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**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 SETTING CASE MANAGEMENT  
CONFERENCE

Date: May 26, 2015  
Time: 1:30 p.m.  
TELEPHONIC

This matter is before the Court on the parties' May 7, 2015 joint statement regarding phase III scheduling (ECF No. 106). By this order, the Court sets a telephonic case management conference to establish a schedule for phase III.

**I. BACKGROUND**

On September 29, 2005, Petitioner filed a "protective" federal petition pursuant to Pace v. DiGuglielmo, 544 U.S. 408 (2005). Stay and abeyance of these proceedings was granted on November 7, 2005, pursuant to Rhines v. Weber, 544 U.S. 269 (2005), to allow state exhaustion. The California Supreme Court denied Petitioner's state habeas petition on October 31, 2007.

Petitioner filed an amended federal petition on October 3, 2008 and concurrently filed a second state habeas petition alleging claims based on new evidence discovered by federal habeas

1 counsel. On December 19, 2008, these proceedings were again ordered held in abeyance  
2 pending state exhaustion. On June 25, 2014, Petitioner's state habeas petitions were denied and  
3 his lodged second amended federal petition was deemed filed.

4 On December 15, 2014, Respondent filed his amended answer to the second amended  
5 petition.

6 On January 9, 2015, the Court ordered that claim 47 be dismissed.

7 On March 9, 2015, the Court ordered that unexhausted allegations be stricken from  
8 claims 7 and 19, and directed the parties to file the above referenced phase III joint statement.

## 9 II. DISCUSSION

10 The parties' joint statement demonstrates that Respondent does not intend to file an  
11 amended answer to the second amended petition; that all remaining claims in the second  
12 amended petition have been exhausted; and that no procedural or limitations issues require  
13 discussion prior to moving this case to phase III.

14 The parties each propose a phase III briefing schedule that assumes cited resource  
15 limitations and obligations in other cases will continue unabated. Petitioner proposes a schedule  
16 under which claim briefing would be completed by August 1, 2017, and motion(s) for  
17 evidentiary development would be fully briefed by February 12, 2018. Respondent proposes a  
18 schedule under which claim briefing would be completed by April 17, 2017, and motion(s) for  
19 evidentiary development would be fully briefed by October 2, 2017.

20 Respondent suggests the parties should brief the full scope of the merits under 28 U.S.C.  
21 § 2254 including procedural defenses and retroactivity under Teague v. Lane, 489 U.S. 288  
22 (1989). This instead of the more limited 28 U.S.C. § 2254(d) briefing proposed by the Court.  
23 Respondent states that full scope briefing would limit the number of claims requiring subsequent  
24 briefing on retroactivity and procedural defenses without significantly increasing the time  
25 required for phase III briefing.

26 The Court will conduct a phase III case management conference to address these and  
27 other issues. Specifically, the parties should be prepared to address the facts underlying their  
28 current scheduling assumptions; their respective positions regarding the appropriate scope of

1 phase III briefing; how expanding the scope of phase III briefing might impact scheduling; and  
2 options for expediting phase III briefing. The merits of the claims alleged in the second  
3 amended petition will be addressed prior to procedural and Teague defenses.

4 **III. ORDER**

5 Accordingly, it is HEREBY ORDERED that a telephonic phase III case management  
6 conference is set for May 26, 2015, at 1:30 p.m., in Courtroom 9 before the undersigned. The  
7 attorneys are directed to contact the Court's Courtroom Deputy Clerk, Mamie Hernandez, to  
8 obtain the teleconference code.

9 IT IS SO ORDERED.

10 Dated: May 13, 2015

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13 UNITED STATES MAGISTRATE JUDGE  
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