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

DAVID ALLEN LUCAS,

Petitioner,

v.
**RON DAVIS, Warden, California
State Prison at San Quentin,**

Respondent.

15cv1224 GPC (WVG)
DEATH PENALTY CASE
**ORDER ON STATEMENT OF THE
PARTIES REGARDING
EXHAUSTION**

Based upon the stipulation of the parties, the Court finds that the following claims and/or subclaims in the Petition for Writ of Habeas Corpus filed on November 22, 2016, are unexhausted: Claims 10.D, 12, 13.B.2, 13.B.5, 13.B.6, 35.M, 50.H, 50.L, 50.M, 52, and 53. The Court takes the parties' position statements regarding the exhaustion status of Claims 2.E.7 and 7.E.1 under submission and will render a decision on the exhaustion status of those claims concurrent with a decision on the stay and abeyance issue.

In addition, the Court adopts the parties' proposed schedule for resolving procedural matters related to the Petition:

1 1. Within 30 days of the issuance of this Order, Petitioner shall file his
2 motion for a stay so that he may present his unexhausted claims to the state court.
3 *See Rhines v. Weber*, 544 U.S. 269, 273-78 (2005) (affirming the authority of
4 district courts to stay, rather than dismiss, mixed petitions governed by AEDPA
5 deadlines).

6 2. Within 14 days of Petitioner filing his motion for a stay, Respondent
7 shall file any opposition to the motion for a stay.

8 3. Within 14 days of the filing of Respondent's opposition to the motion
9 for a stay, Petitioner shall file any reply in support of the motion for a stay.

10 4. Unless otherwise ordered by the Court, the above motions will be
11 decided on the pleadings.

12 IT IS SO ORDERED.

13 Dated: January 17, 2017


14 Hon. Gonzalo P. Curiel
15 United States District Judge
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