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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEONON ALSTON,
Petitioner,
v.
J. MACOMBER,
Respondent.

No. 2:14-cv-1500 JAM KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. On January 11, 2016, petitioner filed a motion styled, "Motion to Request Amendment of Order." (ECF No. 27.) Petitioner claims that the December 15, 2015 order absolves respondent of any responsibility for the delay in petitioner receiving the answer, and further alleges that the order gives the illusion that it was petitioner's fault for the delay. Petitioner provided a copy of his mail log to demonstrate that he did not receive the answer from respondent.

Petitioner is informed that the December 15, 2015 order did not assign fault for the delay in petitioner receiving respondent's answer. The record does not reflect the cause of the delay. Although petitioner appears to believe that respondent failed to mail him a copy, it is just as likely that the copy was lost in the mail, either before arriving at the prison, or at the prison. Rather than delay the case in an effort to discern the cause, the court took petitioner at his word and, rather than further delaying his receipt by ordering respondent to provide another copy, directed the


1 Clerk of the Court to provide petitioner with a copy of the answer with the order. Moreover, a
2 default judgment is unavailable in a habeas action. See Gordon v. Duran, 895 F.2d 610, 612 (9th
3 Cir. 1990). Thus, petitioner's motion was denied. For these reasons, petitioner's January 11,
4 2016 motion is denied.

5 On January 15, 2016, petitioner requested an extension of time to file and serve a traverse.
6 Good cause appearing, petitioner's request is granted.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's January 11, 2016 motion (ECF No. 27) is denied;
- 9 2. Petitioner's motion for an extension of time (ECF No. 28) is granted; and
- 10 3. Petitioner shall file and serve a traverse within thirty days from the date of this order.

11 Dated: January 20, 2016

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14 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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