IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

RICHARD J. VIEIRA, Petitioner, vs. Michael Martel, as Acting Warden of San Quentin State Prison,* Respondent.	Case No. 1:05-cv-1492-OWW DEATH PENALTY CASE CORRECTED ORDER GRANTING RESPONDENT'S SECOND REQUEST TO MODIFY BRIEFING SCHEDULE FOR PHASE III OF THE LITIGATION

Respondent Michael Martel, as Acting Warden of San Quentin State Prison (the "Warden") has submitted a request to modify the briefing schedule issued on March 4, 2011 (doc. 87). The proposed new schedule extends briefing due dates by one month. The Warden's counsel reports that Petitioner Richard J. Vieira ("Vieira") has no objection to the requested modification.

GOOD CAUSE APPEARING,

1. The Warden's memorandum of points and authorities in opposition to the petition shall be filed on or before June 2, 2011. The Warden shall defer his discussion of the application of *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011), until briefing on Vieira's anticipated motion for an evidentiary hearing.

2. Vieira shall file a reply brief on or before August 31, 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

* Michael Martel, as Acting Warden of San Quentin State Prison, is substituted as the Respondent in this case pursuant to Federal Rule of Civil Procedure 25(d).

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 October 6, 2011. The evidentiary motion shall be limited to 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. The exception to presentation of legal analysis and citation to authority involves briefing the application of *Pinholster* to Vieira's entitlement to further evidentiary development.

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

6. Vieira shall file his reply to the opposition on or before December 12, 2011.

SO ORDERED.

Date: May 10, 2011

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