Doc. 86 (HC) Holmes v. Miller 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 2:11-cv-2710 JKS KJN P JESSICA HOLMES, 12 Petitioner, 13 **ORDER** V. 14 DEBORAH K. JOHNSON, Warden, 15 Respondent. 16 17 Petitioner is a state prisoner, proceeding through counsel, with a petition for a writ of 18 habeas corpus pursuant to 28 U.S.C. § 2254. After a partial remand from the Court of Appeals 19 for the Ninth Circuit, an evidentiary hearing is scheduled in this matter on August 22, 2016, on 20 petitioner's claim that her trial counsel rendered ineffective assistance during the plea bargain 21 process. 22 On August 2, 2016, petitioner filed a request to expand the record to include numerous documents related to the past performance of her trial counsel in this case and in other matters 23 with which trial counsel was involved. See ECF No. 83-1. See Rule 7 of the Rules Governing 24 25 Section 2254 Cases in the United States District Courts (if a habeas petition is not dismissed "the 26 judge may direct the parties to expand the record by submitting additional materials relating to the 27 petition."). Petitioner argues that expansion of the record to include these documents would

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"assist this Court in making findings of fact concerning petitioner's allegations." ECF No. 83 at 3.

After careful review, the court does not find good cause to order expansion of the record to include the documents attached to petitioner's motion to expand. The attached materials are beyond the scope of the limited remand issued by the Ninth Circuit in this case. As petitioner's current counsel has previously been advised, he will be granted limited leeway at the evidentiary hearing to explore the content of trial counsel's conversations with petitioner about the advisability of accepting or rejecting the prosecution's plea offer. (ECF No. 62.) If testimony at the evidentiary hearing warrants further discovery on the issues before the court, petitioner may file a renewed motion for discovery after the evidentiary hearing has concluded. However, the court remains skeptical that further testimony will expand the scope of the limited issue on remand, as specified by the Ninth Circuit.

Accordingly, IT IS ORDERED that petitioner's August 2, 2016 request to expand the record (ECF No. 83) is denied. The court will not entertain any further motions filed by either party prior to the evidentiary hearing on August 22, 2016, absent extraordinary circumstances. Dated: August 4, 2016

KENDALL J. NEWMAN

UNITED STATES MAGISTRATE JUDGE

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