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

MICHAEL J. BRODHEIM,

Petitioner,

No. CIV S-06-2326 LKK GGH P

vs.

KATHLEEN DICKINSON, et al.,

Respondents.

ORDER

_____ /

Presently before the court is petitioner’s request to vacate motions and scheduling dates, filed January 24, 2013, as well as respondent’s opposition, filed January 25, 2013.

Petitioner seeks an order vacating all motions and scheduled dates, including respondent’s motion to dismiss, currently scheduled for hearing on February 28, 2013, as well as an order requiring a joint status report be filed by June 14, 2013. Petitioner brings this request based on the Board of Parole Hearings’ January 8, 2013 decision to grant petitioner parole, which will not be final for several months.¹ Petitioner reminds the court that approximately one year ago the court granted a similar request that was stipulated by the parties, based on a January 11, 2012 decision by the Board of Parole Hearings which granted petitioner parole.

¹ Petitioner’s opposition to the motion to dismiss was due January 24, 2013. (Dkt. no. 101.)

1 Respondent opposes the request, noting the history of the appeal in this case and
2 the Ninth Circuit's remand after Swarthout v. Cooke, 131 S.Ct. 859 (2011). Respondent
3 contends, *inter alia*, that most of petitioner's contentions are now foreclosed by Cooke, that his
4 claims are not cognizable in habeas, because his claims should be resolved in the pending class
5 action, Gilman v. Brown, no. 2:05-cv-8830 LKK GGH, and because all of his claims have been
6 mooted by subsequent parole consideration hearings he has received. Respondent requests that
7 its motion to dismiss, filed September 26, 2011, should be heard as scheduled so that this case
8 can finally be closed. Petitioner's request will not be decided without a hearing.

9 Accordingly, IT IS ORDERED that:

10 1. Petitioner's request to vacate motions and scheduling dates, filed January 24,
11 2013, will be heard on February 28, 2013 at 10:00 a.m.

12 2. Hearing on respondent's motion to dismiss is vacated from the calendar for
13 February 28, 2013, to be rescheduled, if necessary, following a decision on petitioner's request.

14 3. Opposition and reply dates for the motion to dismiss will be rescheduled at a
15 later time.

16 DATED: January 28, 2013

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18 /s/ Gregory G. Hollows
19 UNITED STATES MAGISTRATE JUDGE

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