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

DARRYL F. WEST,

No. CIV S-09-0260-CMK-P

Petitioner,

vs.

ORDER

JAMES D. HARTLEY,

Respondent.

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court is Respondent’s request to consolidate this action with Petitioner’s prior case, CIV S-07-1048 JLQ.

While Petitioner’s prior case was pending, he filed the current petition. However, prior to the court screening Petitioner’s current petition and ordering a response thereto, Petitioner’s prior petition was denied and judgment entered. Consolidation of the two actions, therefore, is unavailable as the prior court case is closed and the court cannot consolidate an open case with a closed case. The court will address the merits of Petitioner’s petition.

1            Respondent's request to consolidate cases is therefore denied, and a response to  
2 the petition is required. Respondent shall file a response to Petitioner's petition within 45 days  
3 from the date of service of this order.

4            IT IS SO ORDERED.

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6 DATED: October 20, 2010

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8 **CRAIG M. KELLISON**  
9 UNITED STATES MAGISTRATE JUDGE  
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