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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH AUGUST MARSALA,
Petitioner,
v.
HEIDI LACKNER,
Respondent.

No. 2:13-cv-1614 CKD P

ORDER

Respondent has filed a motion asking that affidavits submitted by petitioner in support of his petition for writ of habeas corpus be stricken. Respondent notes correctly that the original affidavits (ECF No. 43) are not signed under the penalty of perjury. However, petitioner cured this defect by submitting affidavits which are signed under the penalty of perjury. ECF Nos. 55 & 56. Respondent also argues that the affidavits are barred from consideration pursuant to 28 U.S.C. § 2254(d)-(e) in light of deference which must be paid by this court to the California Supreme Court's denial of petitioner's claims.

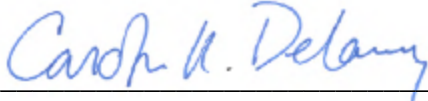
The court is aware of the limitations imposed upon the submission of new evidence by 28 U.S.C. § 2254(d)-(e). However, until reviewing all of the briefing and other exhibits submitted with respect to petitioner's application for writ of habeas corpus, the court cannot ascertain whether the affidavits are barred.

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Accordingly, IT IS HEREBY ORDERED that respondent's motion to strike petitioner's affidavits (ECF No. 48) is denied. However, when the court considers the claims presented in petitioner's application for writ of habeas corpus, the affidavits will not be considered to the extent the court is barred from considering them by 28 U.S.C. § 2254(d)-(e) and interpretive and controlling case law.

Dated: November 2, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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