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28United States District Court
For the Northern District of CaliforniaIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON DORTON,

Petitioner,

v.

KATHLEEN DICKINSON, Warden

Respondent.

No. C 98-2003 MMC

**ORDER DENYING WITHOUT
PREJUDICE PETITIONER'S MOTION
FOR EVIDENTIARY HEARING;
VACATING HEARING**

Before the Court is petitioner Jason Dorton's Motion for Evidentiary Hearing, filed May 24, 2010. Respondent Kathleen Dickinson has filed opposition; petitioner has not filed a reply. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the parties' respective submissions, VACATES the hearing scheduled for July 2, 2010, and rules as follows.

On June 11, 1998, petitioner filed his petition for a writ of habeas corpus, which was dismissed by order filed December 28, 1998. On February 1, 2010, however, the Court granted petitioner's unopposed Motion to Reinstate. Thereafter, on February 24, 2010, respondent filed an answer to the petition, as well as a memorandum of points and authorities in support thereof, and, on May 10, 2010, petitioner filed a traverse and a reply memorandum. Petitioner's claims are presently under submission.

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1 By the instant motion, petitioner seeks a finding that he is entitled to an evidentiary
2 hearing. Because, as noted, the claims alleged in the petition are under submission, the
3 Court has not yet determined whether petitioner has shown a dispute of material fact exists
4 that may warrant an evidentiary hearing.

5 Accordingly, the instant motion is hereby DENIED without prejudice.

6 Should the Court, upon its review of petitioner's claims and the response thereto,
7 determine that an evidentiary hearing on one or more of petitioner's claims is appropriate,¹
8 the Court will notify the parties and schedule a status conference to address the manner in
9 which such hearing will be conducted.

10 **IT IS SO ORDERED.**

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12 Dated: June 23, 2010


MAXINE M. CHESNEY
United States District Judge

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¹In determining whether an evidentiary hearing is appropriate, the Court will consider, in addition to the parties' respective filings in connection with the petition, the arguments made in the parties' respective filings in connection with the instant motion.