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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|------------------------------|---|----------------------------------|
| JOSEPH RINALDI, |) | Civil No. 08cv1637-L(POR) |
| |) | |
| Petitioner, |) | ORDER (1) ADOPTING REPORT |
| |) | AND RECOMMENDATION; AND |
| v. |) | (2) DENYING RESPONDENTS' |
| |) | MOTION TO DISMISS |
| |) | |
| M. E. POULOS <i>et al.</i> , |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

Petitioner Joseph Rinaldi, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Louisa S. Porter for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d). Respondents filed a motion to dismiss for failure to exhaust administrative remedies. Petitioner opposed the motion. On February 11, 2009 the Magistrate Judge issued a Report and Recommendation, recommending to deny Respondents' motion. Respondents have not filed any objections.


A district judge “may accept, reject, or modify the recommended disposition” on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “The court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). When no objections are filed, the *de novo* review is waived.

1 Section 636(b)(1) does not require review by the district court under a lesser standard. *Thomas*
2 *v. Arn*, 474 U.S. 140, 149-50 (1985). The “statute makes it clear that the district judge must
3 review the magistrate judge’s findings and recommendations *de novo if objection is made, but*
4 *not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)
5 (emphasis in the original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D.
6 Ariz. 2003) (applying *Reyna-Tapia* to habeas review).

7 In the absence of objections, the court **ADOPTS** the Report and Recommendation. For
8 the reasons stated in the Report and Recommendation, Respondents’ motion to dismiss is
9 **DENIED.**

10 **IT IS SO ORDERED.**

11
12 DATED: April 3, 2009

13
14 
M. James Lorenz
United States District Court Judge

15 COPY TO:

16 HON. LOUISA S. PORTER
17 UNITED STATES MAGISTRATE JUDGE

18 ALL PARTIES/COUNSEL
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