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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARISSA SCHUSTER,

Petitioner,

v.

JANEL ESPINOZA,

Respondent.

Case No. 1:12-cv-01482-AWI-SAB

**ORDER FOR
SECOND HEARING
RE: CIVIL CONTEMPT**

Petitioner, represented by counsel, is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 8, 2017, Petitioner moved for a court order directing Respondent to process an attorney authorization form (the “Form”) to permit Petitioner to be interviewed by counsel’s investigator without requiring the investigator to disclose her Social Security number on the Form. See Doc No. 85. The Magistrate Judge conducted a hearing on the motion, at which Respondent objected to Petitioner’s request on jurisdictional grounds. Doc. No. 91. On December 7, 2017, the Magistrate Judge granted Petitioner’s motion and ordered that the Form be processed without the investigator’s Social Security number. Doc. No. 93. On March 6, 2018, this Court denied Respondent’s motion for reconsideration based on Respondent’s jurisdictional argument, and ordered Respondent to comply with the Magistrate Judge’s directive. Doc. No. 101.

1 On March 16, 2018, Respondent filed a status report, stating she “respectfully submits that
2 she cannot [process the Form without the investigator’s social security number].” Doc. No. 104.
3 Therein, Respondent stated that she was both legally and practically unable to comply, detailing her
4 purported reasons for failing to do so. Id.

5 On March 23, 2018, Petitioner filed a “Proposed Order re order to show cause re: contempt,”
6 which this court treats as a request for a contempt hearing. Doc. No. 105. Therein, Petitioner
7 contends that “Throughout the litigation of this issue, one fact stands out: respondent has never
8 claimed, much less presented evidence to show, the investigator’s social security number is required
9 to run the background check or why the driver’s license number is insufficient for the security
10 clearance.” Id. at p. 5.

11 The Court notes Respondent’s inaction in complying with the Magistrate Judge’s order to
12 process the Form without the investigator’s social security number. However, the Court also notes
13 the Magistrate Judge’s explicit statement in his initial order stating he was “only ordering that the
14 application be processed[,] and that if there is an issue as to actual clearance and/or entry into the
15 prison facility that then the matter can be re-raised before the Court if the parties are in dispute.”
16 Doc. No. 93, at p. 4. Since this issue has yet to be adjudicated, the Court will direct this case back to
17 the Magistrate Judge to conduct the appropriate briefing, hearing and issuance of findings and
18 recommendations as to whether the Form can be processed without the investigator’s social security
19 number. Of particular import to this Court are the questions of whether civil contempt is appropriate
20 and another investigator can be sent to conduct the interview of Petitioner.

21 Accordingly, IT IS HEREBY ORDERED that this case is referred back to the Magistrate
22 Judge to conduct the appropriate proceedings consistent with this order.

23 IT IS SO ORDERED.

24 Dated: March 28, 2018

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26 _____
27 SENIOR DISTRICT JUDGE
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