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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**ARTURO FRANCO PALOMAR, JR.,** )

**Petitioner,** )

**v.** )

**RON BARNES, WARDEN,** )

**Respondent.** )

**NO. CV 12-4755-GHK (MAN)**

**ORDER ACCEPTING FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus (“Petition”), all of the records herein, the Report and Recommendation of United States Magistrate Judge (“Report”), and Petitioner’s Objections to the Report. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a *de novo* review of those portions of the Report to which objections have been stated.

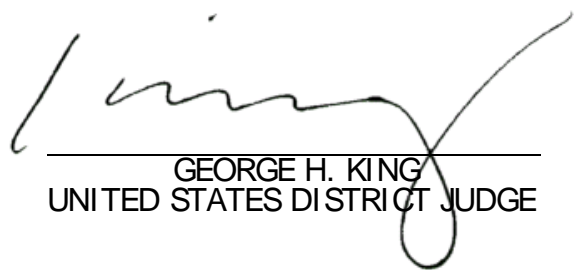
Petitioner’s Objections do not address the substance of the Report. Rather, in his Objections, Petitioner raises numerous new habeas claims, including claims that: the evidence was insufficient to establish the elements, including intent to kill and premeditation, of the crimes of which Petitioner was convicted; improper propensity evidence was admitted; the testimony of a gang expert was improper hearsay and inflammatory; the gang expert’s testimony violated Petitioner’s rights to due process and a fair trial, especially because the trial court failed to give

1 a limiting instruction to the jury; and Petitioner is entitled to relief based on cumulative error.  
2 Each of these claims is based upon the trial record and longstanding law; none of them relies  
3 upon newly discovery evidence or a change in the law. Moreover, none of these claims was  
4 raised by Petitioner in the state courts, and the claims therefore are unexhausted, and none of  
5 these claims was alleged in the Petition.<sup>1</sup>

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7 A district court has discretion, but is not required, to consider evidence or arguments  
8 presented for the first time in objections to a report and recommendation. *See Brown v. Roe*, 279  
9 F.3d 742, 744-45 (9th Cir. 2002); *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000).  
10 The Court declines to consider the plethora of unexhausted habeas claims raised by Petitioner for  
11 the first time in his Objections to the Report.

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13 The Court accepts the findings and recommendations set forth in the Report. Accordingly,  
14 IT IS ORDERED that: (1) the Petition is DENIED; and (2) Judgment shall be entered dismissing  
15 this action with prejudice.

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17 DATED: 9/25/14.

  
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GEORGE H. KING  
UNITED STATES DISTRICT JUDGE

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27 <sup>1</sup> Early in this case, Petitioner voluntarily dismissed two unexhausted claims previously  
28 alleged in the Petition as Grounds One and Four. [Docket No. 12.] The new claims alleged in the  
Objections do not include the two claims Petitioner voluntarily dismissed in this action.