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

WARD FRANCIS WEAVER,)
)
 Petitioner,)
)
 vs.)
)
 Vincent Cullen, as Acting Warden of)
 San Quentin State Prison,*)
)
 Respondent.)

Case No. 1:02-cv-05583 -AWI
DEATH PENALTY CASE
CASE MANAGEMENT ORDER
ESTABLISHING POST-EXHAUSTION
SCHEDULE FOR PHASE II

This matter is before the Court on the February 8, 2010 request from Respondent Vincent Cullen, as acting Warden of San Quentin State Prison (the “Warden”), for an order authorizing a 30-day extension within which to file his answer to the 441-page Amended Petition of Petitioner Ward Francis Weaver (“Weaver”). The Warden’s counsel avers that the press of work on other cases has prevented him from completing the answer. Counsel also avers that CJA appointed counsel for Weaver does not object to the 30-day extension.

GOOD CAUSE APPEARING THEREFOR,

1. The Warden shall file his answer to the Amended Petition, without points and authorities, consistent with Rule 5 of the Rules Governing § 2254 Cases, no later than March 15, 2010. The answer shall raise all substantive and procedural affirmative defenses the Warden intends to pursue, including procedural default and *Teague*-bar.
2. Within 30 days from the filing of the Warden’s answer, the parties shall meet and confer to discuss their respective positions about the exhaustion status and timeliness (under 28 U.S.C.

*Vincent Cullen is substituted for his predecessor Robert K. Wong, as Acting Warden of San Quentin State Prison pursuant to Federal Rule of Civil Procedure 25(d).

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§ 2244(d)(1)) of the Amended Petition. The parties shall file a joint statement setting forth their respective positions concerning exhaustion and timeliness no later than April 30, 2010.

3. The matter thereafter will be taken under submission to resolve the parties' dispute (if any). If the parties agree on exhaustion and timeliness, the Court will order further proceedings to bring culmination to Phase II and move the matter into Phase III.

IT IS SO ORDERED.

DATE: February 11, 2010

/s/ Anthony W. Ishii
Anthony W. Ishii
United States District Judge