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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

|                        |   |                                    |
|------------------------|---|------------------------------------|
| CHRISTOPHER L. HARRIS, | ) |                                    |
|                        | ) | 1:12-cv-01483-LJO-JLT HC           |
| Petitioner,            | ) |                                    |
|                        | ) | ORDER DENYING PETITIONER'S MOTION  |
| v.                     | ) | TO ALTER OR AMEND ORDER ADOPTING   |
|                        | ) | FINDINGS AND RECOMMENDATIONS (Doc. |
|                        | ) | 15)                                |
| UNKNOWN,               | ) |                                    |
|                        | ) |                                    |
| Respondent.            | ) |                                    |

Petitioner is a federal prisoner proceeding pro se with a petition for writ of mandamus pursuant to 28 U.S.C. § 1361, which the Magistrate Judge construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On October 3, 2012, the Magistrate Judge assigned to the case filed a Findings and Recommendation recommending that the petition for writ of habeas corpus be DISMISSED as a second or successive habeas petition. ([Doc. 5](#)). The Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within twenty days from the date of service of that order. On October 31, 2012, Petitioner filed objections to the Magistrate Judge's Findings and Recommendation. ([Doc. 12](#)). Also, on October 5, 2012, Petitioner filed the following motions: (1) motion for leave to amend the complaint to name the proper respondent (Doc. 7); (2) motion for judgment as a matter of law (Doc. 8); and (3) motion for a certificate of appealability. (Doc. 9).

1 On November 8, 2012, the District Judge adopted the Findings and Recommendations of the  
2 Magistrate Judge, denied all pending motions, entered judgment in favor of Respondent, and ordered  
3 the Clerk of the Court to close the case. (Docs. 13 & 14). On November 14, 2012, Petitioner filed  
4 the instant motion to alter or amend the order adopting the Findings and Recommendations,  
5 contending that the Court had failed to rule upon his motion for reconsideration pursuant to Fed. R.  
6 Civ. P. 60(b)(3), which, Petitioner argues, was raised in his objections to the Magistrate Judge's  
7 Findings and Recommendations. (Doc. 15, p. 5).

8 The Court will deny this motion for two reasons. First, pursuant to Fed. R. Civ. P. 7(b)(1),  
9 any "request for a court order must be made by motion," the form for which is to be the same as that  
10 for pleadings. Fed. R. Civ. P. 7(b)(2). Rule 10 governs the form for pleadings and thus, by  
11 application of Rule 7(b)(2), the form for motions as well. Rule 10(a) requires that motions contain a  
12 caption naming the parties *and a title*. Fed. R. Civ. P. 10(a). Here, Petitioner essentially buried his  
13 "motion" for reconsideration in one paragraph of his objections to the Findings and  
14 Recommendations, rather than filing a separate motion with the appropriate caption and title, as  
15 required by the rules of procedure. Second, in the order adopting the Findings and  
16 Recommendations, this Court denied "all pending motions" by Petitioner. Hence, to the extent that it  
17 could be deemed to be a lawful motion pending at the time the Findings and Recommendations were  
18 adopted by this Court, Petitioner's motion for reconsideration was denied by the District Judge in that  
19 order.

20 **ORDER**

21 For the foregoing reasons, the Court HEREBY ORDERS that Petitioner's motion to alter or  
22 amend the order adopting the Magistrate Judge's Findings and Recommendations (Doc. 15), is  
23 DENIED.

24  
25 IT IS SO ORDERED.

26 **Dated:** November 20, 2012

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE