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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

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|--|---|-------------------------------|
| RICHARD J. VIEIRA, |) | Case No. 1:05-cv-1492-OWW |
| |) | |
| Petitioner, |) | <u>DEATH PENALTY CASE</u> |
| |) | |
| vs. |) | |
| |) | ORDER GRANTING RESPONDENT’S |
| Vincent Cullen, as Warden of San Quentin |) | REQUEST TO MODIFY BRIEFING |
| State Prison, |) | SCHEDULE FOR PHASE III OF THE |
| |) | LITIGATION |
| Respondent. |) | |
| _____ |) | |

Respondent Vincent Cullen, as Warden of San Quentin State Prison (the “Warden”) has submitted a request to modify the briefing schedule issued on July 22, 2010 (doc. 81), to which Petitioner Richard J. Vieira (“Vieira”) has no objection.

GOOD CAUSE APPEARING,

1. Vieira’s memorandum of points and authorities in support of the petition having been filed September 1, 2010, the Warden’s memorandum of points and authorities in opposition to the petition shall be filed on or before May 3, 2011.
2. Vieira shall file a reply brief on or before August 1, 2011.
3. The parties are encouraged to meet and confer about the need to conduct discovery. It is anticipated that motions for formal discovery pursuant to Rule 6 of the Rules Governing § 2254 Cases or record expansion pursuant to Rule 7 of the Rules Governing § 2254 Cases will be presented and resolved without altering the schedule for briefing the petition.
4. Vieira shall file his motion for an evidentiary hearing pursuant to Rule 8 of the Rules Governing § 2254 Cases on or before September 6, 2011. The evidentiary motion shall be limited to

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identification of: (a) the claims for which a hearing is sought; (b) an offer of proof as to the evidence sought to be presented; (c) a brief statement of the legal grounds for the evidentiary hearing; and (d) an explanation of diligence exercised in state court to develop the claims before the California Supreme Court (*see* 28 U.S.C. § 2254(e)(2)). In light of the briefing of the petition, legal analysis and citation of authorities in support of claims for which a hearing is sought will not be necessary.

5. The Warden shall file his opposition to the evidentiary hearing motion on or before October 7, 2011.

6. Vieira shall file his reply to the opposition on or before November 7, 2011.

SO ORDERED.

Date: March 3, 2011

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge