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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOHN A. ALMEDA,

12 Petitioner,

No. CIV S-09-1558-KJM-TJB

13 vs.

14 M. MCDONALD,

15 Respondent.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has filed this application for a writ
18 of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate
19 Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On December 8, 2010, the magistrate judge filed findings and recommendations,
21 which was served on all parties and which contained notice to all parties that any objections to
22 the findings and recommendations were to be filed within twenty-one days. On December 27,
23 2010, Petitioner filed objections to the findings and recommendations. Respondent did not file a
24 reply to Petitioner's objections.

25 In his petition, petitioner argues that the trial court erred in refusing to grant his
26 request for a continuance to secure the presence of his alibi witness, Roediger, and also that the

1 court erred by refusing to grant a mistrial based on the same facts. Petitioner also argued that the
2 court denied him his right to compulsory process by discharging the bench warrant even though
3 the witness was not truly unavailable. ECF No. 23 at 22-23. The magistrate judge addressed
4 the denial of the mistrial and the continuance, but not this latter argument.

5 As to the rest of plaintiff's claims, the court has conducted a *de novo* review of
6 this case an accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304.
7 After the review of the file and plaintiff's objections to the findings and recommendations, the
8 court finds the balance of the findings and recommendations to be supported by the record and
9 by proper analysis.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The findings and recommendations filed December 8, 2010, are adopted as to
12 petitioner's claims that the court violated his rights by permitting the prosecutor to question
13 Irene Medina in front of the jury and that he was prejudiced by cumulative error.

14 2. The court declines to adopt the findings and recommendations as to
15 petitioner's claim that the court erred by finding witness Roediger unavailable and thus denied
16 him the right to compulsory process. This case is referred back to the magistrate judge so that
17 this claim may be particularly addressed in supplemental findings and recommendations.

18 DATED: September 30, 2011.

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21 UNITED STATES DISTRICT JUDGE
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