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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HAYDEN NESBITT, Jr.,

Petitioner,

No. CIV S-09-2821 GEB GGH P

vs.

FRANCISCO JACQUEZ,

Warden,

Respondent.

ORDER

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A joint scheduling statement in this matter was filed on February 9, 2010, pursuant to the court’s order filed October 30, 2009.<sup>1</sup> After reviewing the joint statement, the court issues the following ORDERS:

1. Petitioner has until May 13, 2010, either to file supplemental points and authorities in support of the original petition or to file an amended petition. Should petitioner elect to proceed on the original petition or an amended petition of exhausted claims only, respondent must file an answer or dispositive motion within 60 days after petitioner’s filing; petitioner must file any reply or opposition, as appropriate, within 28 days of service of respondent’s responsive pleading; if respondent filed a motion, respondent will have 14 days

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<sup>1</sup> Extensions of time for filing the statement was granted by orders filed on November 25, 2009, and on January 12, 2010.

1 after service of an opposition to file a reply.

2           2. Should petitioner identify unexhausted claims which petitioner will seek to  
3 exhaust, petitioner shall file an amended petition, on or before May 13, 2010, setting forth all  
4 claims, exhausted and unexhausted, and shall demonstrate good cause for having failed to  
5 exhaust state court remedies as to any claim which petitioner would seek to exhaust. Petitioner  
6 shall move the court to hold the proceedings in abeyance pending exhaustion of state court  
7 remedies as to the unexhausted claims on or before May 13, 2010; if a stay is ultimately granted,  
8 petitioner must immediately pursue state court exhaustion, that is, within 28 days of the granting  
9 of a stay, and, upon said exhaustion in state court, within 28 days, proceed upon the amended  
10 petition in federal court.

11           3. Should respondent object to any motion for a stay of proceedings by petitioner  
12 to pursue unexhausted claims, respondent must file any opposition to such a motion within 28  
13 days of service thereof; thereafter, petitioner has 14 days to file any reply.

14           4. If petitioner intends to make a motion for leave to conduct discovery under the  
15 Rules Governing Section 2254 Cases, Rule 6(a), petitioner must do so within 28 days after  
16 petitioner files his traverse/reply; if respondent opposes any such motion respondent must do so  
17 within 14 days thereafter; petitioner's reply, if any, must be filed within seven (7) days of any  
18 opposition by respondent.

19           5. If petitioner chooses to move for an evidentiary hearing, petitioner must do so  
20 at the earliest appropriate opportunity, but by no later than 28 days following the filing of a  
21 traverse/reply; should petitioner file a motion for an evidentiary hearing, if respondent anticipates  
22 opposing any such motion, respondent must file any opposition within 28 days of service of the  
23 motion, and petitioner must file any reply within 14 days of service of any opposition.

24 DATED: February 19, 2010

25 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE