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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARY CLAYTON,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration,

Defendant.

CASE NO. 10-cv-0018 BEN (NLS)

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION**

**(2) DISMISSING ACTION
WITHOUT PREJUDICE
PURSUANT TO FED. R. CIV. P. 41(b)**

[Docket No. 31]

On June 29, 2011, the Court granted the motion of Plaintiff's former counsel to withdraw as attorney of record and denied the parties' joint motion to dismiss the action which was signed by counsel who had withdrawn. (Docket No. 27.) Magistrate Judge Nita Stormes filed a Third Amended Briefing Schedule setting deadlines for the parties' cross-motions for summary judgment. (Docket No. 28.) Plaintiff did not comply with the Court's briefing deadlines. Accordingly, Judge Stormes set an Order to Show Cause Hearing directing Ms. Clayton to appear in person before the Court and show cause why this action should not be dismissed for her failure to prosecute or comply with the Court's Order pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff failed to appear at the OSC hearing. Defendant appeared by telephone.

Judge Stormes issued a thoughtful and thorough Report and Recommendation recommending that this action be dismissed without prejudice. (Docket No. 31.) Any objections to the Report and

1 Recommendation were due December 9, 2011. (*Id.*) Neither party filed any objections. For the
2 reasons that follow, the Report and Recommendation is **ADOPTED**.

3 A district judge “may accept, reject, or modify the recommended disposition” of a magistrate
4 judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1). “[T]he district
5 judge must determine de novo any part of the [report and recommendation] that has been properly
6 objected to.” FED. R. CIV. P. 72(b)(3). However, “[t]he statute makes it clear that the district judge
7 must review the magistrate judge’s findings and recommendations de novo *if objection is made*, but
8 not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
9 (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither
10 the Constitution nor the statute requires a district judge to review, de novo, findings and
11 recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121.

12 In the absence of any objections, the Court fully **ADOPTS** Judge Stormes’ Report and
13 Recommendation. This action is **DISMISSED WITHOUT PREJUDICE**.

14 **IT IS SO ORDERED.**

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16 DATED: December 12, 2011



HON. ROGER T. BENITEZ
United States District Court Judge

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