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3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA
5 WESTERN DIVISION
6

7 CIVIL MINUTES -- GENERAL

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9 **Case No.** LA CV 16-06790-VBF-SK **Dated:** Monday, July 3, 2017
10 **Title:** *Jorge Jimenez, Petitioner v. Debbie Asuncion (Warden, CDC-Lancaster),*
11 *Respondent*
12

13 **PRESENT:** HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE
14 Kelly Davis N/A
15 Courtroom Deputy Court Reporter
16 Attorney Present for Petitioner: N/A Attorney Present for Respondent: n/a
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18 **Proceedings (in chambers): ORDER Adopting the R&R and Dismissing Action**
19 **Without Prejudice for Lack of Prosecution;**
20 **Permitting Jimenez to Move for Reinstatement**
21 **by Friday, August 10, 2017;**
22 **Directing Entry of Separate COA Order**

23 This is an action for a Writ of Habeas Corpus by a Person in State Custody Pursuant
24 to 28 U.S.C. section 2254. Pursuant to his authority under Fed. R. Civ. P. 72(b)(1), title 28
25 U.S.C. section 636(b)(1)(B), and C.D. Cal. Local Civil Rule 72-3.3, the United States
26 Magistrate Judge issued a Report and Recommendation (“R&R”) on May 25, 2017. *See* Case
27 Management / Electronic Case Filing System Document (“Doc”) Doc 25.

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1 Pursuant to 28 U.S.C. § 636(b)(1), the Court has reviewed the habeas corpus petition
2 filed September 9, 2016 (Doc 1); the respondent warden’s unopposed motion to dismiss the
3 habeas petition for failure to establish exhaustion of state-court remedies as to some of his
4 claims (Doc 14) and accompanying documents (Doc 15); the R&R (Doc 25); and the
5 applicable law. Petitioner has not filed objections to the R&R within the time allotted by Fed.
6 R. Civ. P. 72(b) and C.D. Cal. Local Civil Rule 72-3.4. *See Sudduth v. Soto*, No. LA CV 15-
7 09038-VBF-RAO, 2016 WL 2016 WL 4035337, *1 (C.D. Cal. July 12, 2016) (“This Court
8 never rules on an R&R without waiting for the objection deadline to pass, and it will not rule
9 on the R&R here until at least one week after . . . [petitioner]’s objection deadline elapses .
10 . . .”). Nor has petitioner sought an extension of the deadline. Accordingly, the Court
11 proceeds without waiting further.

12 **By its terms, Federal Rule of Civil Procedure 72(b)(3) requires a District Judge**
13 **to conduct de novo review only of those portions of an R&R to which a party has filed**
14 **timely specific objection.** *See, e.g., Jette v. Colvin*, 2016 WL 4717735, *1 (D. Or. Sept. 7,
15 2016) (“Because no objections . . . were timely filed, this Court is relieved of its obligation
16 to review the record *de novo*.”) (citing *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009)
17 (citing 28 U.S.C. section 636(b)(1)(C) and *United States v. Howell*, 231 F.3d 615, 622 (9th
18 Cir. 2000)) and *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)).

19 **Conversely, the Ninth Circuit has held that absent a timely objection purporting**
20 **to identify specific defects in the R&R, the District Judge has no obligation to review the**
21 **R&R at all.** *See US v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (district
22 judge must review magistrate’s findings and recommendations *de novo* if objections are
23 made, “but not otherwise”), *cited by Beard v. Nooth*, 2013 WL 3934188, *1 (D. Or. July 30,
24 2013) (also citing *Thomas v. Arn*, 474 U.S. 140, 152, 106 S. Ct. 466, 473 (1985) (“There is
25 no indication that Congress, in enacting [the Federal Magistrates Act], intended to require a
26 district judge to review a magistrate’s report.[.]”)); *see, e.g., Robles-Castro v. Ryan*, 2017 WL

1 735386, *1 (D. Ariz. Feb. 24, 2017) (Logan, J.) (“The parties did not file objections, which
2 relieves the Court of its obligation to review the R&R.”) (citing, *inter alia*, *Reyna-Tapia*, 328
3 F.3d at 1121, and *Thomas*, 474 U.S. at 149); *Herring v. Maricopa Cty. Sheriff’s Office*, 2016
4 WL 2754851, *1 (D. Ariz. May 12, 2016) (Campbell, J.) (same); *Hussak v. Ryan*, 2016 WL
5 2606993, *1 (D. Ariz. May 6, 2016) (Rayes, J.) (same).

6 **“Nonetheless, the Magistrates Act does not preclude a district judge from**
7 **reviewing an R&R to make sure that it recommends a legally permissible and**
8 **appropriate outcome (based on sound reasoning and valid precedent) if she chooses to**
9 **do so.”** *Juarez v. Katavich*, 2016 WL 2908238, *2 (C.D. Cal. May 17, 2016) (citing *Beard*,
10 2013 WL 3934188 at *1 (although in the absence of objections no review is required, the Act
11 ““does not preclude further review by the district judge[] *sua sponte* . . . under a de novo or
12 any other standard”) (quoting *Thomas*, 474 U.S. at 154)). ““Indeed, the Advisory Committee
13 Notes to Fed. R. Civ. P. 72(b) recommend that [w]hen no timely objection is filed, the Court
14 review the magistrate’s recommendations for clear error on the face of the record.”” *Juarez*,
15 2016 WL 2908238 at *2 (quoting *Beard*, 2013 WL 3934188 at *1 (quote marks omitted).

16 **Out of an abundance of caution, then, the Court has reviewed the R&R. On**
17 **either clear-error or de novo review, the Court finds no defect of law, fact, or logic in the**
18 **R&R.** Therefore the Court will adopt the R&R and implement its recommendation to dismiss
19 the habeas petition without prejudice due to petitioner Jimenez’s lack of prosecution and
20 failure to comply with court order. *Cf. Hawkins v. Boyd*, 2017 WL 27949, *1 (E.D.N.Y. Jan.
21 3, 2017) (“This Court, however, will conduct de novo review if it appears that the magistrate
22 judge may have committed plain error. No such error appears here. Accordingly, the Court
23 adopts the R&R”) (internally citing *Spence v. Sup’t of Great Meadow Corr. Facility*, 219
24 F.3d 162, 174 (2d Cir. 2000)).

25
26 ORDER

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

2 This habeas corpus action is **DISMISSED without prejudice** due to petitioner's
3 failure to comply with court orders and failure to prosecute the case with reasonable diligence.

4 **No later than Friday, August 10, 2017, petitioner MAY FILE a motion to reinstate**
5 **this case.** Any such motion must allege facts justifying or excusing his failure to prosecute.

6 If petitioner fails to file a timely motion to reinstate, or if he files a timely but
7 unpersuasive motion to reinstate, the District Judge will convert the dismissal to with-
8 prejudice in August 2017 without further opportunity for objection or argument.

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10 The Court is issuing a separate order ruling on a certificate of appealability.

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12 The Court is not issuing a Judgment at this time. The case remains open.

13 IT IS SO ORDERED.
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