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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 MICHAEL C. SLAUGHTER

12 Petitioner,

13 v.

14 KEVIN CHAPPELL, AS WARDEN OF SAN
15 QUENTIN CALIFORNIA STATE PRISON,

16 Respondent.
17

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

ORDER HOLDING CLAIM 47 IN
RESERVE AND SETTING A BRIEFING
SCHEDULE FOR ALL OTHER CLAIMS IN
THE PETITION

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19 Upon receiving notice from Petitioner, Michael C. Slaughter, that the California Supreme
20 Court had denied his pending state exhaustion petitions in California Supreme Court Case Nos.
21 S167303 and S183839, the Court lifted the stay holding the present case in abeyance on June 27,
22 2014. On the same day, Petitioner filed an unopposed motion for leave to file his Second
23 Amended Petition. The motion was granted on July 31, 2014 (ECF No. 88) and the Second
24 Amended Petition was deemed filed as of June 27, 2014. In the July 31, 2014 order, the Court
25 also directed Petitioner to address the current status of Claim 47 of the federal petition, which is
26 claim 13 in the California Supreme Court Case No. S167303, now pending before the Stanislaus
27 Superior Court.
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1 Petitioner timely responded to the Court’s directive on August 13, 2014. In his response,
2 Petitioner explains that the State of California does not oppose state claim 13 and that, in light of
3 this non-opposition, there is no need for the state court to conduct an evidentiary hearing.
4 Accordingly, the resolution of state claim 13 is under submission before the Stanislaus Superior
5 Court.

6 Petitioner requests the Court to delay making a ruling on Claim 47 in his Second
7 Amended Petition until the state proceedings are completed. He further advises the Court that he
8 will file a notification of any action taken by the state court as soon as it occurs. The Court takes
9 Petitioner at his word in this regard.

10 Since this matter is no longer in abeyance, the Court now proceeds with setting a
11 schedule for Respondent Kevin Chappell, as Warden of San Quentin California State Prison, to
12 file his answer to the Second Amended Petition. Although this case is not subject to budgeting
13 requirements, it remains subject to case management principles set out in the Fresno Attorney
14 Guide available on the Court’s website (under Forms, CJA Capital Habeas Forms, Fresno).
15 Under those case management principles, the present case is in Phase II of this § 2254 litigation,
16 which includes the filing of the petition, the answer, and resolution of any limitations or
17 exhaustion issues. See Fresno Attorney Guide, ¶¶ 48-57. Unless the parties request a case
18 management conference, the Court will proceed to set a due date for Respondent’s answer
19 without a hearing.

20 Review of the Second Amended Petition shows that it is not overly lengthy (158 pages)
21 and Deputy Attorney General Ryan McCarroll has been assigned to represent Respondent in this
22 case since March 29, 2011 (ECF No. 61). Accordingly, Respondent’s answer shall be due on or
23 before November 14, 2014. Respondent’s answer shall be filed without points and authorities
24 and address the allegations in the Second Amended Petition consistent with Rule 5 of the Rules
25 Governing § 2254 Cases. That is, Respondent shall admit and deny Petitioner’s allegations as
26 well as allege all substantive and procedural affirmative defenses. Fresno Attorney Guide, ¶ 50.
27 Should Respondent raise the issue of the statute of limitations, the Court will direct the parties to
28 brief the matter after reviewing the answer. Id., ¶ 51. In the event Respondent’s answer raises

1 claims lack of exhaustion, the Court will direct the parties to file a joint statement as to which
2 claims are unexhausted (or partially unexhausted). Id., ¶ 53.

3 The Court anticipates that resolution of Claim 47 (that is, state claim 13) will precede the
4 November 14, 2014 due date for Respondent's answer and is held in abeyance for the reasons
5 stated above.

6 IT IS SO ORDERED.

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8 Dated: August 15, 2014


UNITED STATES MAGISTRATE JUDGE