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

RICHARD MICHAEL McLAUGHLIN,

No. 2:13-cv-0924-CMK-P

Petitioner,

vs.

ORDER

M. SPEARMAN,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to dismiss the petition as untimely. Petitioner objects to the dismissal of his petition, and has requested the court find him eligible for equitable tolling. The undersigned issued findings and recommendations that the motion to dismiss be granted, finding plaintiff ineligible for equitable tolling. Petitioner has filed objections to the findings and recommendations, and a separate motion for an evidentiary hearing.

The Ninth Circuit has determined that in most cases where equitable tolling is requested, an evidentiary hearing is likely to be necessary. See Roy v. Lampert, 465 F.3d 964, 969 (9th Cir. 2006). As such, plaintiff’s request will be granted. While the undersigned is

1 unsure what additional evidence petitioner has to present to the court other than what he has
2 already submitted, he will be provided an opportunity to do so. The underlying findings and
3 recommendations, issued on August 18, 2014, will be vacated and reissued after the evidentiary
4 hearing.

5 An evidentiary hearing, conducted by video conference will be set for December
6 17, 2014, at 1:30 p.m., before the undersigned in Redding, California. By separate order, the
7 court will issue a Writ of Habeas Corpus ad Testificandum for petitioner to appear via video
8 conference for the hearing.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's motion for an evidentiary hearing (Doc. 16) is granted;
- 11 2. An evidentiary hearing as to petitioner's claim for equitable tolling is set
12 for December 17, 2014, at 1:30 p.m., before the undersigned in Redding, California; and
- 13 3. The August 18, 2014, findings and recommendations (Doc. 15) are
14 vacated.

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16 DATED: September 30, 2014

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18 **CRAIG M. KELLISON**
19 UNITED STATES MAGISTRATE JUDGE
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