

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL COREY SLAUGHTER,

Petitioner,

v.

KEVIN CHAPPELL, Warden of San Quentin
State Prison,

Respondent.

Case No. 1:05-cv-00922-AWI-SAB

DEATH PENALTY CASE

ORDER REGARDING UNEXHAUSTED
CLAIMS

(FOURTEEN DAY DEADLINE)

On February 6, 2015, Petitioner and Respondent¹ filed a joint statement regarding the exhaustion status of the second amended petition. (ECF No. 101.) In the joint statement, Petitioner agreed that allegations in claims 7 and 19 were not exhausted. Since a federal court may not adjudicate a mixed petition, the next step in these proceedings is addressing the presence of unexhausted claims in the second amended petition. See Rose v. Lundy, 455 U.S. 509 (1982).

Accordingly, it is HEREBY ORDERED that within fourteen days of the filed date of this order, Petitioner shall inform the Court whether he wishes to: (1) dismiss the second amended

¹ Ron Davis, the Acting Warden of San Quentin State Prison, is substituted as the named Respondent. Fed. R. Civ. P. 25(d).

1 petition under Rose; (2) file a notice of abandonment of unexhausted claims, see Kelly v. Small,
2 315 F.3d 1063 (9th Cir. 2003), overruled on other grounds by Robbins v. Carey, 481 F.3d 1143
3 (9th Cir. 2007); (3) file a third amended petition without the unexhausted claims, see id.; or (4)
4 file a motion for stay and abeyance under Rhines v. Weber, 544 U.S. 269 (2005). Within seven
5 days of Petitioner's filing, Respondent shall file a response.

6
7 IT IS SO ORDERED.

8 Dated: February 11, 2015


9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES MAGISTRATE JUDGE