

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 DARREL KING,

7 Petitioner,

8 vs.

9 MATTHEW CATE, Secretary of the California  
10 Department of Corrections and Rehabilitation,

11 Respondent.

Case No: C 10-0338 SBA (PR)

**ORDER STRIKING  
MEMORANDUM IN SUPPORT OF  
AMENDED PETITION FOR WRIT  
OF HABEAS CORPUS**

12 On January 25, 2009, Petitioner, a state prisoner, filed a petition for a writ of habeas  
13 corpus pursuant to 28 U.S.C. § 2254. On February 17, 2010, the Court issued an Order to  
14 Show Cause directing respondent to answer the petition or file a motion to dismiss. On  
15 February 26, 2010, Petitioner, through counsel, filed a “1st Amended Petition for Writ of  
16 Habeas Corpus,” which is accompanied by an 83-page memorandum of points and authorities.  
17 (Docket 8, 9.)

18 Petitioner’s memorandum of points and authorities is in violation of Civil Local Rule 7,  
19 which limits briefs to a maximum of 25 pages. Because Petitioner’s brief well exceeds the  
20 page limit imposed by the Civil Local Rules, and because Petitioner has neither sought nor  
21 received leave to file an oversized brief, the Court strikes Petitioner’s memorandum from the  
22 record. See Swanson v. U.S. Forest Serv., 87 F.3d 339, 345 (9th Cir. 1996). However, the  
23 Court will afford Petitioner an opportunity to cure this deficiency and re-file a memorandum  
24 that complies with the rules of this Court. Accordingly,

25 IT IS HEREBY ORDERED THAT:

26 1. Petitioner’s 1st Amended Memorandum of Points & Authorities in Support of  
27 Petition for Writ of Habeas Corpus (Docket 9) is STRICKEN from the record. Within 14 days  
28

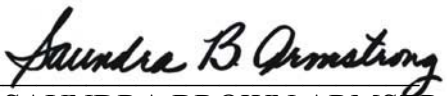
1 of the date this Order is filed, Petitioner shall file a revised memorandum in compliance with  
2 the Court's Local Rules. The Court will issue an amended Order to Show Cause upon receipt  
3 and review of the amended memorandum. The amended memorandum should take into  
4 account the Ninth Circuit's recent decision in Hayward v. Marshall, --- F.3d ---, 2010 WL  
5 1664977 (9th Cir. Apr. 22, 2010) (en banc), which was rendered after Petitioner filed his  
6 memorandum.

7           2.       The Clerk of the Court shall serve a copy of this Order upon Respondent and  
8 Respondent's attorney, the Attorney General of the State of California. The Clerk shall also  
9 serve a copy of this Order on Petitioner's counsel, Steve DeFilipis, 625 N. First St., San Jose,  
10 CA 95112.

11           3.       The deadlines scheduled in the Court's Order to Show Cause issued on February  
12 17, 2010 (Docket 6) are held in abeyance pending the Court's issuance of an Amended Order  
13 to Show Cause.

14           IT IS SO ORDERED.

15 Dated: June 1, 2010

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

G:\Sbalc2\Kei.\Prisoner\10-778 – King - Order to Show Cause.doc