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9 Attorneys for Petitioner
 10 WILLIAM A. PROCTOR

11 **IN THE UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**
 13

14 WILLIAM A. PROCTOR,
 15 Petitioner,

16 v.

17
 18 ROBERT L. AYERS, Warden of
 19 California State Prison at San Quentin,
 20 Respondent.

No. CIV-S-96-1401 RBB CMK

DEATH PENALTY CASE

**APPLICATION AND ORDER
 FOR EXTENSION OF TIME
 TO FILE MERITS BRIEF**

21 Pursuant to an order issued November 21, 2008, petitioner’s brief on the merits of
 22 Claims EE, W, Y, CC, EE, and NN is due on January 16, 2008. Petitioner, by and through
 23 his counsel, hereby requests an extension of forty-five days, to and including March 2,
 24 2009, in which to submit his brief.

25 This Court has granted one previous extension of time to file the merits brief. The
 26 extension of time is necessary for the following reasons:

- 27 1. Respondent’s brief on the merits was filed on September 17, 2008. Despite
 28

1 their due diligence, neither Mr. Thomson or Ms. Lipsig have been able to devote sufficient
2 time to complete work on the answering briefing due to other case obligations.

3 2. Lead counsel Mr. Thomson has oral argument in the Ninth Circuit in Grant
4 v. Ayers, Case No. 06-99003, on January 12, 2009.

5 3. Mr. Thomson is also counsel in a capital trial in the Northern District of
6 California, U. S. v Dennis Cyrus, Case # CR-05-00324-MMC. Despite his attempts to
7 continue this trial, jury selection is scheduled for January 13, 2009. The trial is expected to
8 be lengthy and Mr. Thomson has spent considerable time preparing for the trial in the past
9 60 days.

10 4. In addition to these obligations, Mr. Thomson also has a merits brief due on
11 January 14, 2009, in a habeas corpus proceeding in the United States District Court for the
12 District of Montana, Kills on Top v. Mahoney, CV-01-192-BLG-RFC CSO.

13 5. As this Court is aware, Ms. Lipsig is employed full-time by the Office of the
14 State Public Defender and has a full case load. She is thus unable to devote significant
15 time to the present case except on weekends and in the evenings. Unfortunately, due to
16 state budget problems and staff shortages, Ms. Lipsig has been required to take on
17 additional duties, including working some weekends and evenings that she normally would
18 devote to the present case. In addition, during the month of January, she will be required
19 to take two multi-day trips to Southern California to conduct witness interviews.

20 6. Counsel for petitioner have contacted counsel for respondent, Deputy
21 Attorney General Brian Smiley, regarding this request for an extension of time. He
22 indicated that he has no objection to the request for an extension of time.

23 For all the reasons stated above, petitioner requests that he be granted an additional
24 forty-five (45) days, to and including March 2, 2009, in which to submit his brief on the
25 merits Claims EE, W, Y, CC, EE, and NN and that respondent's time in which to submit a
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1 reply brief be extended until thirty (30) days thereafter, or until April 1, 2009.

2 DATED: January 8, 2009

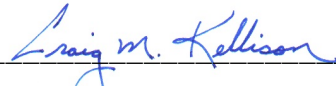
3 Respectfully submitted,

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5 /s/JAMES S. THOMSON

6 /s/ JOLIE LIPSIG
7 Attorneys for Petitioner

8 IT IS SO ORDERED.

9 DATED: January 14, 2009

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11 _____
12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE

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