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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 DAVID JOHN WAGNER, JR.,

No. C 09-4662 SI (pr)

9 Petitioner,

**ORDER DISMISSING
UNEXHAUSTED CLAIMS AND
SETTING BRIEFING SCHEDULE ON
REMAINING CLAIM**

10 v.

11 KEN CLARK, warden,

12 Respondent.
13 _____/

14 David John Wagner, Jr., filed this pro se action for a writ of habeas corpus pursuant to
15 28 U.S.C. § 2254. The court reviewed the petition, found that it stated three cognizable claims,
16 and ordered respondent to show cause why the petition should not be granted. Respondent then
17 moved to dismiss the petition, arguing that state judicial remedies had not been exhausted for
18 Claims 2 and 3. Petitioner conceded non-exhaustion as to Claims 2 and 3, and chose to amend
19 the petition to delete the unexhausted claims and proceed with just Claim 1, as to which state
20 judicial remedies had been exhausted. See Opposition, p. 2. He also filed an amended petition
21 that deleted the two unexhausted claims and presented just his one exhausted claim.
22 Accordingly, respondent's motion to dismiss is GRANTED (docket # 4), the unexhausted
23 Claims 2 and 3 are dismissed, and the action will proceed with just the claim in the amended
24 petition, i.e., the claim for ineffective assistance of counsel. The court now sets the following
25 briefing schedule on the amended petition:

26 1. Respondent must file and serve upon petitioner, on or before **January 14, 2011**,
27 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
28 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the

1 answer a copy of all portions of the court proceedings that have been previously transcribed and
2 that are relevant to a determination of the issues presented by the petition.

3 2. If petitioner wishes to respond to the answer, he must do so by filing a traverse
4 with the court and serving it on respondent's counsel on or before **February 18, 2011**.

5 IT IS SO ORDERED.

6 DATED: December 6, 2010



SUSAN ILLSTON
United States District Judge

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