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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODNEY T. BURKS,

1:12-CV-00918 LJO GSA HC

Petitioner,

ORDER GRANTING RESPONDENT’S
REQUEST TO WITHDRAW MOTION TO
DISMISS
[Docs. #14, 23]

v.

ORDER SETTING BRIEFING SCHEDULE

M. CATE, Secretary,

Respondent.

_____ /

Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

On October 23, 2012, Respondent filed a motion to dismiss the petition for being filed beyond the statute of limitations. Petitioner filed an opposition on December 3, 2012, wherein he complained that he suffered from both medical impairments and impediments with his legal mail which prevented him from timely filing his state petitions. He argued he should be granted equitable tolling due to these impediments which were beyond his control.

On February 8, 2013, Respondent filed the instant request to withdraw the motion to dismiss. With commendable candor, Respondent concedes the issue of equitable tolling in light of the documents obtained by Respondent which support Petitioner’s claimed legal mail impairments and

1 tolling calculations. Respondent states that equitable tolling appears justified, and when tolling is
2 provided, the petition appears to be timely filed. Good cause having been presented, Respondent's
3 request will be granted.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED:

6 1) Respondent's request to withdraw the motion to dismiss is GRANTED and the motion to
7 dismiss is DEEMED withdrawn;

8 2) Respondent is DIRECTED to file an answer within thirty (30) days of the date of service
9 of this order; and

10 3) Petitioner MAY FILE a traverse within thirty (30) days of the date Respondent's answer is
11 filed with the Court. If no traverse is filed, the petition and answer are deemed submitted at the
12 expiration of the thirty days.

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14 IT IS SO ORDERED.

15 Dated: February 12, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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