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

GIRARD FLYNN,
Petitioner,

v.

DEBBIE ASUNCION,
Respondent.

) Case No. LA CV 15-03283 VBF (JCG)
) **ORDER**
) Adopting the Report & Recommendation;
) Denying the Habeas Corpus Petition;
) Denying Document #19 as Moot;
) Denying Document #21 as Moot;
) Terminating the Case (JS-6);
) Directing Entry of Separate Final Judgment;
) Denying Certificate of Appealability

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge’s Report and Recommendation (“R&R”), [Dkt. No. 31], Petitioner’s Objections to the Report and Recommendation (“Objections”), [Dkt. No. 33], and the remaining record, and has made a *de novo* determination.

1 Petitioner’s Objections generally reiterate the same arguments made in the
2 Petition, and lack merit for the reasons set forth in the R&R.¹ There is one issue
3 however, that warrants brief discussion here.

4 In his Objections, Petitioner takes issue with the notion that some of his claims
5 might not have been exhausted. (See Objections at 1.) However, as explained in the
6 R&R, the Court has exercised its discretion to deny such claims on the merits, without
7 making any conclusive determination as to whether they have been exhausted in state
8 court, pursuant to *Cassett v. Stewart*, 406 F.3d 614, 623-34 (9th Cir. 2005). (See R&R
9 at 6 n.4.) As such, Petitioner’s focus on “show[ing] that [he] did exhaust [his]
10 remedies” is misplaced and moot.

11
12 **Accordingly, IT IS ORDERED THAT:**

13 **The Report and Recommendation is ADOPTED.**

14 The petition for a writ of habeas corpus is **DENIED**.

15
16 Petitioner’s motion to stay case (**Document #19**) is **DENIED as moot**.

17 Petitioner’s motion to appoint counsel (**Document #21**) is **DENIED as moot**.

18
19 Additionally, for the reasons stated in the Report and Recommendation, the
20 Court finds that Petitioner has not made a substantial showing of the denial of a
21 constitutional right. See 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
22 *Cockrell*, 537 U.S. 322, 336 (2003).

23 _____
24 ¹ Petitioner does not explain, and the Court does not see, how the documents attached to the
25 Objections — many of which are and have been part of the record — do anything other than reiterate
26 the same arguments that the Court already addressed in the R&R. (See Objections at 7-159); see also
27 *Rabb v. Lopez*, 2012 WL 5289593, at *1 (C.D. Cal. Oct. 25, 2012) (accepting the findings and
28 recommendations of the Magistrate Judge because “[t]hose documents [attached to Petitioner’s
Objections] appear to be the same ones that were attached to the Petition; the Court already has taken
them into consideration”).

1 **Thus, the Court declines to issue a certificate of appealability.**

2
3 Separate final judgment will be entered in favor of the respondent.

4 The case shall be **TERMINATED and CLOSED (JS-6).**

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7 Dated: Monday, January 23, 2017



8
9 HON. VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

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