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9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13  
 14 **DELANEY GERAL MARKS,**

Petitioner,

15  
 16 v.

17 **MICHAEL MARTEL, Warden of**  
 18 **California State Prison at San Quentin,<sup>1</sup>**

19 Respondent.

CV 11-2458 LHK

DEATH PENALTY CASE

~~(PROPOSED)~~ ORDER FOLLOWING  
 INITIAL CASE MANAGEMENT  
 CONFERENCE

Date: February 17, 2012

Time: 2:00 p.m.

Courtroom: Courtroom Eight

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 21 This matter came on for the initial Case Management Conference (“CMC”) on February 17,  
 22 2012 at 2:00 p.m., in the above-entitled Court, the Honorable Lucy H. Koh, presiding. Petitioner  
 23 Delaney Geral Marks was represented by his appointed counsel of record, the California Habeas  
 24 Corpus Resource Center (“HCRC”), appearing specifically through Gary D. Sowards.  
 25 Respondent Kevin Chappelle, as Acting Warden of San Quentin State Prison, was represented by  
 26

27 <sup>1</sup> Kevin Chappelle, as Acting Warden of San Quentin, is substituted as the Respondent in  
 28 this case pursuant to Federal Rule of Civil Procedure 25(d).

1 his counsel of record, the California Attorney General, appearing specifically through Deputy  
2 Attorneys General Sharon Wooden and Alice Lustre.

3 Pursuant to an order filed May 24, 2011 (ECF No. 2) the parties were instructed to meet  
4 and confer and thereafter file a proposed litigation schedule, as well as a joint statement regarding  
5 any other issues they wished the Court to address, at least seven days prior to the date for the  
6 CMC. On February 7, 2012, the parties filed the Parties' Joint Proposed Litigation Schedule and  
7 Statement of Issues for Case Management Conference. ("Proposed Schedule," ECF No. 8.)  
8 During the CMC, respondent's counsel provided additional information regarding the estimated  
9 time for lodging the state-court record pursuant to Habeas Corpus Local Rule 2254-27.

10 Based upon the parties' Proposed Schedule, counsel's responses to the Court's questions at  
11 the CMC, and GOOD CAUSE appearing, the Court adopts the following litigation schedule:

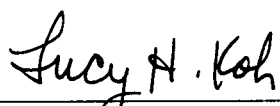
- 12 1. Respondent shall complete the lodging of the record pursuant to Habeas L.R. 2254-27  
13 by March 30, 2012;
- 14 2. Within thirty (30) days of the filing of this Order, petitioner shall file a notice  
15 regarding exhausted claims, identifying where in the record each claim was  
16 exhausted;
- 17 3. If respondent contends that any claims in the petition are unexhausted and declines to  
18 waive exhaustion, the parties will meet and confer regarding respondent's contention;
- 19 4. If the parties cannot resolve the disputed exhausted status of any claim, then within  
20 forty-five (45) days from the date petitioner files the notice regarding exhausted  
21 claims, respondent shall file a motion to determine the status of any disputed claim;  
22 and the parties shall file a joint statement in accordance with Habeas Corpus Local  
23 Rule 2254-28(c)(1)-(3);
- 24 5. Respondent shall file an answer to the petition within forty-five (45) days from the  
25 date petitioner files the notice regarding exhausted claims, or within such time as the  
26 Court may order if respondent files a motion to determine the exhausted status of any  
27 claim;

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- 6. Petitioner shall file a traverse within thirty (30) days from the date respondent files the answer;
- 7. The Court will conduct a further Case Management Conference on Wednesday, July 11, 2012, at 2:00 p.m.;
- 8. No later than seven (7) days prior to the further Case Management Conference, the parties, through counsel, shall file a joint statement regarding the parties' position as to the status of claims subject to procedural default; and the scheduling of motions for evidentiary hearing, summary judgment, or other pleadings or motions necessary to resolve the petition; and
- 9. In the event the contingencies described in numbers 3-5, above, make it impracticable to conduct a Case Management Conference on July 11, 2012, or for other good cause, the parties may stipulate to a proposed date for scheduling the further CMC on a Wednesday afternoon consistent with the Court's availability.

**It is so Ordered.**

DATED: 2/28/12


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 LUCY H. KOH  
 United States District Judge

Submitted by:

/s/ Sharon Wooden

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By: SHARON WOODEN  
 Counsel for Respondent  
 Kevin Chappelle

*Parties should do future case management orders all jointly. Thank you.*

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