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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,

Petitioner,

No. 2:13-cv-0197 KJN¹ P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

_____ /

Petitioner seeks reconsideration of this court’s order and judgment entered March 22, 2013, wherein the court construed the petition for writ of habeas corpus filed herein as a motion to amend the petition pending in Langston v. Swarthout, Case No. 2:12-cv-01633 JFM. (See Dkt. Nos. 7, 8, herein.) Petitioner seeks reconsideration² on the ground that the court’s construction of the instant petition compromises his action in Case No. 2:12-cv-01633 JFM. Petitioner asserts that respondent defaulted in the first-filed action, thus entitling petitioner to the

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¹ Petitioner consented to the jurisdiction of the undersigned magistrate judge for all purposes. (Dkt. No. 5.) See 28 U.S.C. § 636(c); Local Rule 305(a).

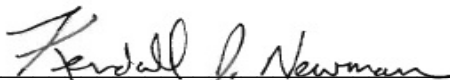
² Rule 60, Federal Rules of Civil Procedure, authorizes, inter alia, relief from a final order for “any . . . reason that justifies relief.” Fed. R. Civ. P. 60(b)(6).

1 requested relief,³ and that construing the instant petition as a motion to amend petitioner’s first-
2 filed action “gives the respondent a second bite at the apple . . .[to] use the new amendment as an
3 loop hole opportunity, to respond (sic).” (Dkt. No. 9 at 1.)

4 The undersigned is without authority to reopen the instant case. The petition filed
5 in the instant case must be construed as a motion to amend petitioner’s first-filed petition. See
6 Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008). Petitioner’s concerns regarding the merits of
7 Case No. 2:12-cv-01633 JFM, must be raised in that action.

8 Accordingly, IT IS HEREBY ORDERED that petitioner’s request for
9 reconsideration (Dkt. No. 9), is denied.

10 DATED: May 7, 2013

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12 
13 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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24 _____
25 ³ The court notes, however, that petitioner’s request for entry of default in Case No. 2:12-
26 cv-01633 JFM, was declined by the court; petitioner has filed a motion for reconsideration of that
order, which remains pending.