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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 MICHAEL JAMES,

No. C 13-00885 SBA (PR)

12 Petitioner,

ORDER TO SHOW CAUSE

13 v.

14 JEFFREY A. BEARD, Secretary of California
15 Department of Corrections and Rehabilitation
(CDCR),

16 Respondent.
17 _____/

18 Petitioner, a state parolee proceeding pro se, has filed this petition for a writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee.

20 The rules governing relief under 28 U.S.C. § 2254 require a person in custody pursuant to the
21 judgment of a state court to name the "state officer having custody" of him as the respondent.

22 Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (quoting Rule 2(a) of the Rules

23 Governing Habeas Corpus Cases Under Section 2254). This person typically is the warden of the

24 facility in which the petitioner is incarcerated. See Stanley v. California Supreme Court, 21 F.3d

25 359, 360 (9th Cir. 1994). Failure to name the petitioner's custodian as a respondent deprives federal

26 courts of personal jurisdiction, see id., but the allegations of the petition are to be liberally construed

27 when considering whether the proper respondent has been named, see Belgarde v. Montana, 123

28 F.3d 1210, 1214 (9th Cir. 1997). The "state officer having custody" also may include "the chief

1 officer in charge of state penal institutions." Ortiz-Sandoval, 81 F.3d at 894 (quoting Rule 2(a)
2 advisory committee's note).

3 Here, Petitioner has named as Respondent the "Superior Court of California." However, the
4 proper respondent should be "the chief officer in charge of state penal institutions," who has
5 "custody" of Petitioner, a parolee. See Rule 2(a) advisory committee's note; Fed. R. Civ. P. 19(a).
6 Accordingly, Secretary of CDCR Jeffrey A. Beard is named as the respondent in this action in place
7 of "Superior Court of California." See Ortiz-Sandoval, 81 F.3d at 894.

8 Further, it does not appear from the face of the petition that it is without merit. Good cause
9 appearing, the Court hereby issues the following orders:

10 1. The Clerk of the Court shall serve a copy of this Order and the petition and all
11 attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State
12 of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.

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

19 3. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with
20 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should
21 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**
22 after the date Petitioner is served with Respondent's Answer.

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


3 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
4 and Respondent informed of any change of address and must comply with the Court's orders in a
5 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the
6 Court by mailing a true copy of the document to Respondent's counsel.

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

10 7. Secretary of CDCR Jeffrey A. Beard is substituted as Respondent pursuant Rule 2(a)
11 of the Rules Governing Habeas Corpus Cases Under Section 2254.

12 IT IS SO ORDERED.

13 DATED: 5/21/13


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

6 MICHAEL JAMES,

Case Number: CV13-00885 SBA

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 SUPERIOR COURT OF CALIFORNIA 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
13 Court, Northern District of California.

14 That on May 23, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Michael James AD2470 / AQU348
19 8117 Sunkist Drive
20 Oakland, CA 94605

21 Dated: May 23, 2013

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