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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN EDWARD RATHBUN,)	
)	Case No. CIV S-06-1311 VAP
Petitioner,)	
)	[Motion filed on October 9,
v.)	2007]
)	
K. PROPSEER, Warden,)	ORDER GRANTING LEAVE TO FILE
)	UNTIMELY TRAVERSE
Respondent.))	

Petitioner is a state prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2254. The petition was filed on June 29, 2006. On January 5, 2009, the action was transferred to this Court pursuant to an Order of Designation of Judge to Serve in Another District Within the Ninth Circuit.

On October 9, 2007, Petitioner filed a motion seeking (1) the appointment of counsel and (2) leave to file an untimely traverse. Respondent filed no opposition. On October 12, 2007, Magistrate Judge Brennan issued an order denying the appointment of counsel, but not

1 addressing Petitioner's request to file an untimely
2 traverse. The Court thus addresses this request now.

3

4 Petitioner claims he was never properly served with a
5 copy of Respondent's answer to his petition, and was thus
6 unable to file a timely traverse. Petitioner's prison
7 legal mail record supports this assertion. (Mot. at Ex.
8 2.) In addition, no duly executed proof of service was
9 ever filed by Respondent.¹

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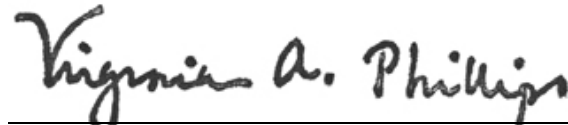
11 The Court finds that Petitioner has established good
12 cause for his failure to file a timely traverse, and thus
13 GRANTS him 30 days from the date of this Order to file a
14 traverse.

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18 Dated: November 17, 2009



VIRGINIA A. PHILLIPS
United States District Judge

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26 ¹ The Declaration of Service by U.S. Mail attached to
27 Respondent's Answer is not only unsigned, but fails to
28 include the name of a declarant. Compare Answer (Dkt. No.
14) at p. 45 (blank declaration of service) with Resp.'s
Not. of Filing (Dkt. No. 15) at p. 3 (declaration of
service electronically signed by Catherine Tennant).