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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANTHONY HICKS, JR.,

Petitioner,

v.

CONNIE GIPSON (Warden),

Respondent.

Case No. LA CV 14-01790-VBF-AGR

ORDER

-) Overruling Petitioner’s Objections;
-) Adopting Report & Recommendation;
-) Denying the Habeas Corpus Petition;
-) Dismissing the Action With Prejudice;
-) Directing Entry of Separate Final Judgment;
-) Terminating and Closing the Action (JS-6)

Pursuant to 28 U.S.C. § 636(b)(1), the Court has reviewed the First Amended Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. section 2254 (“FAP”) (Case Management / Electronic Case Filing System Document (“Doc”) 17) (excluding claims two, three, and four, which were dismissed by prior Order issued September 18, 2015, Doc 29); the respondent warden's answer and accompanying memorandum (Doc 40); the relevant decision(s) of the California state courts; the state-court “lodged documents” submitted by the respondent in paper form (listed in the Notice of Lodging at Doc 41); petitioner's filing entitled “Petitioner Objection to the Respondent Motion to Dismissed With Prejudice Herein”, construed as his traverse (Doc 49),

1 the Report and Recommendation ("R&R") issued by the United States Magistrate Judge pursuant
2 to Fed. R. Civ. P. 72(b)(1) and 28 U.S.C. § 636(b)(1)(B) on January 13, 2017 (Doc 51); petitioner's
3 timely objections to the R&R (Doc 53); and the applicable law.

4 "Federal Rule of Civil Procedure 72(b)(2) g[ives] respondent a right to respond to the
5 objections," *Ruelas v. Muniz*, No. SA CV 14-01761-VBF, 2016 WL 540769, *1 (C.D. Cal. Feb. 9,
6 2016), and that response period has not yet elapsed. "Nonetheless, because the Court is ruling in
7 favor of the respondent, then respondent cannot be prejudiced by the Court ruling without waiting
8 for its possible response to petitioner's objections." *John M. Adams v. Borders*, No. ED CV 16-
9 00541-VBF-AS Doc. 18, 2016 WL 4520906, *1 n.1 (C.D. Cal. Aug. 29, 2016); *see also, e.g., Ismail*
10 *v. Ford*, No. SA CV 10-00901-VBF Doc. 146, 2014 WL 1681993, *1 n.2 (C.D. Cal. Apr. 29, 2014)
11 ("[T]he Fords still had until about Friday, May 2, 2014, to file a response. The Fords cannot be
12 prejudiced by this court ruling without waiting for their possible response, however, because the
13 Court today is overruling plaintiff's objections and dismissing all claims against the Fords.").

14
15 "As required by Fed. R. Civ. P. 72(b)(3), the Court has engaged in de novo review of the
16 portions of the R&R to which petitioner has specifically objected and finds no defect of law, fact,
17 or logic in the . . . R&R." *Rael v. Foulk*, No. LA CV 14-02987 Doc. 47, 2015 WL 4111295, *1
18 (C.D. Cal. July 7, 2015), *COA denied*, No. 15-56205 (9th Cir. Feb. 18, 2016).

19 "The Court finds discussion of [the] objections to be unnecessary on this record. The
20 Magistrates Act 'merely requires the district judge to make a de novo determination of those portions
21 of the report or specified proposed findings or recommendation to which objection is made.'" It
22 does not require the district judge to provide a written explanation of the reasons for rejecting
23 objections. *See MacKenzie v. California AG*, SA CV 12-00432, 2016 WL 5339566, *1 (C.D. Cal.
24 Sept. 21, 2016) (Fairbank, J.) (quoting *United States ex rel. Walterspiel v. Bayer AG*, 639 F. App'x
25 164, 168-69 (4th Cir.) (per curiam) ("The district court complied with this requirement. Accordingly,
26 we find no procedural error in the district court's decision not to address specifically Walterspiel's
27 objections."), *cert. denied*, – U.S. –, 137 S. Ct. 162 (2016)) (brackets & internal quote marks
28 omitted). "This is particularly true where, as here, the objections are plainly unavailing." *Smith v.*

1 *California Judicial Council*, No. ED CV 14-01413-VBF Doc. 93, 2016 WL 6069179, *2 (C.D. Cal.
2 Oct. 17, 2016).

3 Accordingly, the Court will accept the Magistrate Judge's factual findings and legal
4 conclusions and implement the Magistrate Judge's recommendations.

5
6 ORDER

7 Petitioner's objection [**Doc #53**] is **OVERRULED**.

8 The Report and Recommendation [**Doc #51**] is **ADOPTED**.

9 The 28 U.S.C. section 2254 petition for a writ of habeas corpus is **DENIED**.

10
11 The Court will rule on a certificate of appealability by separate order.

12
13 Final judgment will be entered in favor of respondent consistent with this order.

14 "As required by Fed. R. Civ. P. 58(a), the Court will enter judgment by separate document."
15 *Toy v. Soto*, 2015 WL 2168744, *1 (C.D. Cal. May 5, 2015) (citing *Jayne v. Sherman*, 706 F.3d 994,
16 1009 (9th Cir. 2013)) (footnote 1 omitted), *appeal filed*, No. 15-55866 (9th Cir. June 5, 2015).

17
18 This action is **DISMISSED** with prejudice.

19 **The case SHALL BE TERMINATED and closed (JS-6)**.

20
21 Dated: Wednesday, February 15, 2017



22
23 Valerie Baker Fairbank

24 Senior United States District Judge
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