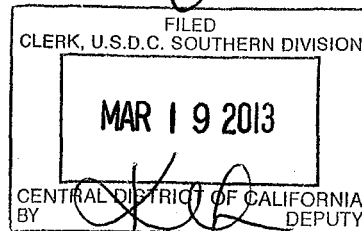


" 0 "



I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
 FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
 (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
 RECORD IN THIS ACTION ON THIS DATE.

DATED: 3-19-13

 DEPUTY CLERK [Signature]

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ROBERT DEANE SCHWARTZ,
 Petitioner,
 vs.
 DOMINGO URIBE, JR.,
 Warden,
 Respondent.

Case No. EDCV 11-1174-MWF (RNB)
 ORDER ACCEPTING FINDINGS AND
 RECOMMENDATIONS OF UNITED
 STATES MAGISTRATE JUDGE; AND
 DENYING PETITIONER'S REQUEST
 FOR APPOINTMENT OF COUNSEL
 FOR PURPOSE OF AN EVIDENTIARY
 HEARING

On January 29, 2013, the assigned Magistrate Judge issued a Report and Recommendation in this matter with respect to the exhaustion of state remedies issue raised by respondent in his Answer and Supplemental Answer to the operative Second Amended Petition herein. The Magistrate Judge found that the Second Amended Petition herein constituted a "mixed petition" in that the following claims (numbered in accordance with the breakdown set forth in the Magistrate Judge's May 30, 2012 Order re Further Proceedings) had not been fairly presented to the California Supreme Court: 2(b), 2(c), 2(e), 2(g), 3(d), 4(b), 5(a), 5(c), 6(a), 7(c), and 7(f). Accordingly, the Magistrate Judge recommended that this action be dismissed without prejudice for failure to exhaust state remedies unless petitioner filed a notice of withdrawal of his unexhausted claims within thirty (30) days.

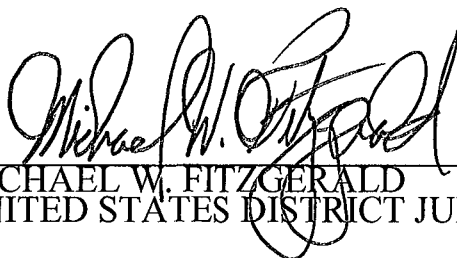
On February 15, 2013, petitioner filed a "Statement of Objections" to the

1 Report and Recommendation. He then filed a "Notice of Clerical Error in His
2 Statement of Objections" on March 4, 2013. Petitioner's objections included a
3 request for the appointment of counsel for purposes of an evidentiary hearing on the
4 on the exhaustion of state remedies issue.

5 Pursuant to 28 U.S.C. § 636, the Court has reviewed the operative Second
6 Amended Petition and all the records and files herein, including the Report and
7 Recommendation of the Magistrate Judge, and petitioner's objections thereto.
8 Having made a de novo determination of those portions of the Report and
9 Recommendation to which objections have been made, the Court accepts the findings
10 and recommendations of the Magistrate Judge. Further, the Court denies petitioner's
11 request for the appointment of counsel for purposes of an evidentiary hearing on the
12 exhaustion of state remedies issue as unnecessary.¹

13 IT THEREFORE IS ORDERED that Judgment be entered denying the Second
14 Amended Petition and dismissing this action without prejudice for failure to exhaust
15 state remedies unless, within thirty (30) days, petitioner files a notice of withdrawal
16 of the following unexhausted claims (numbered in accordance with the breakdown
17 set forth in the Magistrate Judge's May 30, 2012 Order re Further Proceedings): 2(b),
18 2(c), 2(e), 2(g), 3(d), 4(b), 5(a), 5(c), 6(a), 7(c), and 7(f).

19
20 DATED: March 15, 2013

21
22 
23 MICHAEL W. FITZGERALD
24 UNITED STATES DISTRICT JUDGE

25
26 ¹ To the extent that petitioner also was requesting the appointment of
27 counsel to represent him with respect to the merits of his exhausted claims (assuming
28 those claims go forward), including for purposes of further development of the record
and/or discovery (if either becomes necessary here), the Court refers petitioner's
request back to the Magistrate Judge for consideration.