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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 KENT KEIGWIN,

12 Petitioner,

13 v.

14 J. LIZARRAGA, Warden,

15 Respondent.
16

Case No.: 16cv1451 GPC (NLS)

**(1) NOTICE OF OPPORTUNITY TO
CONSENT TO MAGISTRATE
JUDGE JURISDICTION (28 U.S.C. §
636(c), F.R.C.P. 73), and
(2) ORDER SETTING BRIEFING
SCHEDULE.**

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18 On June 10, 2016, Petitioner, proceeding pro se, filed a Petition for Writ of Habeas
19 Corpus pursuant to 28 U.S.C. § 2254, a motion for stay and abeyance, and a motion to
20 proceed in forma pauperis (IFP). The district judge granted the IFP motion. After it was
21 fully briefed, the magistrate judge issued a Report and Recommendation (R&R) on the
22 motion for stay and abeyance. On September 30, 2016, the district judge adopted this
23 court's R&R and denied Petitioner's motion for stay and abeyance as moot.

24 Based on the procedural status of the case, the Court **ORDERS:**

25 1. If Respondent contends the Petition can be decided without the Court's
26 reaching the merits of Petitioner's claims (e.g., because Respondent contends Petitioner
27 has failed to exhaust any state remedies as to any ground for relief alleged in the Petition,
28 or that the Petition is barred by the statute of limitations, or that the Petition is subject to

1 dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are
2 procedurally defaulted, or that Petitioner is not in custody), Respondent shall file a
3 motion to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than
4 **December 2, 2016**. The motion to dismiss shall not address the merits of Petitioner’s
5 claims, but rather shall address all grounds upon which Respondent contends dismissal
6 without reaching the merits of Petitioner’s claims is warranted.¹ At the time the motion
7 to dismiss is filed, Respondent shall lodge with the Court all records bearing on
8 Respondent’s contention in this regard. A hearing date is not required for the motion to
9 dismiss.

10 2. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if
11 any, to the motion no later than **January 6, 2017**. At the time the opposition is filed,
12 Petitioner shall lodge with the Court any records not lodged by Respondent which
13 Petitioner believes may be relevant to the Court’s determination of the motion.

14 3. Unless the Court orders otherwise, Respondent shall not file a reply to
15 Petitioner’s opposition to a motion to dismiss. If the motion is denied, the Court will
16 afford Respondent adequate time to respond to Petitioner’s claims on the merits.

17 4. If Respondent does not contend that the Petition can be decided without the
18 Court reaching the merits of Petitioner’s claims, Respondent shall file and serve an
19 answer to the Petition, as well as points and authorities in support of such answer, no later
20 than **December 2, 2016**. At the time the answer is filed, Respondent shall lodge with the
21 Court all records bearing on the merits of Petitioner’s claims. The lodgments shall be
22 accompanied by a notice of lodgment which shall be captioned “**Notice of Lodgment in**
23 **28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk’s Office**.” Respondent
24 shall not combine separate pleadings, orders or other items into a combined lodgment
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27 ¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any
28 ground for relief alleged in the Petition, the motion to dismiss shall also specify the state
remedies still available to Petitioner.

1 entry. Each item shall be numbered separately and sequentially.

2 5. Petitioner may file a traverse to matters raised in the answer no later than
3 **January 6, 2017**. Any traverse by Petitioner (a) shall state whether Petitioner admits or
4 denies each allegation of fact contained in the answer; (b) shall be limited to facts or
5 arguments responsive to matters raised in the answer; and (c) shall not raise new grounds
6 for relief that were not asserted in the Petition. Grounds for relief withheld until the
7 traverse will not be considered. No traverse shall exceed ten (10) pages in length absent
8 advance leave of Court for good cause shown.

9 6. A request by a party for an extension of time within which to file any of the
10 pleadings required by this Order should be made in advance of the due date of the
11 pleading, and the Court will grant such a request only upon a showing of good cause.
12 Any such request shall be accompanied by a declaration under penalty of perjury
13 explaining why an extension of time is necessary.

14 7. Unless otherwise ordered by the Court, this case shall be deemed submitted
15 on the day following the date Petitioner's opposition to a motion to dismiss and/or his
16 traverse is due.

17 8. Every document delivered to the Court must include a certificate of service
18 attesting that a copy of such document was served on opposing counsel (or on the
19 opposing party, if such party is not represented by counsel). Any document delivered to
20 the Court without a certificate of service will be returned to the submitting party and
21 disregarded by the Court.

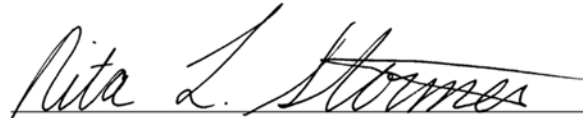
22 9. Petitioner shall immediately notify the Court and counsel for Respondent of
23 any change of Petitioner's address. If Petitioner fails to keep the Court informed of
24 where Petitioner may be contacted, this action will be subject to dismissal for failure to
25 prosecute.

26 10. Petitioner has consented to proceed before a United States Magistrate Judge.
27 Respondent must execute and return either a "Consent to Exercise of Jurisdiction by a
28 United States Magistrate Judge and Order of Reference" or a "Notice of Intent to Proceed

1 before District Judge” to the Clerk of Court on or before **November 4, 2016**. The parties
2 are free to withhold consent without adverse substantive consequences. The Clerk of
3 Court must send the appropriate Southern District forms to Respondent along with this
4 Order.

5 **IT IS SO ORDERED.**

6 Dated: October 3, 2016

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8 Hon. Nita L. Stormes
9 United States Magistrate Judge
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