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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**

9 **GEORGE SOULIOTES,** ) **1:06-cv-00667 AWI MJS HC**  
10 )  
11 **Petitioner,** ) **ORDER ADOPTING FINDINGS AND**  
12 ) **RECOMMENDATION WITH EDITS**  
13 **v.** ) **LISTED BELOW**  
14 )  
15 **RANDY GROUNDS, Warden,** ) **ORDER GRANTING AMENDED**  
16 ) **PETITION’S CLAIMS TWO, THREE AND**  
17 **Respondent.** ) **SEVEN**  
18 ) **[Doc. 174]**

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16 Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2254. On March 7, 2013, the Magistrate Judge issued a Findings and  
18 Recommendation that the Court find Petitioner entitled to relief with respect to claims two,  
19 three and seven in the First Amended Petition for Writ of Habeas Corpus. This Findings and  
20 Recommendation was served on all parties with notice that any objections were to be filed  
21 within fourteen days of the Findings and Recommendation’s date of service. Both parties filed  
22 objections to the Findings and Recommendation on March 21, 2013. (See ECF Nos. 180-81.)  
23 Petitioner filed a reply to Respondent's objections on March 31, 2013. (See ECF No. 182.)

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
25 a *de novo* review of the case. “De novo review means that the reviewing court does not defer to  
26 the lower court's ruling but freely considers the matter anew, as if no decision had been rendered  
27 below.” Dawson v. Marshall, 561 F.3d 930, 933 (9<sup>th</sup> Cir. 2009) (internal quotations and citation  
28 omitted). However, the court need not consider new evidence in reviewing a magistrate judge's

1 recommendation. United States v. Howell, 231 F.3d 615, 622 (9th Cir. 2000).

2 Having carefully reviewed the entire file, including the Magistrate Judge's Findings and  
3 Recommendation and the parties' objections and responses, the Court concludes that the  
4 Magistrate Judge's Findings and Recommendation is supported by the record and proper  
5 analysis.

6 Petitioner alleges in his objections that the Magistrate Judge incorrectly reserved  
7 judgment as to his first claim, which asserts Petitioner's convictions were based on  
8 fundamentally unreliable expert testimony and evidence presented in violation of his  
9 constitutional due process rights. It is unnecessary to determine whether Petitioner is entitled to  
10 relief with regard to this claim. By granting Petitioner relief with regard to claims two, three  
11 and seven, the Court is providing Petitioner with the relief requested. See Blazak v. Ricketts,  
12 971 F.2d 1408, 1413 (9<sup>th</sup> Cir. 1992).

13 Respondent's objections present no grounds for questioning the Magistrate Judge's  
14 analysis. Respondent repeats, often verbatim, many of the arguments and assertions presented  
15 in his answer and other pleadings. (See Pet'r's Reply, ECF No. 182.) Finally, the Court  
16 concludes that Respondent's repeated allegations that the Magistrate Judge failed to provide  
17 appropriate deference to the state court's decision and trial counsel's strategy are without merit.

18  
19 Accordingly, IT IS HEREBY ORDERED that:

20 1. The Findings and Recommendation issued March 7, 2013, is ADOPTED as  
21 amended below:

22 a. Page 18, lines 16-24, of the Findings and Recommendation are adopted to  
23 read as follows:

24 . . . . On April 24, 2012, after the hearing and appropriate  
25 briefing from the parties, the Magistrate Judge issued  
26 findings and a recommendation that the Court find that  
27 Petitioner presented a sufficient showing of actual  
28 innocence to serve as an equitable exception to the

1 AEDPA's statute of limitations. On July 6, 2012, the  
2 Court adopted the Magistrate Judge's Findings and  
3 Recommendation and found Petitioner had met Schlup's  
4 actual innocence standard as to excuse Petitioner's  
5 violation of the AEDPA's one year statute of limitations.

6 b. Petitioner's Claim One, as discussed in the Findings and  
7 Recommendations from Pages 19-25, which contends that Petitioner's  
8 due process rights were violated by the introduction of scientific evidence  
9 at trial about potential MPD's present at the fire and on Petitioner's shoes  
10 and clothing, is referred to as Claim Six, as listed in the Amended  
11 Petition.

12 c. Page 26, lines 3 through 6, is amended to read: "The Court declines at  
13 this time to determine if Petitioner is entitled to relief on this claim.  
14 Because any finding on this claim is unnecessary to grant Petitioner the  
15 relief he requests, the Court will not grant or deny this claim at this time."

16 d. The reference to "At closing defense counsel repeatedly attacked" on  
17 page 54, line 3, of the Findings and Recommendations, is amended to  
18 read "**At closing, the prosecution repeatedly attacked. . .**"

19 e. The last paragraph on page 64, beginning at line 17 is omitted.

20 f. Page 72, line 12, of the Findings and Recommendation is amended to  
21 read: "**The court must next consider . . .**" as opposed to "Here, we  
22 consider . . ."

23 g. Page 84, the first and second lines of footnote 51, Findings and  
24 Recommendation is amended to remove "the Court's Experience  
25 suggests" and read: "**In addition to the benefits identified in the cases  
26 discussed above, advantages might also include consideration of the  
27 added weight juror may give . . .**"

28 h. Page 91, line 6, of the Findings and Recommendation, is amended to read

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**“Petitioner is entitled to relief on claims two, three and seven”** rather than “Petitioner is entitled to relief on claims one, two and seven”.

2. Claims two, three and seven of the First Amended Petition for Writ of Habeas Corpus are **HEREBY GRANTED**.

3. Petitioner shall be released unless the State of California both (1) notifies this Court within thirty days of the filing of this order that it intends to retry Petitioner and that it has taken concrete and substantial steps to do so; and (2) actually commences Petitioner’s retrial within 90 days.

IT IS SO ORDERED.

Dated: April 12, 2013

  
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SENIOR DISTRICT JUDGE