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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 HUMBERTO DIAZ,

12 Petitioner,

13 v.

14 G. D. LEWIS,

15 Respondent.
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No. 2:12-cv-1095 WBS AC

ORDER

17 This habeas corpus action was submitted for decision with the filing of the traverse on
18 October 18, 2013. It has come to the attention of the court that the state court record lodged by
19 respondent does not include a copy of the California Supreme Court's March 14, 2012 order
20 denying habeas relief. Instead, respondent has submitted a docket report from the California
21 Supreme Court, indicating that the petition was denied on March 14, 2012. Lodged Doc. 16. In
22 the experience of the undersigned, it is common practice in federal habeas cases for Deputies
23 Attorney General to lodge California Supreme Court docket reports in lieu of the actual orders
24 denying habeas petitions. This practice does not permit the court to perform the review required
25 by 28 U.S.C. § 2254.

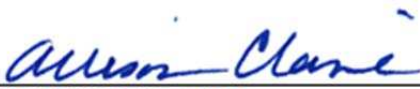
26 A docket report is not an order and does not conclusively establish the contents of the
27 orders it references. A docket report summarizes the procedural history of a case. It documents
28 the fact that relief was denied, but does not establish to the court's satisfaction whether or not the

1 denial was without comment or citation. The presence or absence of any stated reason for denial,
2 no matter how briefly identified, or any citation to authority, has potential consequences for
3 review under § 2254. See Cullen v. Pinholster, 131 S. Ct. 1388, 1399 (2011) (focus of 2254(d)
4 review is “what a state court. . . did”); Ylst v. Nunnemaker, 501 U.S. 797, 806 (1991) (where
5 state court’s denial is unexplained, federal court must “look through” it to last reasoned decision);
6 Frantz v. Hazey, 533 F.3d 724, 738 (9th Cir. 2008) (en banc) (where state court’s denial is
7 explained, federal court’s analysis is limited to its actual reasoning and analysis); Cone v. Bell,
8 556 U.S. 449, 472 (2009) (where state court denial rests on procedural ground, federal court
9 conducts de novo review of merits).

10 The undersigned is aware from experience that California Supreme Court docket sheets
11 generally do reflect the content of orders denying habeas relief, including any citation to a
12 procedural bar. However, the docket reports are not the source documents. In light of this court’s
13 duty to review what the state court actually did, the lodged state court record must include all
14 state court orders denying relief. A docket report or similar substitute is not sufficient.

15 Accordingly, counsel for respondent is HEREBY ORDERED to file (or lodge in paper) a
16 copy of the California Supreme Court’s order dated March 14, 2012, denying Mr. Diaz’s habeas
17 petition, within 30 days of this order.

18 DATED: December 3, 2014

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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