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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GEORGE MALDONADO,	)	1:08-CV-01308 LJO GSA HC
	)	
Petitioner,	)	ORDER ADOPTING FINDINGS AND RECOMMENDATION
	)	[Doc. #23]
v.	)	
	)	ORDER GRANTING MOTION TO DISMISS
	)	[Doc. #15]
J. HARTLEY,	)	
	)	ORDER STRIKING AMENDED PETITION
Respondent.	)	[Doc. #24]
		ORDER REFERRING MATTER BACK TO MAGISTRATE JUDGE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 27, 2009, the Magistrate Judge issued a [Findings and Recommendation](#) that recommended Respondent’s motion to dismiss be GRANTED and those claims concerning the Governor’s 2005 decision be DISMISSED with prejudice for violating the statute of limitations. The Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order.

On April 14, 2009, Petitioner filed [objections](#) to the Findings and Recommendation. He also filed a [first amended petition](#). In his objections, he does not challenge the untimeliness of his claims regarding the 2005 decision. Instead, he states he has now cured the defects in the original petition by filing an amended petition raising only the timely claims. The Court has reviewed the first amended petition and finds it suffers from the same defects noted in the Findings and Recommendation. The first amended petition challenges the Governor’s 2005 decision extensively. Further, the petition raises challenges to even more untimely claims concerning a 2003 parole

1 decision.

2 Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure allows a party to amend its pleading  
3 once as a matter of course “before being served with a responsive pleading.” In this case, Respondent  
4 filed a responsive pleading by filing a motion to dismiss the petition. Therefore, pursuant to Rule  
5 15(a)(2) Petitioner may only amend his petition “with the opposing party’s written consent or the  
6 court’s leave.” He has sought neither in this instance.

7 The instant first amended petition is unauthorized and raises claims that are untimely.  
8 Therefore, the petition will be stricken. The habeas action will proceed on the original petition;  
9 however, any claims challenging the Governor’s 2005 decision are DISMISSED WITH  
10 PREJUDICE for violating the statute of limitations as stated in the Findings and Recommendation.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*  
12 *novo* review of the case. Having carefully reviewed the entire file and having considered the  
13 objections, the Court concludes that the Magistrate Judge's Findings and Recommendation is  
14 supported by the record and proper analysis, and there is no need to modify the Findings and  
15 Recommendations based on the points raised in the objections.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendation issued March 27, 2009, is ADOPTED IN FULL;
- 18 2. Respondent’s Motion to Dismiss is GRANTED;
- 19 3. All claims concerning the Governor’s 2005 decision are DISMISSED WITH  
20 PREJUDICE;
- 21 4. The First Amended Petition for Writ of Habeas Corpus is STRICKEN; and
- 22 5. The matter is REFERRED back to the Magistrate Judge for further proceedings.

23 IT IS SO ORDERED.

24 **Dated:** April 23, 2009

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