

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 JOHN SHAW,

No. C 09-00077 CW (PR)

5                                    Petitioner,

ORDER TO SHOW CAUSE; VACATING  
ORDER GRANTING IN FORMA  
6 PAUPERIS STATUS; AND ADDRESSING  
7 PENDING MOTION

v.

8 ROBERT K. WONG, Warden,

9                                    Respondent.  
10 \_\_\_\_\_/

11                                    Petitioner, a state prisoner, has filed this petition for a  
12 writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also filed  
13 a motion for leave to proceed in forma pauperis (IFP) and a motion  
14 for appointment of counsel.

15                                    In an Order dated February 2, 2009, the Court denied his  
16 motion for appointment of counsel and granted his motion for leave  
17 to proceed IFP. However, the Court's records indicate that  
18 Plaintiff actually paid the full filing fee of \$5.00 on January 15,  
19 2009. See Receipt no. 54611004527. Therefore, the Court's Order  
20 granting IFP status to Petitioner is VACATED, and the directive  
21 that he pay the full filing fee is RESCINDED.

22                                    On February 19, 2009, Petitioner filed a "Motion to Request  
23 for Ruling Based on Misconduct of the State of California," in  
24 which he challenges the conditions of his confinement at the Santa  
25 Clara County Jail stemming from an incident on February 17, 2009.  
26 A federal habeas petition is not the proper way to raise such  
27 claims. See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil  
28 rights action proper method of challenging conditions of  
confinement). Accordingly, Petitioner's "Motion to Request for

1 Ruling Based on Misconduct of the State of California" is DENIED.  
2 His claims attacking the conditions of his confinement are more  
3 appropriately addressed in a civil rights complaint pursuant to 42  
4 U.S.C. § 1983. Therefore, if Petitioner wishes to pursue such  
5 claims, he may do so by filing a new civil rights action  
6 accompanied by the requisite \$350.00 filing fee or an IFP  
7 application.

8 The Court now reviews the pending habeas petition in this  
9 action. It does not appear from the face of the petition that it  
10 is without merit. Good cause appearing, the Court hereby issues  
11 the following orders:

12 1. The Court's February 2, 2009 Order granting IFP status to  
13 Petitioner is VACATED, and the directive that he pay the full  
14 filing fee is RESCINDED.

15 2. Petitioner's "Motion to Request for Ruling Based on  
16 Misconduct of the State of California" is DENIED. If Petitioner  
17 wishes to pursue his claims attacking the conditions of his  
18 confinement at the Santa Clara County Jail, he may do so by filing  
19 a new civil rights action accompanied by the requisite \$350.00  
20 filing fee or an IFP application. The Clerk of the Court shall  
21 send Petitioner a blank civil rights form and a blank IFP  
22 application along with his copy of this Order.

23 3. The Clerk of the Court shall serve a copy of this Order  
24 and the petition and all attachments thereto upon Respondent and  
25 Respondent's attorney, the Attorney General of the State of  
26 California. The Clerk shall also serve a copy of this Order on  
27 Petitioner at his current address.

28

1           4.     Respondent shall file with this Court and serve upon  
2     Petitioner, within one-hundred twenty (120) days of the issuance of  
3     this Order, an Answer conforming in all respects to Rule 5 of the  
4     Rules Governing Section 2254 Cases, showing cause why a writ of  
5     habeas corpus should not be issued. Respondent shall file with the  
6     Answer a copy of all portions of the relevant state records that  
7     have been transcribed previously and that are relevant to a  
8     determination of the issues presented by the petition.

9           5.     If Petitioner wishes to respond to the Answer, he shall  
10    do so by filing a Traverse with the Court and serving it on  
11    Respondent within sixty (60) days of his receipt of the Answer.  
12    Should Petitioner fail to do so, the petition will be deemed  
13    submitted and ready for decision sixty (60) days after the date  
14    Petitioner is served with Respondent's Answer.

15          6.     Respondent may file a motion to dismiss on procedural  
16    grounds in lieu of an Answer, as set forth in the Advisory  
17    Committee Notes to Rule 4 of the Rules Governing Section 2254  
18    Cases. If Respondent files such a motion, Petitioner shall file  
19    with the Court and serve on Respondent an opposition or statement  
20    of non-opposition to the motion within sixty (60) days of receipt  
21    of the motion, and Respondent shall file with the Court and serve  
22    on Petitioner a reply within fifteen (15) days of receipt of any  
23    opposition.

24          7.     It is Petitioner's responsibility to prosecute this case.  
25    Petitioner must keep the Court and Respondent informed of any  
26    change of address and must comply with the Court's orders in a  
27    timely fashion. Petitioner must also serve on Respondent's counsel  
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1 all communications with the Court by mailing a true copy of the  
2 document to Respondent's counsel.

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

7 9. The Clerk of the Court is directed to substitute San  
8 Quentin State Prison Warden Robert K. Wong as Respondent in place  
9 of Petitioner's former custodian, Chief Flores at the Santa Clara  
10 County Jail.

11 10. This Order terminates Docket no. 9.

12 IT IS SO ORDERED.

13 Dated: 6/30/09



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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

4 JOHN SHAW,

5 Plaintiff,

6 v.

7 STATE OF CA et al,

8 Defendant.

Case Number: CV09-00077 CW

**CERTIFICATE OF SERVICE**

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

11 That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 John Shaw G60830 w/CR form  
16 San Quentin State Prison  
17 Badger Unit 143  
18 San Quentin, CA 94974

19 Attorney General  
20 State of California  
21 455 Golden Gate Avenue, #11000  
22 San Francisco, CA 94102

23 Robert K. Wong, Warden  
24 San Quentin State Prison  
25 San Quentin, CA 94974

26 Dated: June 30, 2009

27 Richard W. Wieking, Clerk  
28 By: Sheilah Cahill, Deputy Clerk