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

VICTOR CHARLES FOURSTAR, JR.,  
  
                    Petitioner,  
  
                    v.  
  
PAUL COPENHAVER,  
  
                    Respondent.

Case No. 1:14-cv-01456-BAM-HC  
  
ORDER CONSTRUING PETITION AS A  
MOTION TO AMEND (DOC. 9)  
  
ORDER DIRECTING THAT PETITIONER'S  
MOTION TO AMEND (DOC. 9) BE FILED  
IN CASE NUMBER 1:14-cv-1486-MJS-HC  
AS A MOTION TO AMEND THE PETITION  
  
ORDER DISMISSING PETITIONER'S  
MOTION AND DEEMING PETITIONER'S  
MOTION TO AMEND (DOC. 8) TO BE A  
SUPPLEMENT TO THE PETITION  
  
ORDER GRANTING RESPONDENT AN  
EXTENSION OF TIME TO FILE A  
RESPONSE TO THE SUPPLEMENTED  
PETITION (DOC. 1, 8)

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting their consent in writings signed by the parties or their representatives and filed by Petitioner on October 1, 2014, and on behalf of Respondent on October 16, 2014.

1 I. Background

2 In the present proceeding, Petitioner alleges in the petition  
3 filed on September 18, 2014, that he is an inmate of the United  
4 States Penitentiary at Atwater, California, serving a sentence of  
5 188 months imposed in the United States District Court for the  
6 District of Montana, Great Falls Division, in 2003. Petitioner  
7 challenges the execution of his sentence, alleging that the United  
8 States Bureau of Prisons (BOP) has incorrectly calculated custody  
9 credits and his release date; he was denied custody credits without  
10 due process of law and in violation of equal protection of the laws.  
11 (Doc. 1 at 1, 5-7.)

12 On September 23, 2014, Respondent was directed to file an  
13 answer to the petition within sixty days.

14 On October 1, 2013, Petitioner filed in this proceeding a  
15 motion to amend the petition for writ of habeas corpus in which he  
16 sought to add to the petition information regarding a report of  
17 September 17, 2014, involved in an administrative appeal that  
18 relates to the matters and calculations pertinent to his release.  
19 (Doc. 8, 1-2.)

20 On October 3, 2014, a petition that initially had been filed in  
21 Fourstar v. Copenhaver, case number 1:14-cv-1535-JLT-HC, was filed  
22 in the instant case as an amended petition. Review of that petition  
23 shows that it mainly concerns Petitioner's conviction and sentence  
24 imposed in 2003 in the United States District Court, District of  
25 Montana, as well as conditions claims regarding his custody level in  
26 regard to an ongoing knee condition. (Doc. 9.)

27 The Court notes that on September 24, 2014, a petition was  
28 filed in Fourstar v. Copenhaver, case number 1:14-cv-1486-MJS-HC, in

1 which Petitioner challenges a 1992 state court conviction that was  
2 used for impeachment at Petitioner's federal trial as well as for  
3 the purpose of sentencing him in the federal proceeding. (Doc. 1,  
4 1-2.)

5 II. Construction and Filing of "Amendment" (Doc. 9)

6 In Woods v. Carey, 525 F.3d 886 (9th Cir. 2008), the court held  
7 that a petition filed before a prior petition has been adjudicated  
8 should be considered a motion to amend the prior petition rather  
9 than a second or successive petition.

10 Here, because the document that was initially filed in case  
11 number 1:14-cv-1535-JLT-HC (doc. 9) relates to the same judgment  
12 challenged by Petitioner in the earlier-filed case number 1:14-cv-  
13 1486-MJS-HC, it is appropriate to construe the document as a motion  
14 to amend the petition in case number 1:14-cv-1486-MJS-HC.

15 Accordingly, the petition initially filed in case number 1:14-  
16 cv-1535-JLT-HC, and thereafter filed in this action on October 3,  
17 2014 (doc. 9), will be construed as a motion to amend the petition  
18 in case number 1:14-cv-1486-MJS-HC, and it will further be ordered  
19 that the document be re-filed in that action.

20 III. Petitioner's Motion to Amend the Petition (Doc. 8)

21 The instant case now proceeds on the initial petition (doc. 1).  
22 Because no response had been filed when Petitioner filed his motion  
23 to amend the initial petition (doc. 8), Petitioner was not required  
24 to seek leave of Court to amend his petition. Fed. R. Civ. P.  
25 15(a). Thus, Petitioner's motion will be dismissed as moot.

26 As to the amendment, review of it reflects that the document  
27 was not intended to supplant the initially filed petition (doc. 1),  
28 but rather to supplement it. Local Rule 220 provides that unless

1 prior approval to the contrary is obtained from the Court, every  
2 pleading as to which an amendment or supplement is permitted shall  
3 be retyped or rewritten and filed so that it is complete in itself  
4 without reference to the prior or superseded pleading. However, the  
5 Court has inherent power to control its docket and the disposition  
6 of its cases with economy of time and effort for both the court and  
7 the parties. Landis v. North American Co., 299 U.S. 248, 254-255  
8 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992).

9 Accordingly, in this one instance, the Court will construe  
10 Petitioner's motion to amend the petition as a supplement to the  
11 petition.<sup>1</sup>

12 Respondent's response to the petition is presently due in  
13 approximately thirty days. Respondent will be granted an additional  
14 thirty days to file a response to the petition as supplemented  
15 (docs. 1, 8).

16 IV. Disposition

17 Accordingly, IT IS HEREBY ORDERED that:

18 1) The habeas petition initially filed in case number 1:14-cv-  
19 1535-JLT-HC, and filed in this action on October 3, 2019, as an  
20 amendment of the petition (doc. 9), is CONSTRUED as a motion to  
21 amend the petition in case number 1:14-cv-1486-MJS-HC; and

22 2) The Clerk of Court is DIRECTED to file the document (doc. 9)  
23 as a motion to amend in case no. 1:14-cv-1486-MJS-HC; and

24 3) To the extent that it seeks leave to file an amendment to  
25 the petition, Petitioner's motion to amend the petition (doc. 8) is  
26 DISMISSED as moot; and

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27  
28 <sup>1</sup> Petitioner is forewarned that in the future, absent further order of the Court, compliance with both Fed. R. Civ. P. 15 and Local Rule 220 will be required with respect to any further attempts to amend the petition.

1 4) Petitioner's motion to amend the petition (doc. 8) is  
2 DEEMED to be a supplement to the petition; and

3 5) The time for filing Respondent's response to the  
4 supplemented petition in this proceeding (docs. 1 & 8) is EXTENDED  
5 to no later than sixty (60) days after the date of service of this  
6 order.

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8 IT IS SO ORDERED.

9 Dated: October 27, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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