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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 DAVID J. CARPENTER,

12 Petitioner,

13 v.

14 KEVIN CHAPPELLE, Acting Warden of
15 California State Prison at San Quentin,

16 Respondent.
17

NO. C 98-2444 MMC

ORDER GRANTING LEAVE TO
FILE A MOTION FOR RECONSIDERATION;
DIRECTIONS TO PARTIES

DEATH PENALTY CASE

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19 Pursuant to Local Rule 7-9(a), respondent has moved for leave to file a motion for
20 reconsideration of this Court's Order of March 5, 2008, denying in part Respondent's Motion to
21 Dismiss. In support of his motion, respondent relies on Civil Local Rule 7-9(b)(2), which requires
22 the moving party to demonstrate the "emergence of new material facts or a change of law occurring
23 after the time of [the challenged] order." See Civil L.R. 7-9 (setting forth grounds for motion).


24 Respondent has made the requisite showing. In particular, as respondent correctly points out,
25 this Court, in its March 5, 2008 Order, relied on *Bennett v. Mueller*, 322 F. 3d 573 (9th Cir. 2003)
26 and *Morales v. Calderon*, 85 F. 3d 1387 (9th Cir. 1996), to support its holding that California's
27 timeliness bar was not adequate and thus could not preclude federal review of claims found to be
28 untimely thereunder in state court. More recently, however, the United States Supreme Court has

1 held that California's timeliness bar is adequate, and thus may serve to procedurally bar in federal
2 court claims that were held untimely in state court. *See Walker v. Martin*, 131 S.Ct. 1120, 1126-
3 1130 (2011).

4 Accordingly, and for good cause shown, respondent's motion for leave to file a motion for
5 reconsideration is hereby GRANTED. Within thirty days of the date of this order, the parties shall
6 meet and confer, and set a briefing schedule for any motion for reconsideration.

7 **IT IS SO ORDERED.**

8 DATED: September 12, 2013

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10 MAXINE M. CHESNEY
11 United States District Judge
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