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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY ALICE KESSLER,)	1:10-cv-0322-OWW-SMS-HC
)	
Petitioner,	)	ORDER DEEMING RESPONDENT'S
	)	"STATEMENT REGARDING EVIDENTIARY
v.	)	HEARING" TO BE A REQUEST TO
	)	SUBMIT OPPOSITION TO THE MOTION
TINA HORNBEAK, Warden, et al.,	)	FOR EVIDENTIARY HEARING, AND
	)	OPPOSITION
Respondents.	)	ORDER PERMITTING PETITIONER TO
	)	FILE A REPLY TO THE OPPOSITION NO
	)	LATER THAN THIRTY (30) DAYS AFTER
	)	THE DATE OF SERVICE OF THIS ORDER

**DEADLINE FOR FILING A REPLY:
THIRTY (30) DAYS**

Petitioner is a state prisoner proceeding with counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to Local Rules 302 and 303.

On April 5, 2011, Petitioner filed a motion for an evidentiary hearing which was electronically served on Respondent. No opposition to the motion was filed. On July 27, 2011, the Court ordered consideration of the motion deferred until the merits of the petition were considered. On July 28, 2011, Respondent served and filed a "Statement Regarding Evidentiary Hearing," in which Respondent explained why no opposition to the motion was filed, and which contained points

1 and authorities concerning the motion.

2 Despite its title, the "Statement" is DEEMED to be a request
3 for leave to file opposition due to developing law, and to be
4 opposition to the motion. The request is GRANTED, and the
5 statement is considered to be Respondent's opposition to the
6 motion.

7 Petitioner may FILE a reply to the opposition no later than
8 thirty days after the date of service of this order.

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10 IT IS SO ORDERED.

11 **Dated: July 28, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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