UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

_____,
(Petitioner's name and inmate number)

                    Petitioner,   _____-CV-_____

            v.

_____,
(Respondent's name)

                    Respondent.

_____

PETITIONER'S § 2254 UNEXHAUSTED CLAIMS RESPONSE FORM

Petitioner, having filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and the Court having

advised petitioner that it appears that one or more of the grounds for the petition has not been exhausted, as

required by 28 U.S.C. § 2254(b), petitioner hereby informs the Court that the following grounds for the petition

have not been exhausted:

1. _____

2. _____

3. _____

4. _____

(Use additional paper as needed.)

Accordingly, the petitioner hereby advises the Court that he wishes to choose the following option with respect

to this petition (petitioner should check one option only, and petitioner should file with this response any

supporting papers called for by the selected option):

_____   **Option One**: Petitioner chooses to file an amended petition within 30 days of this response,

which raises **only** those grounds for which state court remedies have been exhausted, thereby withdrawing from

this Court's consideration all grounds for which such remedies have not been exhausted. Petitioner has been

informed that the effect of such withdrawal may be that petitioner will **not** be permitted to raise the withdrawn grounds in a second or successive habeas petition, see 28 U.S.C. § 2244(b). **The proposed amended petition is attached to this response.**

_____ **Option Two**: Petitioner chooses to withdraw the entire petition herein to permit time to exhaust all of the claims. Petitioner has been informed that petitioner may then raise the claims in another petition, which will not be considered a second petition for purposes of § 2244(b) and therefore will not be foreclosed by the second or successive petition requirements of the statute. Petitioner has also been informed that the applicable statute of limitations is tolled only "during the time in which a properly filed application for State post-conviction or other collateral review ... is pending." 28 U.S.C. § 2244(d)(2).

_____ **Option Three**: Petitioner asks the Court to dismiss his unexhausted claims and stay this petition in order to permit him to exhaust his state court remedies with respect to the unexhausted claims for habeas relief. See Zarvela v. Artuz, — F.3d —, 2001 WL 671762 (2d Cir. June 14, 2001). Petitioner has been informed that this choice means that the stay is conditioned on petitioner's initiation of exhaustion within 30 days, and his return to the district court within 30 days of the completion of the effort to exhaust. **The petitioner acknowledges that the above list of unexhausted claims are the claims which should be dismissed for exhaustion purposes. Petitioner also recognizes that standard rules for amendment under Fed. R. Civ. P. 15, including the "relation back" rules of Rule 15(c), will be applicable to his request to amend the petition to include the dismissed claims, once they are exhausted.** See Zarvela, — F.3d at —. 2001 WL 671762, at * –.

_____ **Option Four**: Petitioner is procedurally barred from raising some or all of his unexhausted claims. In order to permit the Court to properly evaluate the status of the above claims, petitioner hereby provides the Court with the following information regarding why he may not still raise the claims in state court.

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(a) why the claim cannot now be raised and therefore exhausted, **(b)** why petitioner failed to exhaust that claim when it could have been raised, and **(c)** describing what, if any, prejudice petitioner has experienced as a result of the failure to exhaust that claim.

1. a. _____

   b. _____

   c. _____

2. a. _____

   b. _____

   c. _____

3. a. _____

   b. _____

   c. _____

4. a. _____

   b. _____

   c. _____

(Use additional paper as needed.)

If petitioner chooses this fourth option, and if the Court finds that the cause and prejudice is legally sufficient, the claim will be deemed exhausted and the petition determined on the merits. **Petitioner recognizes, however, that if the Court finds that the cause and prejudice are legally insufficient, the Court will dismiss the petition and all the grounds therein with prejudice.**

Date: _____   _____

                                                 (Petition's signature and inmate number)