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UNITED STATES DISTRICT COURT7
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EASTERN DISTRICT OF CALIFORNIA10 JAVANCE J. HOUSE,) 1:11-cv-00687-SKO-HC
11 Petitioner,)
12) ORDER DEEMING RESPONDENT'S MOTION
13 v.) TO DISMISS TO BE WITHDRAWN
14) (DOCS. 13, 21)
15 TERRI GONZALEZ, Warden)
16 Respondent.)
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Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting their consent in writings signed by the parties or their representatives and filed by Petitioner on May 12, 2011, and on behalf of Respondent on June 2, 2011.

Pending before the Court is Respondent's request to 1) withdraw the Respondent's motion to dismiss the petition as untimely that was filed on July 5, 2011, and 2) receive a briefing schedule for the filing of a "merits response" to the

1 petition. (Doc. 21, 1-2.)

2 Respondent seeks to withdraw the motion because Respondent
3 has reviewed evidence concerning Petitioner's argument that the
4 statute of limitations was equitably tolled due to Petitioner's
5 mental condition and to separation from legal materials due to an
6 institutional transfer.

7 Although no local rule requires that a party seek permission
8 to withdraw a motion, in this action the Court on May 4, 2011,
9 ordered Respondent to file a response to the petition and set
10 forth a briefing schedule. Fed. R. Civ. P. 16(b)(4) provides
11 that a scheduling order shall not be modified except upon a
12 showing of good cause and with the judge's consent.

13 It thus appears that Respondent is seeking to modify a
14 scheduling order based on a determination that the merits of the
15 motion require withdrawal of the motion and waiver of the defense
16 of the statute of limitations.

17 The Court concludes that Respondent has shown good cause for
18 withdrawal of the motion and modification of the briefing
19 schedule set forth in the Court's order requiring Respondent to
20 file a response to the petition.

21 Accordingly, it is ORDERED that:

22 1) Respondent's motion to dismiss the petition as untimely
23 is DEEMED withdrawn; and

24 2) Respondent SHALL FILE an answer addressing the merits of
25 the petition no later than sixty (60) days after the date of
26 service of this order; and

27 3) Petitioner MAY FILE a traverse within **THIRTY (30) days**
28 of the date Respondent's answer is filed with the Court. If no

1 traverse is filed, the petition and answer are deemed submitted
2 at the expiration of the thirty (30) days.

3 Requests for extensions of time will only be granted upon a
4 showing of good cause. All provisions of Local Rule 110 are
5 applicable to this order.

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7 IT IS SO ORDERED.

8 **Dated: September 5, 2011**

9 **/s/ Sheila K. Oberto**
10 UNITED STATES MAGISTRATE JUDGE

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