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

MACK A. WEST, JR.,

Petitioner,

No. 2:09-cv-3147 KJM AC P

vs.

KATHLEEN DICKINSON,

Respondent.

ORDER

_____/

Petitioner is a state prisoner who proceeds pro se on his third amended petition for writ of habeas corpus.

Recent filings from the petitioner, including his November 28, 2012 motion for an extension of time and his December 6, 2012 request for discovery, read that petitioner does not have access to his legal file, despite having requested it from prison authorities. See, e.g., Doc. Nos. 91 at 2, 96 at 4. To date, respondent has not filed any response to petitioner’s request for discovery.

While a temporary deprivation of an inmate’s legal materials may not, in all cases, rise to a constitutional violation, see, e.g., Vigliotto v. Terry, 873 F.2d 1201, 1202 (9th Cir. 1989), petitioner in this case appears to be alleging that he has been without his legal material since at least September 14, 2012. See Doc. No. 96 at 2. Petitioner also has a pending

1 deadline to file his traverse, which is currently due on February 5, 2013. See Doc. No. 95.

2 In light of petitioner's allegations that he has not been allowed access to his legal
3 file, the court will order respondent to respond to petitioner's allegations within 30 days of the
4 filing date of this order. Petitioner will then be allowed to respond, if he chooses to do so, within
5 30 days after service of respondent's answer. The court will hold in abeyance petitioner's
6 deadline to file his traverse, which the court will reset upon disposition of this order to show
7 cause.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Within thirty (30) days of the filing date of this order, defendant shall file a
10 response to plaintiff's request for discovery (Doc. No. 96);

11 2. Plaintiff may file an optional reply to defendant's response within thirty (30)
12 days after service of defendant's response; and

13 3. All pending deadlines, including petitioner's pending deadline to file his
14 traverse, are held in abeyance pending disposition of this order to show cause.

15 DATED: January 3, 2013.

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18 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

19 AC:rb
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