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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARIO LEON,

 Petitioner,

 v.

FRED FOULK, Warden,

 Respondent.

Case No. 1:14-cv-00301-AWI-SKO-HC

ORDER DISMISSING AS MOOT
PETITIONER'S MOTION REGARDING THE
DATE OF CONSTRUCTIVE FILING OF THE
PETITION (DOC. 2)

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is Petitioner's request that the Court determine that March 15, 2013, was the date on which the petition was constructively filed pursuant to the "mailbox rule."

Consideration of the motion was previously deferred pending receipt of Respondent's response to the petition. The docket reflects that Respondent filed an answer to the petition on July 31, 2014, in which Respondent 1) stated that it did not appear that the

1 petition was untimely filed, and 2) responded to Petitioner's claims
2 on the merits. (Doc. 15.) Thus, no issue regarding the timeliness
3 of the petition is pending before the Court.

4 Accordingly, it is ORDERED that Petitioner's motion regarding
5 the date of constructive filing of the petition is DISMISSED as
6 moot.

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9 IT IS SO ORDERED.

10 Dated: September 2, 2014

/s/ Sheila K. Oberto
11 UNITED STATES MAGISTRATE JUDGE