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7 °	UNITED STATES DISTRICT COURT	
8 9	EASTERN DISTRICT OF CALIFORNIA	
9	JAIME I. ESTRADA,	Case No. 1:14-cv-00679-DAD-EPG-HC
10	Petitioner,	ORDER DENYING RESPONDENT'S
12	V.	MOTION TO VACATE EVIDENTIARY HEARING
12	MARTIN BITER,	(ECF No. 68)
14	Respondent.	
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16	Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant	
17	to 28 U.S.C. § 2254. On January 17, 2017, the assigned District Judge adopted the findings and	
18	recommendation and referred this matter back to the undersigned for an evidentiary hearing on	
19	Petitioner's first claim for relief (ineffective assistance of counsel for failure to communicate an	
20	alleged nineteen-year plea offer). (ECF No. 53).	
21	On March 22, 2017, Respondent filed the instant motion to vacate the evidentiary	
22	hearing. (ECF No. 68). ¹ Relying on a minute order that refers to an indicated disposition	
23	involving pleas on counts I and II and dismissal of count III, Respondent contends that the record	
24	shows an offer was made at the pretrial conference with Petitioner present, and thus, Petitioner	
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26	¹ It is worth noting that Respondent moved to vacate the hearing the day after the Court held a telephonic pre- hearing conference. Respondent did not mention its intention to file such a motion, and indeed confirmed the	
27	evidentiary hearing at that time. Given the gravity of the request to vacate an evidentiary hearing already ordered by the District Judge after substantial briefing, and the purpose of the pre-hearing conference to confirm the hearing	

the District Judge after substantial briefing, and the purpose of the pre-hearing conference to confirm the hearing and resolve any outstanding issues, the Court would have expected Respondent to raise the issue of vacating the hearing if it truly believed that was the proper course.

cannot establish that a plea offer was not conveyed to him. (ECF No. 68 at 2; ECF No. 68-2 at
 2).² Petitioner contests Respondent's interpretation of the minute order and proffers evidence it
 intends to offer at the evidentiary hearing of a plea offer that was not conveyed to Petitioner.
 (ECF No. 75)

5 After substantial briefing and consideration, the assigned District Judge directed the 6 undersigned to hold an evidentiary hearing on Petitioner's ineffective assistance of counsel 7 claim. Nothing in Respondent's motion provides a basis to decline to hold such a hearing at this 8 time. Respondent has put forth evidence it will certainly introduce at that hearing. Petitioner 9 intends to put forth its own evidence. An evidentiary hearing remains appropriate. The Court 10 will not preview some of the evidence and predict the outcome before hearing all the evidence, 11 as directed by the District Judge.

As there are disputed issues of fact regarding whether trial counsel communicated the
alleged nineteen-year plea offer to Petitioner, the Court finds that an evidentiary hearing is
necessary to determine whether Petitioner is entitled to habeas relief.

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Accordingly, IT IS HEREBY ORDERED that:

1. Respondent's motion to vacate the evidentiary hearing (ECF No. 68) is DENIED;

2. The hearing on the motion to vacate scheduled for April 25, 2017 is VACATED; and

3. The evidentiary hearing will proceed as scheduled on May 5, 2017, at 9:00 a.m.

IT IS SO ORDERED.

18/ Encir P. Group

UNITED STATES MAGISTRATE JUDGE