

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VESTER L. PATTERSON, Case No. 1:16-cv-01215-SAB-HC Petitioner, ORDER FOR RESPONDENT TO FILE AN OPPOSITION OR STATEMENT OF NON-v. OPPOSITION TO MOTION TO AMEND JOEL MARTINEZ, (ECF No. 11) Respondent.

Petitioner is state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 30, 2016, the Court directed the Clerk of Court to serve the petition on Respondent and ordered Respondent to file a response. (ECF No. 4). On September 26, 2016, Petitioner filed a first amended petition (ECF No. 10) and a motion for an order to direct the Clerk of Court to serve the amended petition (ECF No. 11), which the Court construes as a motion to amend. See Castro v. United States, 540 U.S. 375, 381–82 (2003) (courts may recharacterize a pro se motion to "create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis").

A party may amend its pleading once as a matter of course within 21 days after serving it, or "if the pleading is one to which a responsive pleading is required, 21 days after service of a

¹ Pursuant to the prison mailbox rule, a *pro se* prisoner's legal document is filed "at the time . . . [it is] delivered . . . to the prison authorities for forwarding to the court clerk." <u>Hernandez v. Spearman</u>, 764 F.3d 1071, 1074 (9th Cir. 2014) (alteration in original) (internal quotation marks omitted) (quoting <u>Houston v. Lack</u>, 487 U.S. 266, 276 (1988)).

responsive pleading." Fed. R. Civ. P. 15(a)(1). But "[i]n all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Here, the amended petition was filed 27 days after the petition was served, and Respondent has not filed a responsive pleading yet. Therefore, Petitioner may amend the petition only with Respondent's written consent or the court's leave.

Accordingly, the Court HEREBY ORDERS Respondent to file an opposition or statement of non-opposition no later than October 7, 2016.

8 IT IS SO ORDERED.

Dated: **September 30, 2016**

JNITED STATES MAGISTRATE JUDGE