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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DANIEL LEE WHALEN,  
Petitioner,  
v.  
WARDEN, California State Prison at San  
Quentin,  
Respondent.

Case No. 1:14-cv-01865-LJO-SAB  
DEATH PENALTY CASE  
ORDER FOLLOWING CASE  
MANAGEMENT CONFERENCE

This matter came on for a case management conference on May 26, 2015, at 3:00 p.m., in Department 9 of the above referenced court, the Honorable Stanley A. Boone presiding. Petitioner, Daniel Whalen, was represented by Brian Abbington, Esq., and Jennifer Mann, Esq., of the Federal Public Defender’s Office. Respondent, Warden of San Quentin State Prison, was represented by Catherine Nieto, Esq. of the California Attorney General’s Office. All counsel appeared telephonically.

Based on the parties’ confidential case evaluations and discussions at the May 26 conference the Court finds as follows:

1. By capital case standards this case is not especially complex.
2. Limited discovery and factual development took place during state level post-conviction investigation; no evidentiary hearing was held at the state level.

- 1           3.     Petitioner’s counsel have obtained state habeas and appellate counsel files, but  
2           have not assembled the balance of an estimated 32,035 page record.
- 3           4.     Respondent will lodge the state record, in electronic (PDF-OCR) form, with the  
4           Court on or before July 15, 2015, accompanied by a notice of lodging to be filed  
5           the same day. Should Petitioner’s counsel identify any documents in the notice  
6           of lodging to which they do not have access, they will contact the Respondent’s  
7           counsel. Respondent’s counsel shall make all such documents available to  
8           Petitioner’s counsel upon request.
- 9           5.     The parties agree to completing record assembly and review and preliminary  
10          investigation by no later than September 15, 2015.
- 11          6.     The statute of limitations, under 28 U.S.C. § 2244(d), will be deemed to expire  
12          on November 12, 2015 unless Respondent files an objection to this date by no  
13          later than thirty days following the filed date of this order, in which event the  
14          Court will resolve any dispute.
- 15          7.     Petitioner’s counsel shall investigate and develop a complete federal petition,  
16          including any newly discovered, unexhausted claims, before the limitations  
17          period expires and shall file Petitioner’s federal petition on or before November  
18          12, 2015. Any second state petition on Petitioner’s behalf presenting  
19          unexhausted claims to the California Supreme Court also should be filed on or  
20          before November 12, 2015. Counsel for Petitioner shall include with the federal  
21          petition any request for stay and abeyance under Rhines v. Weber, 544 U.S. 269  
22          (2005). Counsel for Petitioner does not at this point indicate that a request for  
23          equitable tolling will be needed.
- 24          8.     Respondent shall file any opposition to stay and abeyance and/or motion to  
25          dismiss, or answer to the federal petition, on or before January 15, 2016.
- 26          9.     A further case management conference is set for January 29, 2016 at 10:00 a.m.  
27          Counsel shall appear telephonically and are directed to contact the Court’s  
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Courtroom Deputy Clerk, Ms. Mamie Hernandez, to obtain the teleconference code.

10. The parties are advised that the Court will view any request to extend the above timeline with disfavor absent reasonably unforeseeable and unavoidable circumstances showing good cause for an extension of time.

Counsel for both parties are directed to familiarize themselves with the *Guide to Case Management and Budgeting in Capital Habeas Cases, Eastern District of California, Fresno Division* (the "*Fresno Attorney Guide*") (available on the Court's website at [www.caed.uscourts.gov](http://www.caed.uscourts.gov) under "Forms").

IT IS SO ORDERED.

Dated: May 27, 2015

  
UNITED STATES MAGISTRATE JUDGE