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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL COREY SLAUGHTER,

Petitioner,

v.

RON BROOMFIELD, Warden of San
Quentin State Prison,

Respondent.

Case No. 1:05-cv-00922-ADA

DEATH PENALTY CASE

ORDER GRANTING UNOPPOSED MOTION
TO MODIFY CASE SCHEDULING

(Doc. 168)

I. INTRODUCTION

Before the Court is a motion brought by Petitioner, a condemned state prisoner, through counsel Assistant Federal Defenders Jennifer Mann and Alyssa Mack, to modify case scheduling to permit filing of a Supplemental Motion for Evidentiary Hearing and Expansion of the Record including Exhibits 2A-2D thereto (Docs. 168-2, 168-3, 168-4, 168-5, 168-6, together the “Supplemental Motion”), in support of the operative second amended petition for writ of habeas corpus filed in this proceeding.

Petitioner asserts the Supplemental Motion includes non-record evidence that was unavailable in late 2020, when he filed a [corrected] motion for evidentiary hearing and expansion of the record and discovery. He argues that impacts of COVID-19 on the facts and

1 circumstances of the case provide good cause to modify case scheduling. (*See* Doc. 168 at 4-6.¹)

2 Respondent, through counsel Deputy Attorney General Joseph Penney, has filed a notice
3 of non-opposition to filing of the Supplemental Motion and related scheduling, though he
4 anticipates substantive opposition to the Supplemental Motion upon its filing.

5 The Court vacated the December 4, 2023 hearing on the instant motion, finding the matter
6 amenable to resolution on the papers. (Doc. 169.)

7 II. BACKGROUND

8 The record reflects Petitioner's 1991 conviction and death sentence in Stanislaus County
9 Superior Court case number 254100. In 2002, the California Supreme Court affirmed
10 petitioner's conviction on direct appeal. In 2003, the United States Supreme Court denied
11 certiorari. Also in 2003, Petitioner filed the first of three post-conviction petitions in state court.

12 In 2005, Petitioner began this federal proceeding under 28 U.S.C. § 2254. That same
13 year, Petitioner filed in this case a protective petition pursuant to *Pace v. DiGuglielmo*, 544 U.S.
14 408 (2005). In 2014, after multiple exhaustion stays and state court denial of his three post-
15 conviction petitions, Petitioner filed in this case his operative second amended petition.²
16 Respondent filed his answer to the second amended petition that same year.

17 In 2020, the parties completed merits briefing. Also in 2020, Petitioner filed the noted
18 [corrected] motion for evidentiary hearing, expansion of the record, and discovery. Respondent
19 filed his opposition to the [corrected] motion in 2021. That same year, Petitioner filed his reply in
20 support of the [corrected] motion.

21 In 2022, the Court granted Petitioner's request for a round supplemental briefing of the
22 [corrected] motion relating to recent Supreme Court decisions. In early 2023, the parties
23 completed supplemental briefing of the [corrected] motion.

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26 ¹ Reference to pagination is to CM/ECF system pagination.

27 ² The state supreme court issued an OSC for one claim regarding a clerical error in the abstract of
28 judgment, which was subsequently discharged following correction of the clerical error. This
Court dismissed the corresponding federal claim (i.e. claim 47) in 2015, upon stipulation of the
parties. (*See* Doc. 100.)

1 III. DISCUSSION

2 In determining whether to modify case scheduling, the Court considers the “good cause”
3 standard set out by Federal Rules of Civil Procedure 16(b)(4). Rule 16(b)(4) provides a schedule
4 may be modified only for good cause and with the judge's consent. As this Court has observed:

5 The “good cause” requirement focuses primarily on the party's
6 diligence and its reasons for not acting sooner. *In re W. States*
7 *Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir.
8 2013) (citing *Johnson v. Mammoth Recreations Inc.*, 975 F.2d 604,
9 609 (9th Cir. 1992)), *aff'd on unrelated question sub nom. Oneok,*
10 *Inc. v. Learjet, Inc.*, 575 U.S. 373, 135 S.Ct. 1591, 191 L.Ed.2d 511
11 (2015).

12 *City of Lincoln v. Cnty. of Placer*, No. 2:18-CV-00087-KJM-AC, 2023 WL 2776091, at *6 (E.D.
13 Cal. Apr. 4, 2023). The Court may modify the pretrial schedule “if it cannot reasonably be met
14 despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609 (citing to Fed.
15 R. Civ. P. 16 advisory committee's notes (1983 amendment)); *see also* 6A Wright, Miller &
16 Kane, *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990) (“good cause” means
17 scheduling deadlines cannot be met despite party's diligence).

18 Here, the Court finds good cause to grant Petitioner’s unopposed request to modify case
19 scheduling to permit filing and briefing of the Supplemental Motion.

20 The Court is persuaded that notwithstanding Petitioner’s reasonable diligence and that of
21 his counsel, development and presentation of a complete motion for evidentiary hearing and
22 expansion of the record was unforeseeably impeded by the impacts of COVID-19 on the facts and
23 circumstances of the case. (*See e.g.*, Doc. 146 at 17-19; Doc. 153 at 2; Doc. 168-1; *see also*
24 *Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009 (“Good cause may be
25 found to exist where the moving party shows that it diligently assisted the court with creating a
26 workable scheduling order, that it is unable to comply with the scheduling order's deadlines due
27 to matters that could not have reasonably been foreseen at the time of the issuance of the
28 scheduling order, and that it was diligent in seeking an amendment once it became apparent that
the party could not comply with the scheduling order.”)).

Respondent’s non-opposition to the instant motion to modify case scheduling appears

1 implicitly to concede good cause and the absence of prejudice should relief be granted.

2 ACCORDINGLY, Petitioner's unopposed motion to modify case scheduling to permit
3 filing of his Supplemental Motion for Evidentiary Hearing and Expansion of the Record (Doc.
4 168) is GRANTED. The CLERK is directed to FILE on the public docket the Supplemental
5 Motion for Evidentiary Hearing and Expansion of the Record and Exhibits 2A-2D thereto (i.e.
6 Docs. 168-2, 168-3, 168-4, 168-5, 168-6). RESPONDENT shall FILE any opposition to the
7 Supplemental Motion and Exhibits 2A-2D thereto not later than sixty (60) days following the
8 filed date thereof. PETITIONER shall FILE any reply to the opposition by not later than sixty
9 (60) days following the filed date thereof.

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12 IT IS SO ORDERED.

13 Dated: October 13, 2023

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16 UNITED STATES DISTRICT JUDGE
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