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5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**
7

8 PERIECE JOHNSON,

9 Petitioner,

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11 v.

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14 MATTHEW CATE, Secretary of the
15 California Department of Corrections
16 and Rehabilitation,

17 Respondent.

CASE NO. 08-CV-1782 W (BLM)

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION
(DOC. NO. 17.)**

**(2) GRANTING MOTION TO
DISMISS (DOC. NO. 11.)**

**(3) DENYING PETITION
(DOC. NO. 1)**

18 On September 29, 2008, Petitioner Periece Johnson (“Petitioner”), state prisoner
19 proceeding pro se, filed this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C.
20 § 2254. (Doc. No. 1.) Petitioner challenges his 2005 convictions for selling cocaine base
21 and possessing cocaine base for sale. (Id.)

22 On March 13, 2009, Respondent filed a motion to dismiss the Petition. (Doc. No.
23 11.) On April 21, 2009, Petitioner filed an opposition. (Doc. No. 16.)

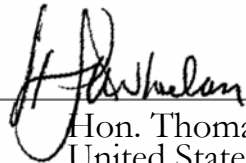
24 On April 28, 2009, Magistrate Judge Barbara L. Major issued a Report and
25 Recommendation (“Report”), recommending that the Court grant the motion to dismiss
26 and deny the Petition with prejudice. The Report also ordered that any objections were
27 to be filed by May 20, 2009, and any reply filed by June 10, 2009. To date, no objection
28 has been filed, nor has there been a request for additional time in which to file an
objection.

1 A district court's duties concerning a magistrate judge's report and recommendation
2 and a respondent's objections thereto are set forth in Rule 72(b) of the Federal Rules of
3 Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are filed, the district court
4 is not required to review the magistrate judge's report and recommendation. See United
5 States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003)(holding that 28 U.S.C.
6 636(b)(1)(c) "makes it clear that the district judge must review the magistrate judge's
7 findings and recommendations de novo *if objection is made*, but not otherwise")(emphasis in
8 original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219, 1226 (D. Arizona 2003) (concluding
9 that where no objections were filed, the District Court had no obligation to review the
10 magistrate judge's Report). This rule of law is well established within the Ninth Circuit and
11 this district. See Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005)("Of course,
12 de novo review of a R & R is *only* required when an objection is made to the R &
13 R.")(emphasis added)(citing Reyna-Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F.
14 Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopted Report without review because
15 neither party filed objections to the Report despite the opportunity to do so, "accordingly,
16 the Court will adopt the Report and Recommendation in its entirety."); see also Nichols
17 v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

18 The Court, therefore, accepts Judge Major's recommendation, and **ADOPTS** the
19 Report (Doc. No. 17) in its entirety. For the reasons stated in the Report, which is
20 incorporated herein by reference, the Court **GRANTS** Respondent's motion to dismiss
21 (Doc. No. 11), and **DISMISSES** the Petition (Doc. No. 1) **WITH PREJUDICE**.

22
23 **IT IS SO ORDERED.**

24 DATED: August 31, 2009

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26 
27 Hon. Thomas J. Whelan
28 United States District Judge