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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 KENDRA D. BERNARD,
9 Petitioner,

No. C 07-01575 SBA (PR)

ORDER TO SHOW CAUSE

10 v.

11 DEBORAH K. JOHNSON, Warden,
12 Respondent.
13 _____/

14 On June 28, 2007, Petitioner initiated this action by filing a document entitled "Motion to
15 Toll Federal Time for Writ of Habeas Corpus" requesting that the Court stay these habeas
16 proceedings so that Petitioner may exhaust her claims in state court. In that motion, Petitioner stated
17 that her state habeas petition was still pending in the state superior court.

18 In an Order dated March 18, 2008, the Court stayed the petition and administratively closed
19 the case while Petitioner exhausted state remedies.

20 On December 10, 2009, Petitioner wrote a letter to the Court indicating she had exhausted
21 state remedies.

22 On March 10, 2010, Petitioner filed an Amended Petition.

23 In an Order dated June 10, 2013, the Court lifted the stay, reopened the instant action, and
24 gave Petitioner leave to file a Second Amended Petition within twenty-eight days. The Court added:

25 If Petitioner fails to file a Second Amended Petition by the deadline, then her
26 March 10, 2010 Amended Petition will be the operative petition in this action. The
27 Court will review either her timely-filed Second Amended Petition or her March
28 10, 2010 Amended Petition in a separate written Order.

(June 10, 2013 Order at 3.) Twenty-eight days have passed since the Court issued its June 10, 2013
Order, and Petitioner has not filed a Second Amended Petition. Therefore, the Court will review her

1 March 10, 2010 Amended Petition, which is now the operative petition in this action.

2 It does not appear from the face of the March 10, 2010 Amended Petition that it is without
3 merit. Good cause appearing, the Court hereby issues the following orders:

4 1. The Clerk of the Court shall serve a copy of this Order, the June 10, 2013 Order
5 (Docket No. 61), and the March 10, 2010 Amended Petition and all attachments thereto (Docket No.
6 51) upon Respondent and Respondent's attorney, the Attorney General of the State of California.
7 The Clerk shall also serve a copy of this Order on Petitioner at her current address.

8 2. Respondent shall file with this Court and serve upon Petitioner, within **sixty (60)**
9 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules
10 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.
11 Respondent shall file with the Answer a copy of all portions of the relevant state records that have
12 been transcribed previously and that are relevant to a determination of the issues presented by the
13 petition.

14 3. If Petitioner wishes to respond to the Answer, she shall do so by filing a Traverse
15 with the Court and serving it on Respondent within **sixty (60) days** of her receipt of the Answer.
16 Should Petitioner fail to do so, the March 10, 2010 Amended Petition will be deemed submitted and
17 ready for decision **sixty (60) days** after the date Petitioner is served with Respondent's Answer.

18 4. Respondent may file with this Court and serve upon Petitioner, within **sixty (60) days**
19 of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an Answer, as set
20 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
21 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an
22 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the
23 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fourteen**
24 **(14) days** of receipt of any opposition.

25 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
26 and Respondent informed of any change of address and must comply with the Court's orders in a
27 timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding pro se whose
28 address changes while an action is pending must promptly file a notice of change of address

1 specifying the new address. See L.R. 3-11(a). The Court may dismiss without prejudice a
2 complaint when: (1) mail directed to the pro se party by the Court has been returned to the Court as
3 not deliverable, and (2) the Court fails to receive within sixty days of this return a written
4 communication from the pro se party indicating a current address. See L.R. 3-11(b); see also
5 Martinez v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

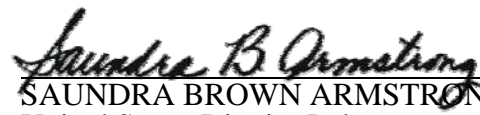
6 Petitioner must also serve on Respondent's counsel all communications with the Court by
7 mailing a true copy of the document to Respondent's counsel.

8 6. Extensions of time are not favored, though reasonable extensions will be granted.
9 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the
10 deadline sought to be extended.

11 7. Deborah K. Johnson, the current warden of the prison where Petitioner is
12 incarcerated, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of
13 Civil Procedure.

14 IT IS SO ORDERED.

15 DATED: 7/11/13


SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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6 KENDRA D. BERNARD,
7 Plaintiff,

Case Number: CV07-01575 SBA
CERTIFICATE OF SERVICE

8 v.

9 WARDEN et al,

10 Defendant.
_____/

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

13 That on July 11, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.
16

17 Kendra D. Bernard X06773
18 Central California Women's Facility State Prison
19 P.O. Box 1508
Chowchilla, CA 93610-1508

20 Dated: July 11, 2013

Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk

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