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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHNNY NORTON,

Petitioner,

v.

E. VALENZUELA, Warden, et al.,

Respondents.

Civil No. 13cv1485-GPC (BGS)

ORDER:

(1) DIRECTING CLERK OF COURT TO FILE COPY OF PETITION AS AN ORIGINAL MOTION TO AMEND IN Case No. 12cv2634-CAB (RBB); and,

(2) DISMISSING CASE WITHOUT PREJUDICE

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging the sentence imposed as a result of his April 24, 2009, conviction in San Diego Superior Court Case No. SCD211717. (See Pet. [ECF No. 1] at 1, 6-15.) Petitioner currently has a federal habeas petition pending in this Court in Case No. 12cv2634-CAB (RBB), in which he challenges the same state court conviction as the Petition filed in this case. (See Pet. filed 10/29/12 in So.DIST.CA.CIVIL CASE NO. 12cv2436-CAB (RBB) [ECF No. 1] at 1.) An Answer and Traverse has been filed in that case, and the action is currently awaiting adjudication. (See id. [ECF Nos. 9, 13].)

The Clerk of Court is **DIRECTED** to file a copy of the instant Petition as an original Motion to Amend the Petition in So.DIST.CA.CIVIL CASE NO. 12cv2634-CAB (RBB). See

1 Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008) (holding that a new pro se petition
2 challenging the same conviction as a pending petition, which is filed before the first petition is
3 adjudicated, should be liberally construed as a motion to amend the pending petition rather than
4 summarily dismissed as second or successive). The fact that Petitioner is challenging his
5 sentence in this action and his conviction in the prior action does not change the outcome. See
6 Hill v. Alaska, 297 F.3d 895, 897-98 (9th Cir. 2002) (recognizing that the “second or
7 successive” petition provision of 28 U.S.C. § 2244(b) codified the “abuse of the writ” doctrine
8 which “occurs when a petitioner raises a habeas claim that could have been raised in an earlier
9 petition were it not for inexcusable neglect.”), citing McCleskey v. Zant, 499 U.S. 467, 493
10 (1991).

11 This case is **DISMISSED** without leave to amend but without prejudice to Petitioner to
12 seek leave to amend in order to present his claims in SO.DIST.CA.CIVIL CASE NO. 13cv2634-
13 CAB (RBB).

14 The Clerk shall close the file.

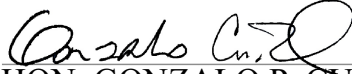
15 IT IS SO ORDERED.

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17 DATED: July 1, 2013

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HON. GONZALO P. CURIEL
United States District Judge

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Copies to: ALL PARTIES

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