28 name Petitioner's custodian as a Respondent deprives federal courts of personal

1 jurisdiction. *Id.* However, a petitioner ordinarily should be given leave to amend his
2 petition to name the correct party as respondent. *See id.* Petitioner is granted leave to
3 amend to name the proper Respondent in this matter. For this and the below reasons, the
4 petition will be dismissed with leave to amend.

5 **DISCUSSION**

6 A. Standard of Review

7 This court may entertain a petition for writ of habeas corpus "in behalf of a person
8 in custody pursuant to the judgment of a State court only on the ground that he is in
9 custody in violation of the Constitution or laws or treaties of the United States." 28
10 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

11 A district court shall "award the writ or issue an order directing the respondent to
12 show cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary
14 dismissal is appropriate only where the allegations in the petition are vague or conclusory,
15 palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d
16 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

17 B. Petitioner's Claims

18 The petition appears to contain numerous unnumbered claims regarding
19 Petitioner's state convictions. Because not all of the claims are numbered and Petitioner
20 includes a lengthy document in support of the petition which includes additional
21 underlined claims not identified on the Court's form, the Court is unable to determine
22 how many claims Petitioner seeks to raise before this Court. The Court also cannot
23 determine whether all or some of these claims have been exhausted in the state courts.

24 A prisoner in state custody who wishes to challenge either the fact or length of his
25 confinement by filing a federal petition for writ of habeas corpus must first exhaust state
26 judicial remedies, either on direct appeal or through collateral proceedings, by presenting
27 the highest state court available with a fair opportunity to rule on the merits of each and
28 every issue he seeks to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v.*


1 *Greer*, 481 U.S. 129, 133-34 (1987). The petition is ambiguous as to whether Petitioner
2 has raised the claims she wishes to bring in this petition before the California Supreme
3 Court. It appears that Petitioner may not have exhausted some or all of the claims before
4 this state's highest court. Petitioner cannot proceed with any federal claim in federal
5 court unless and until he has given the California Supreme Court a fair opportunity to rule
6 on the merits of such a claim.

7 **CONCLUSION**

8 For the foregoing reasons and for good cause shown, this action is dismissed with
9 leave to file an amended petition within *thirty days* of the date of this order in which
10 Petitioner presents only claims for violations of her rights under the laws, treaties, or
11 Constitution of the United States. Each and every such claim must have been presented
12 to the California Supreme Court before it may be asserted in a federal habeas action. The
13 amended petition must contain the caption and civil case number used in this order and
14 the words AMENDED PETITION on the first page. Petitioner is also directed to clearly
15 identify the claims by numbering each claim on the Court's form separately, as the Court
16 is unable to determine how many separate claims Petitioner is pursuing. Failure to file an
17 amended petition by the deadline will result in dismissal of all claims in this action.

18 It is Petitioner's responsibility to prosecute this case. She must keep the Court
19 informed of any change of address by filing a separate paper with the clerk headed
20 "Notice of Change of Address." She must comply with any orders of the Court within the
21 time allowed, or ask for an extension of that time. Failure to do so may result in the
22 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
23 Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b)
24 applicable in habeas cases). The Clerk shall provide Petitioner with another copy of this
25 Court's form habeas petition along with this order.

26 DATED: December 8, 2009

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28 _____
JEFFREY S. WHITE
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 REENA CHOPRA,
6 Plaintiff,
7

Case Number: CV09-00841 JSW

CERTIFICATE OF SERVICE

8 v.

9 CALIFORNIA et al,
10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on December 8, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Reena Chopra
18 644 Fulton Street
19 #2
20 Redwood City, CA 94061

21 Dated: December 8, 2009



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk