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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	MICHAEL COREY SLAUGHTER,	Case No. 1:05-cv-00922-NODJ
12	Petitioner,	DEATH PENALTY CASE
13	V.	ORDER GRANTING UNOPPOSED SECOND MOTION TO MODIFY CASE
14	CHANCE ANDES, Warden of San Quentin Rehabilitation Center,	SCHEDULE
15	Respondent. <sup>1</sup>	
16	Respondent.	
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18	Before the Court is a motion (Doc. 180) brought by Petitioner, a condemned state	
19	prisoner, through counsel Assistant Federal Defenders Jennifer Mann and Alyssa Mack, to	
20	modify the case schedule to permit filing of a Second Supplemental Motion for Expansion of the	
21	Record and Request for Judicial Notice including Exhibit 2E thereto (Docs. 180-1, 180-2,	
22	collectively the "Second Supplemental Moti-	on"), in support of the operative Second Amended
23	Petition for Writ of Habeas Corpus. (Doc. 82.)	
24	Relatedly, the record reflects that Pet	titioner has filed in the case a November 2, 2020
25	Corrected Motion for Evidentiary Hearing, Expansion of the Record and Discovery (Doc. 146,	
26	hereinafter the "Corrected Motion"), and an October 17, 2023 Supplemental Motion for	
27		abilitation Center, is substituted as Respondent in place of his
28	predecessor wardens. Fed. R. Civ. P. 25(d).	
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1	Evidentiary Hearing and Expansion of the Record (Doc. 174, hereinafter the "Supplemental	
2	Motion").	
3	Petitioner asserts the proposed Second Supplemental Motion is a necessary response to	
4	Respondent's recently filed Opposition to the Supplemental Motion (Doc. 176).	
5	Counsel for Petitioner represents that counsel for Respondent, Deputy Attorney General	
6	Joseph Penney, does not oppose the proposed modification of the case schedule to permit filing of	
7	the Second Supplemental Motion.	
8	The Court finds the matter amendable to resolution on the papers. See Local Rule 230(g).	
9	BACKGROUND	
10	The record reflects Petitioner's 1991 conviction and death sentence in Stanislaus County	
11	Superior Court case number 254100.	
12	In 2002, the California Supreme Court affirmed petitioner's conviction on direct appeal.	
13	In 2003, the United States Supreme Court denied certiorari.	
14	In 2005, Petitioner began this federal proceeding pursuant to 28 U.S.C. § 2254. That	
15	same year, Petitioner filed in the case a Protective Petition pursuant to Pace v. DiGuglielmo, 544	
16	U.S. 408 (2005). (Doc. 8.) In 2014, after multiple exhaustion stays and state court denial of his	
17	three post-conviction petitions, Petitioner filed in the case his Second Amended Petition. <sup>2</sup>	
18	Respondent filed his Answer to the Second Amended Petition that same year. (Doc. 97.)	
19	In 2020, the parties completed merits briefing of the Second Amended Petition. Also in	
20	2020, Petitioner filed the Corrected Motion. The parties completed briefing of the Corrected	
21	Motion in 2021.	
22	In 2022, the Court granted Petitioner's request for a round supplemental briefing of the	
23	Corrected Motion to address recent Supreme Court decisions. The parties completed this	
24	supplemental briefing in early 2023.	
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<sup>&</sup>lt;sup>2</sup> The state supreme court issued an OSC for one claim regarding a clerical error in the abstract of judgment, which was subsequently discharged following correction of the clerical error. This Court dismissed the corresponding 28 federal claim (i.e. claim 47) in 2015, upon stipulation of the parties. (*See* Doc. 100.) 2

1	Petitioner filed the Supplemental Motion in October 2023. Respondent filed his	
2	Opposition to the Supplemental Motion in December 2023. Any reply to the Opposition to the	
3	Supplemental Motion was due by February 27, 2024. <sup>3</sup>	
4	DISCUSSION	
5	In determining whether to modify case scheduling, the Court considers the "good cause"	
6	standard set out by Federal Rules of Civil Procedure 16(b)(4). Rule 16(b)(4) provides that a	
7	schedule may be modified only for good cause and with the judge's consent. As this Court has	
8	observed:	
9	The "good cause" requirement focuses primarily on the party's	
10	diligence and its reasons for not acting sooner. In re W. States Wholesale Nat. Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir.	
11	2013) (citing Johnson v. Mammoth Recreations Inc., 975 F.2d 604, 609 (9th Cir. 1992)), aff'd on unrelated question sub nom. Oneok,	
12	<i>Inc. v. Learjet, Inc.</i> , 575 U.S. 373, 135 S.Čt. 1591, 191 L.Ed.2d 511 (2015).	
13		
14	<i>City of Lincoln v. Cnty. of Placer</i> , No. 2:18-CV-00087-KJM-AC, 2023 WL 2776091, at *6 (E.D.	
15	Cal. Apr. 4, 2023). The Court may modify the pretrial schedule "if it cannot reasonably be met	
16	despite the diligence of the party seeking the extension." Johnson, 975 F.2d at 609 (citing to Fed.	
17	R. Civ. P. 16 advisory committee's notes (1983 amendment)); see also 6A Wright, Miller &	
18	Kane, Federal Practice and Procedure § 1522.1 at 231 (2d ed. 1990) ("good cause" means	
19	scheduling deadlines cannot be met despite party's diligence).	
20	Here, the Court finds good cause to grant Petitioner's unopposed request to modify the	
21	case schedule to permit filing of the Second Supplemental Motion. The Second Supplemental	
22	Motion, according to Petitioner, addresses Respondent's recently raised hearsay objection to	
23	evidentiary facts presented in the Supplemental Motion, by proffering such facts through Judicial	
24	Notice of Exhibit 2E to the Second Supplemental Motion. Exhibit 2E is a volume of the	
25	Reporters' Transcript on Appeal in People v. Alfredo Alvarado Padilla, California Supreme Court	
26	No. S014496, relating to the alleged racial animus of Petitioner's trial counsel.	
27	////	
28	$^{3}$ To date, no reply brief has been filed. 3	

1 The Court is satisfied that notwithstanding Petitioner's reasonable diligence and that of his 2 federal counsel, the need to proffer Exhibit 2E became apparent only after Respondent filed his Opposition to the Supplemental Motion. (See Doc. 180 at 5)<sup>4</sup>; see also Kuschner v. Nationwide 3 4 Credit, Inc., 256 F.R.D. 684, 687 (E.D. Cal. 2009) ("Good cause may be found to exist where the 5 moving party shows that it diligently assisted the court with creating a workable scheduling order, 6 that it is unable to comply with the scheduling order's deadlines due to matters that could not have 7 reasonably been foreseen at the time of the issuance of the scheduling order, and that it was 8 diligent in seeking an amendment once it became apparent that the party could not comply with 9 the scheduling order.").

Respondent's non-opposition to the instant motion to modify the case schedule appears
implicitly to concede good cause and the absence of prejudice should the requested relief be
granted. Moreover, the yet to be briefed Second Supplemental Motion relates to allegations
raised in the Second Amended Petition to be developed through the previously filed Supplemental
Motion, reasonably suggesting the absence of prejudice should relief be granted on the instant
scheduling motion.

16 ACCORDINGLY, Petitioner's unopposed motion to modify the case schedule to permit 17 filing of the Second Supplemental Motion (Doc. 180) is GRANTED. The CLERK is directed to 18 FILE on the public docket CM/ECF System Documents Number 180-1 and 180-2 AS the 19 SECOND SUPPLEMENTAL MOTION FOR EXPANSION OF THE RECORD AND 20 REQUEST FOR JUDICIAL NOTICE. RESPONDENT shall FILE any opposition to the Second 21 Supplemental Motion not later than SIXTY (60) DAYS following the filed date thereof. 22 PETITIONER shall FILE any reply to the opposition by not later than SIXTY (60) DAYS 23 following the filed date thereof.

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STATES DISTRICT JUDGE CHIEF UNITED

<sup>4</sup> Reference to pagination is to CM/ECF System pagination. 4

DATED: March 1, 2024.