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9 Attorneys for Petitioner
10 WILLIAM A. PROCTOR

11 **IN THE UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 WILLIAM A. PROCTOR,)	No. CIV-S-96-1401 DFL PAN
14 Petitioner,)	
15 v.)	DEATH PENALTY CASE
16 JILL BROWN, Warden of California)	
17 State Prison at San Quentin,)	APPLICATION AND ORDER
18 _____Respondent._____)	FOR MODIFICATION OF
19 _____)	BRIEFING SCHEDULE

20 By Order issued June 3, 2005 this Court granted petitioner's request to modify the
21 previously issued Scheduling Order. Pursuant to the modified schedule, petitioner's Opposition
22 and Cross-Motion for Summary Judgment are currently due on September 30, 2005.

23 Counsel for petitioner hereby request that the schedule be modified to provide them with
24 an additional ninety (90) days, or until December 30, 2005, in which to file their
25 Opposition and Cross-Motion. The modification is necessary for the following reasons:

26 1. Counsel are unable to meet the September 30, 2005 deadline due to significant
27 pre-existing obligations in other cases.

28 2. On July 18, 2005, counsel for Mr. Proctor filed a 700 page Opening Brief in the

1 automatic appeal of a capital case in California Supreme Court, *People v. Tully*, S030402.

2 Both Ms. Lipsig and Mr. Thomson spent considerable time preparing the brief.

3 3. Both Ms. Lipsig and Mr. Thomson also have separate obligations that prevent
4 them from meeting the current schedule. Mr. Thomson filed a reply brief in the Ninth
5 Circuit in *Pope v White* on August 1, 2005. He is also counsel in two complex, multi-
6 defendant federal capital trial cases pending in the Northern District, *United States v.*
7 *Dennis Cyrus, Jr.* and *United States v, Don Johnson*. Ms. Lipsig conducted extensive
8 discovery and filed on opposition to a motion to dismiss in an habeas corpus case pending
9 in the Eastern District, *Fenenbock v. Director of Corrections*. In addition, Ms. Lipsig is
10 now employed full-time at the Office of the State Public Defender (OSPD) and is in the
11 process of closing her private practice. Her obligations there prevent her from devoting a
12 substantial amount of time to the present case.

13 4. Counsel for petitioner have contacted counsel for respondent, Brian
14 Smiley, to discuss the proposed modification. Mr. Smiley indicated that respondent has no
15 objection to this proposed modified schedule.

16 For all the reasons stated above, petitioner requests that current briefing schedule be
17 modified as follows:

18 Petitioner's Opposition to Respondent's Motion for Summary Judgment and Cross-
19 Motion for Summary Judgment shall be filed by December 30, 2005;

20 Respondent's Reply to Petitioner's Opposition, and Opposition to Petitioner's
21 Motion for Summary Judgment shall be filed by March 1, 2006; and

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Petitioner's Reply to Respondent's Opposition shall be filed by May 1, 2006.

DATED: September 26, 2005

Respectfully submitted,
JAMES THOMSON

JOLIE LIPSIG
Attorneys for Petitioner

IT IS SO ORDERED.

DATED: September 21, 2005.

/s/ Peter A. Nowinski
United States Magistrate Judge

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DECLARATION OF SERVICE BY MAIL

Case Name: PROCTOR V. BROWN Case No.: Civ. S-96-1401 DFL PAN

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 1006 4th Street, Suite 301, Sacramento, California 95814.

On September 26, 2005, I served the attached

APPLICATION AND ORDER FOR MODIFICATION OF BRIEFING SCHEDULE

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, for there is regular communication by mail between the place of mailing and each of the places so addressed.

Brian Smiley
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94255-2550

I declare under penalty of perjury that the foregoing is true and correct.

Signed on September 26, 2005 at Sacramento, California.
