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

|                |   |                                      |
|----------------|---|--------------------------------------|
| SAMMY L. PAGE, | ) | Case No.: 1:16-cv-00522-AWI-JLT (HC) |
|                | ) |                                      |
| Petitioner,    | ) | ORDER GRANTING MOTION TO AMEND       |
|                | ) | [Doc. No. 68]                        |
|                | ) |                                      |
| v.             | ) | ORDER CONSTRUING MOTION TO AMEND AS  |
|                | ) | FIRST AMENDED PETITION               |
|                | ) |                                      |
| AUDREY KING,   | ) | ORDER DISMISSING MOTION TO COMPEL    |
|                | ) | [Doc. No. 77]                        |
|                | ) |                                      |
| Respondent.    | ) | ORDER GRANTING RESPONDENT LEAVE TO   |
|                | ) | SUPPLEMENT MOTION TO DISMISS         |

Petitioner challenges his on-going pre-trial detention awaiting trial as a Sexually Violent Predator (“SVP”). Petitioner was originally committed as an SVP in 2004 for a two-year commitment. The State of California filed a petition to re-commit Petitioner for a second two-year period in 2006. However, after a change in California law, the prosecutor amended the petition to provide for an indefinite commitment. Over the subsequent ten years, the matter has been continued no less than twenty-eight times.

Following remand from an appeal to the Ninth Circuit, this case was transferred to this Court by the Northern District after that court determined that it was not the custodial court. On April 21, 2016, the Court ordered Respondent to file a response to the original petition. Petitioner filed a motion to appoint counsel on April 25, 2016, which the Court denied on April 27, 2016. Petitioner

1 filed a motion for reconsideration and the Court denied the motion. Subsequently, Petitioner  
2 attempted to appeal this non-appealable order to the Ninth Circuit, which dismissed the appeal on July  
3 21, 2016.

4 On July 22, 2016, Petitioner filed a document which purported to be a petition pursuant to 28  
5 U.S.C. 2241. The Clerk of the Court filed the document as a motion to amend the original petition.  
6 (Doc. 68). On August 26, 2016, the Court issued an order regarding Petitioner's motion to amend.  
7 The Court noted that the case was proceeding on the original petition insofar as it had not been  
8 dismissed. The Court stated that it appeared that Petitioner may have believed he needed to file a new  
9 petition, which was not the case. Therefore, the Court directed Petitioner to advise the Court whether  
10 he desired to proceed with the original petition or if he did, in fact, desire to file an amended petition.

11 On August 26, 2016, Petitioner filed a notice of options pursuant to the Court's order. (Doc.  
12 No. 76.) Petitioner states he did intend to file an amended petition, because it was what he believed he  
13 was required to do according to the Ninth Circuit's order in Appeal No. 15-17278. (Doc. No. 76, Ex.  
14 U.) However, that order concerned other cases Petitioner had pending in the Northern District,  
15 specifically, Case Nos. 3:13-cv-05352-WHA and 3:14-cv-02052-WHA. The order was not issued in  
16 any appeals concerning the instant case and therefore has no application here.

17 Nevertheless, Petitioner seeks to proceed with the amended petition, which is his right under  
18 Fed. R. Civ. P. 15(a). Petitioner complains that the Court stated the amended petition would be  
19 dismissed because the amended petition did not contain any claims, but he claims the amended  
20 petition did in fact contain two claims. Petitioner reiterated these arguments in a motion to compel  
21 filed on September 12, 2016. Petitioner is correct that the amended petition does in fact present two  
22 claims. While not set forth in the form petition, Petitioner referred to attached pages where he sets  
23 forth two claims with supporting factual arguments. (Doc. No. 68, pp. 15, 17.) Therefore,  
24 Petitioner's motion to amend will be granted. The Court notes that Respondent filed a motion to  
25 dismiss on August 17, 2016. Respondent will be granted leave to file a supplemental brief to her  
26 motion to dismiss, however, such brief is optional since Respondent addressed the amended petition as  
27 well as the initial petition in her motion. Petitioner will then be granted leave to file an opposition.  
28 Should Petitioner file an opposition, Respondent will then be permitted to file a reply.

**ORDER**

Accordingly, the Court **ORDERS**:

- 1) Petitioner’s motion to amend (Doc. No. 68) is **GRANTED**;
- 2) The motion to amend is construed as a first amended petition (Doc. No. 68);
- 3) Petitioner’s motion to compel (Doc. No. 77) is **DISMISSED** as moot;
- 4) Respondent is **GRANTED** thirty days to file an optional supplemental brief to her motion to dismiss or a statement she does not intend to file a supplemental brief;
- 5) Within 21 days after the date Respondent files her supplemental brief or statement she will not file a supplemental brief, Petitioner **SHALL** file an opposition or statement of non-opposition to the motion.
- 6) Respondent may file a reply to the opposition, if any, within seven days after the opposition is served.

IT IS SO ORDERED.

Dated: September 15, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE