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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-00942-LJO-SAB

DEATH PENALTY CASE

ORDER SETTING CASE MANAGEMENT  
CONFERENCE AND INITIATING PHASE  
III BUDGET

Date: September 22, 2015

Time: 10:00 a.m.

TELEPHONIC

This matter is before the Court on the parties' August 21, 2015 joint statement regarding phase III scheduling (ECF No. 152). By this order, the Court sets a telephonic case management conference to establish scheduling and budgeting for phase III.

**I.**

**BACKGROUND**

On September 10, 1992, the trial court sentenced Petitioner to death following a jury verdict finding him guilty of two counts of murder, one count of forcible rape, and one count of forcible lewd or lascivious acts upon a child under the age of 14. Petitioner's conviction and

1 sentence were affirmed on state direct appeal on December 6, 2004. The Supreme Court denied  
2 Petitioner's writ of certiorari on October 3, 2005. Petitioner's state petition for writ of habeas  
3 corpus in the California Supreme Court was denied on July 12, 2006.

4 On February 2, 2007, this Court appointed Wesley A. Van Winkle as counsel to represent  
5 Petitioner. On March 30, 2007, the Federal Defender's Office was appointed co-counsel with  
6 Mr. Van Winkle.

7 Petitioner filed a protective petition in this Court on July 12, 2007. On January 16, 2008,  
8 he filed an amended federal petition. He concurrently filed a three claim addendum petition,  
9 which the Court ordered filed under seal, with the only justiciable claim therein being claim 1.

10 On March 3, 2008, the Court ordered these proceedings held in abeyance of Petitioner's  
11 state exhaustion petition. On February 11, 2014, the California Supreme Court denied the  
12 exhaustion petition.

13 On February 20, 2014, the Court ordered Respondent to either identify unexhausted  
14 claims or answer the petitions. Respondent filed a motion to dismiss as unexhausted sealed  
15 claim 1, which the Court denied on October 23, 2014.

16 On February 6, 2015, the Court ordered Respondent to answer the unsealed and sealed  
17 petitions, and ordered the parties to meet and confer and file a joint statement regarding  
18 transition to phase III.

19 Respondent answered the unsealed petition on July 22, 2015. He answered the sealed  
20 petition on July 30, 2015.

21 The parties filed their noted joint statement on August 21, 2015.

## 22 **II.**

### 23 **DISCUSSION**

24 The parties' joint statement suggests that Respondent does not intend to file any amended  
25 answer; that all claims have been exhausted; and that no procedural or limitations issues require  
26 discussion prior to moving this case to phase III.

27 Additionally, the parties' joint statement proposes a schedule for phase III merits briefing  
28 of the thirty-eight (38) claims in the amended petition and claim 1 in the sealed petition.

