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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

WARREN LEMONS,  
  
Petitioner,  
  
v.  
  
UNKNOWN,  
  
Respondent.

Civil No. 10cv0807-BEN (CAB)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE**

On April 14, 2010, Petitioner, a state prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, accompanied by a motion to proceed in forma pauperis. On April 29, 2010, the Court granted Petitioner's motion to proceed in forma pauperis, but dismissed the Petition because Petitioner had failed to name a Respondent and failed to state a claim cognizable on federal habeas. Petitioner was instructed that if he wished to proceed with this case, he was required to file a First Amended Petition on or before June 28, 2010, which named a proper Respondent and stated a cognizable claim.

On May 10, 2010, Petitioner filed a First Amended Petition. Because Petitioner has once again failed to name a Respondent, the Court once again dismisses this action. The Court will provide Petitioner a final opportunity to amend.

**FAILURE TO NAME A RESPONDENT**

Petitioner has not named a Respondent in the First Amended Petition. Petitioner was informed in this Court's previous Order of dismissal that a state prisoner filing a federal habeas

1 petition must name the state officer having custody of him as the respondent. Ortiz-Sandoval  
2 v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). This  
3 requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner,  
4 the person who will produce “the body” if directed to do so by the Court. “Both the warden of  
5 a California prison and the Director of Corrections for California have the power to produce the  
6 prisoner.” Ortiz-Sandoval, 81 F.3d at 895. Thus, in order for this Court to entertain the Petition  
7 filed in this action, Petitioner must name the warden in charge of the state correctional facility  
8 in which Petitioner is presently confined or the Director of the California Department of  
9 Corrections and Rehabilitation. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992)  
10 (per curiam).

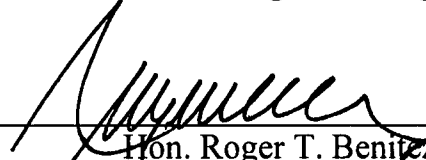
11 Petitioner has once again failed to name a Respondent, and this action is subject to  
12 dismissal on that basis for the reasons set forth in the Court’s previous Order of dismissal.

13 **CONCLUSION**

14 This action is **DISMISSED** without prejudice because Petitioner has failed to name a  
15 Respondent. If Petitioner wishes to proceed with this action he must submit, **no later than June**  
16 **28, 2010**, a Second Amended Petition which cures the pleading defects identified in this Order  
17 and in the Court’s previous Order of dismissal. The Clerk of Court shall send a blank Southern  
18 District of California amended petition form to Petitioner along with a copy of this Order.

19 **IT IS SO ORDERED.**

20 DATED: 5/27/2010

  
\_\_\_\_\_  
Hon. Roger T. Benitez  
United States District Judge

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22 CC: ALL PARTIES

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