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

JAMES TROTTER,  
Petitioner,  
v.  
MARTIN BITER,  
Respondent.

Case No. LA CV 14-7854 JVS (JCG)

**ORDER ACCEPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge’s Report and Recommendation, and the remaining record. No objections to the Report and Recommendation have been filed.

Accordingly, IT IS ORDERED THAT:

1. The Report and Recommendation is approved and accepted;
2. Judgment be entered dismissing this action without prejudice; and
3. The Clerk serve copies of this Order on the parties.

Additionally, for the reasons stated in the Report and Recommendation, the Court finds that Petitioner has not shown that “jurists of reason would find it debatable whether”: (1) “the petition states a valid claim of the denial of a constitutional right”; and (2) “the district court was correct in its procedural ruling.” *See Slack v. McDaniel*,

1 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a certificate of  
2 appealability.

3 Petitioner is advised that the Court’s dismissal of this action is *without*  
4 *prejudice*. If Petitioner wishes to pursue federal habeas relief, he may file a new  
5 federal habeas petition *after* he has “fairly present[ed]” his unexhausted claim(s) in a  
6 state habeas petition to the California Supreme Court. *See Davis v. Silva*, 511 F.3d  
7 1005, 1008 (9th Cir. 2008). A claim is deemed to have been “fairly presented” when  
8 the petitioner has described both the operative facts and the federal legal theory on  
9 which the claim is based. *Id.* at 1009.

10 Petitioner is further advised that there is a one-year statute of limitations on  
11 federal habeas claims by a petitioner in state custody, which ordinarily begins to run at  
12 the end of the period during which that petitioner may seek direct review. 28 U.S.C.  
13 § 2244(d). The limitations period is tolled while a properly filed application for state  
14 post-conviction relief, or other collateral review (such as a state habeas petition), is  
15 pending. *Id.* However, the limitations period is not tolled while a petition is pending  
16 in federal court. *Duncan v. Walker*, 533 U.S. 167, 181-82 (2001).

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DATED: October 19, 2015

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HON. JAMES V. SELNA  
UNITED STATES DISTRICT JUDGE