

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

**ED ONTIVEROS,**

2:07-cv-01441-JAM-DAD (HC)

Petitioner, | **ORDER**

V.

R. J. SUBIA, Warden,

### Respondent.

On January 29, 2015, this court set an evidentiary hearing in this matter for the sole purpose of determining whether petitioner is entitled to equitable tolling of the statute of limitations. Counsel for respondent has since filed a request to withdraw respondent's pending motion to dismiss the petition as time-barred. Respondent's counsel explains therein that in light of the costs of proceeding with an evidentiary hearing, respondent has elected to withdraw the affirmative defense based on the statute of limitations and, within ten days of the court vacating the evidentiary hearing, respondent's counsel will file an answer addressing the merits of petitioner's sole claim that the Board of Parole Hearings was unconstitutionally biased when it denied petitioner parole.

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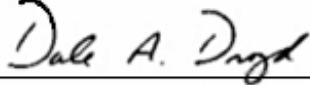
1 Good cause appearing, IT IS HEREBY ORDERED that:

2 1. Respondent's motion to dismiss (Doc. No. 7) is deemed withdrawn;

3 2. The evidentiary hearing set for June 1, 2015, is vacated; and

4 3. Respondent shall file an answer within ten days of the date of this order.

5 Dated: March 16, 2015

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7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

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