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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WARREN CLAUDIUS LEMONS,
Plaintiff,

v.

A. HEDGPETH, Warden,
Respondent.

Case No. 3:10-cv-00807-AJB-CAB

**AMENDED ORDER: (1) ADOPTING
REPORT AND
RECOMMENDATION, (2)
DENYING PETITION FOR WRIT
OF HABEAS CORPUS, AND (3)
DENYING CERTIFICATE OF
APPEALABILITY**

[Doc. 13]

Presently before the Court is Magistrate Judge Cathy Ann Bencivengo's Report and Recommendation (Doc. 13) advising the Court to deny the Petition for Writ of Habeas Corpus.

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge's duties in connection with a magistrate judge's report and recommendation. The district judge must "make a *de novo* determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the finding or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection, the Court "need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P.


1 72(b), Advisory Committee Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,
2 1121 (9th Cir. 2003).

3 Objections were originally due September 30, 2011, but the Court granted an extension until
4 November 11, 2011. However, neither party has filed objections to Magistrate Judge Bencivengo's
5 report and recommendation. Having reviewed the report and recommendation, the Court finds that it
6 is thorough, well reasoned, and contains no clear error. Accordingly, the Court hereby: (1)
7 **ADOPTS** Magistrate Judge Bencivengo's report and recommendation and (2) **DENIES** the Petition
8 for Writ of Habeas Corpus. The action is **DISMISSED WITH PREJUDICE**.

9 When a district court enters a final order adverse to the applicant in a habeas proceeding, it
10 must either issue or deny a certificate of appealability. Rule 11(a) of the Rules Governing Section
11 2254 Cases. A certificate of appealability is required to appeal a final order in a habeas proceeding.
12 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability is appropriate only where the petitioner
13 makes "a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*,
14 537 U.S. 322, 336 (2003). Under this standard, the petitioner must demonstrate that reasonable
15 jurists could debate whether the petition should have been resolved in a different manner or that the
16 issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253;
17 *Slack v. McDaniel*, 529 U.S. 473, 474 (2000). Here, the Court finds that Petitioner has not
18 demonstrated that the reasonable jurists could debate whether the petition should have been resolved
19 differently, and it therefore **DENIES** a certificate of appealability.

20
21 IT IS SO ORDERED.

22
23 DATED: February 14, 2012

24 
25 _____
26 Hon. Anthony J. Battaglia
27 U.S. District Judge
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