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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6

7 SCOTT EDGAR DYLESKI,

No. C-12-5336 SI

8 Petitioner,

**ORDER GRANTING RESPONDENT'S
MOTION FOR EXTENSION OF TIME;
AND DENYING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

9 v.

10 CONNIE GIBSON, Warden, California State
11 Prison at Corcoran,

12 Respondent.
13 _____/

14 Now before the Court is respondent Connie Gibson's motion for extension of time and petitioner
15 Scott Edgar Dyleski's motion for summary judgment. For the reasons set forth below, the Court
16 GRANTS respondent's motion for extension of time and DENIES as moot petitioner's motion for
17 summary judgment.

18 Petitioner, a prisoner at California State Prison at Corcoran, filed a petition for a writ of habeas
19 corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. Petitioner was assisted in preparing the petition
20 by his attorneys, Sara Zalkin and Katherine Hallinan. On November 8, 2012, the Court stayed the action
21 so petitioner could exhaust his claims in the California Supreme Court. Docket No. 6. On August 7,
22 2013, the Court lifted the stay, reopened the action, and ordered respondent to show cause why the
23 petition should not be granted within 60 days of issuance of the order. Docket No. 8. To date,
24 respondent has not filed an answer to the petition or a motion to dismiss.

25 On October 16, 2013, petitioner filed a motion for summary judgment. Docket No. 12. In the
26 motion, petitioner argues that summary judgment of his claims is appropriate because respondent did
27 not file an answer to his petition. *Id.* at 4. On October 22, 2013, respondent filed an opposition to
28 petitioner's motion for summary judgment and a motion for an extension of time of up to December 23,

1 2013 to file her response to the petition. Docket Nos. 13, 14. In the filings, respondent argues that a
2 response was not filed because the Attorney's General Office has no record of having been served with
3 the August 7, 2013 Order to Show Cause. *Id.*

4 Accordingly, for good cause shown, the Court GRANTS respondent's motion for extension of
5 time and ORDERS as follows:

6 1. Respondent shall file with the court and serve on petitioner by **December 23, 2013**, an
7 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, SHOWING
8 CAUSE why a writ of habeas corpus should not be granted. Respondent shall file with the answer and
9 serve on petitioner a copy of all portions of the state trial record that have been transcribed previously
10 and that are relevant to a determination of the issues presented by the petition.

11 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court
12 and serving it on respondent within thirty days of his receipt of the answer.

13 2. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as
14 set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
15 respondent files such a motion, it is due by **December 23, 2013**. If a motion is filed, petitioner shall file
16 with the court and serve on respondent an opposition or statement of non-opposition within twenty-eight
17 (28) days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
18 within fourteen (14) days of receipt of any opposition.

19 In addition, because the Court extends the time for respondent to file an answer or motion to
20 dismiss, the Court DENIES as moot petitioner's motion for summary judgment.

21
22 **IT IS SO ORDERED.**

23
24 Dated: November 13, 2013



25 SUSAN ILLSTON
26 United States District Judge
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