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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RODNEY JESSE SAN NICOLAS,

Petitioner,

v.

KEVIN CHAPPELL, as Warden of San
Quentin State Prison,

Respondent.

Case No. 1:06-cv-000942-LJO-SAB

DEATH PENALTY CASE

ORDER DIRECTING RESPONDENT TO
FILE AN ANSWER

(SIXTY DAY DEADLINE)

ORDER DIRECTING PARTIES TO FILE
JOINT STATEMENT REGARDING MERITS
BRIEFING

(NINETY DAY DEADLINE)

The federal petition in this matter was filed on January 16, 2008 (ECF No. 65).
Petitioner lodged a three claim addendum petition (ECF No. 89). The Court ordered that the
addendum petition be filed as of January 16, 2008, under seal, with the only justiciable claim
therein being claim 1 (ECF No. 88). Sealed claim 1 (of ECF No. 89) and all of the allegations of
the unsealed petition (ECF No. 65) are referred to collectively as the "Petition."

On March 3, 2008, the Court ordered federal Petition held in abeyance of Petitioner's
state exhaustion petition (ECF No. 88). On February 11, 2014, the California Supreme Court
denied the exhaustion petition (ECF No. 113-1).

1 On February 20, 2014, the Court ordered Respondent to either identify unexhausted
2 claims or answer the Petition. Respondent filed a motion to dismiss as unexhausted sealed claim
3 1. The Court denied the motion on October 23, 2014.

4 Accordingly, it is HEREBY ORDERED THAT:

- 5 1. Within sixty days from the filing of this order, Respondent shall file an answer
6 that conforms to Habeas Rule 5, without points and authorities, addressing all
7 affirmative defenses and procedural defaults and identifying any facts in dispute.
8 To maintain the integrity of sealed claim 1, Respondent's answer to that claim
9 shall be filed under seal (but served on the counsel for Petitioner).
- 10 2. Within ninety days from filing of this order, the parties shall meet and confer and
11 file a joint statement setting forth a proposed schedule for submission of points
12 and authorities addressing 28 U.S.C. § 2254(d), in support of and opposition to
13 the each claim in the Petition; Petitioner's reply; and any motions for factual
14 development. The Court will not entertain a request for summary judgment.
- 15 3. Once the answer and joint statement are filed and the Court determines that the
16 case is at issue, the Court will set a Phase III case management conference to
17 discuss merits briefing. The merits of the claims alleged in the Petition will be
18 addressed prior to procedural defenses.

19 IT IS SO ORDERED.

20 Dated: February 6, 2015

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23 UNITED STATES MAGISTRATE JUDGE
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