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 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

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 14 **RICHARD ALLEN DAVIS,**  
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 18 **RON DAVIS, Acting Warden, San Quentin**  
 19 **State Prison,**  
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Petitioner,

v.

Respondent.

CV13-00408 EMC

**JOINT STIPULATION AND**  
~~**PROPOSED**~~ **ORDER CONCERNING**  
**LITIGATION RELATED TO THE**  
**MIXED FEDERAL HABEAS PETITION**

21 On February 19, 2015, counsel for the parties met and conferred telephonically regarding  
 22 the exhaustion status of the claims in the amended finalized habeas petition filed on January 29,  
 23 2015. *See* Habeas L. R. 2254-29(b). The results of the meet and confer are as follows:

24 1. Petitioner further amends the amended finalized petition as follows:

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a. The heading for Claim Twenty at p. 351 of Doc. 34 shall be changed to:

**DAVIS’S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A RELIABLE SENTENCE WERE VIOLATED BECAUSE THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ADMITTING OTHER-CRIMES EVIDENCE AT THE GUILT PHASE TO PROVE INTENT, MOTIVE, AND COMMON SCHEME TO COMMIT BURGLARY AND ATTEMPTED LEWD ACT UPON A CHILD.**

b. The heading for Claim Twenty-Two at p. 375 of Doc. 34 shall be changed to:

**DAVIS’S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A RELIABLE SENTENCE WERE VIOLATED BECAUSE THE TRIAL COURT ERRONEOUSLY GRANTED THE PROSECUTION’S MOTION TO VIEW THE “CRIME SCENE” WHEN THE PROBATIVE VALUE OF SUCH A VIEWING WAS FAR OUTWEIGHED BY THE PREJUDICE AND FURTHER RENDERED THE TRIAL PROCEEDING FUNDAMENTALLY UNFAIR AND UNRELIABLE.**

c. The heading for Claim Twenty-Four at p. 386 of Doc. 34 shall be changed to:

**DAVIS’S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A RELIABLE SENTENCE WERE VIOLATED BECAUSE THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ADMITTING HIGHLY INFLAMMATORY PHOTOGRAPHS.**

d. The heading for Claim Twenty-Nine at p. 417 of Doc. 34 shall be changed to:

**DAVIS’S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS, AND A RELIABLE SENTENCE WERE VIOLATED WHEN THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REJECTING DEFENSE INSTRUCTIONS FOR THE PENALTY PHASE, AND, AS A RESULT, THE JUDGMENT OF DEATH MUST BE REVERSED.**

2. The parties agree that the amended finalized petition, including the changes to the headings for Claims 20, 22, 24, and 29, set forth above, is a mixed petition. The parties further agree as to the exhaustion status of each of the thirty-seven claims in the petition, i.e., exhausted, fully unexhausted, partially unexhausted. As to partially unexhausted claims the parties agree on which parts of these claims are unexhausted.

1           3. Accordingly, the parties recommend that the following schedule be adopted by the Court  
2 for litigation of the mixed petition:

3           a. Respondent shall file a motion to dismiss the mixed petition in lieu of an answer not  
4 later than March 2, 2015. *See White v. Lewis*, 874 F.2d 599, 602 (9th Cir. 1989); *O'Bremski v.*  
5 *Maass*, 915 F.2d 418, 420 (9th Cir. 1990); Rules Governing Section 2254 Cases in the United  
6 States District Courts, Rule 4 and Advisory Committee Notes.

7           b. Petitioner shall file a joint pleading containing his response to the motion to dismiss; his  
8 motion for stay, *see Rhines v. Weber*, 544 U.S. 269, 277-78 (2005); and his motion for an  
9 evidentiary hearing as to procedural issues not later than May 1, 2015.

10          c. Respondent shall file a joint pleading containing his reply, if any, to the response to the  
11 motion to dismiss; his response to the motion for *Rhines* stay; and his response to the motion for  
12 an evidentiary hearing on procedural issues not later than June 1, 2015.

13          d. Petitioner shall file a joint pleading containing his replies, if any, to the responses to the  
14 motions for *Rhines* stay and for an evidentiary hearing on procedural issues not later than July 3,  
15 2015.

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1 Dated: February 23, 2015

Respectfully submitted,

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27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 DATED: March 5, 2015.

