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8	UNITED STATES DISTRICT COURT		
9	SOUTHERN DISTRICT OF CALIFORNIA		
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11	KENT WIMBERLY,	CASE NO. 10 CV 2106 MMA (JMA)	
12	Petitioner,	ORDER ADOPTING REPORT AND RECOMMENDATION OF	
13	VS.	UNITED STATES MAGISTRATE JUDGE;	
14		[Doc. No. 8]	
15		DENYING WITH PREJUDICE	
16	GEORGE NEOTTI, Warden,	PETITION FOR WRIT OF HABEAS CORPUS	
17	Respondent.	[Doc. No. 1]	
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19	Petitioner Kent Wimberly, a state prisoner proceeding with counsel, filed a petition for writ		
20	of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the Board of Parole's decision on		
21	September 22, 2009 finding him unsuitable for parole. [Doc. No. 1] Respondent George Neotti		
22	filed a response to the petition [Doc. No. 6], and Petitioner filed a traverse [Doc. No. 7]. The		
23	matter was referred to United States Magistrate Judge Jan M. Adler for preparation of a Report		
24	and Recommendation under 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d)(4).		
25	Judge Adler issued a well-reasoned and thorough Report recommending the petition be		
26	denied in its entirety. Objections to the Report and Recommendation were due no later than		
27	August 16, 2011. To date, Petitioner has not filed any objections.		
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Where, as here, the case has been referred to the magistrate judge pursuant to 28 U.S.C. § 1 2 636, a district judge "may accept, reject, or modify the recommended disposition." Fed. R. Civ. P. 3 72(b); see 28 U.S.C. § 636(b)(1). "[T]he court shall make a *de novo* determination of those 4 portions of the [Report and Recommendation] to which objection is made." 28 U.S.C. § 5 636(b)(1); see also Fed. R. Civ. P. 72(b). "The statute makes it clear that the district judge must 6 review the magistrate judge's findings and recommendations de novo if objection is made, but not 7 otherwise." United States v. Reyna-Tapia, 328 F.3d 1114,1121 (9th Cir. 2003) (en banc). 8 "Neither the Constitution nor the statute requires a district judge to review, de novo, findings and 9 recommendations that the parties themselves accept as correct." Reyna-Tapia, 328 F.3d at 1121. 10 Accordingly, a district court is entitled to adopt a magistrate judge's report and recommendation 11 based on the lack of objections. Nonetheless, the Court has conducted a *de novo* review and 12 agrees that the petition should be denied with prejudice. 13 Accordingly, in the absence of objections and after conducting a de novo review, the Court 14 ADOPTS the Report and Recommendation in its entirety and DENIES WITH PREJUDICE 15 Petitioner's petition. 16 **CERTIFICATE OF APPEALABILITY** 17 "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11 foll. 28 U.S.C. § 2254. A petitioner may not seek an 18 19 appeal of a claim arising out of state court detention unless the petitioner first obtains a certificate 20 of appealability from a district judge or a circuit judge under 28 U.S.C. § 2253. Fed. R. App. P. 21 22(b). Under 28 U.S.C. § 2253(c)(1), a certificate of appealability will issue only if the petitioner 22 makes a substantial showing of the denial of a constitutional right. 23 24 25 26 27 /// 28 ///

1	For the reasons set forth in the Report and Recommendation, Petitioner has not made a		
2	substantial showing of the denial of a constitutional right. Accordingly, a certificate of		
3	appealability should not issue in this action.		
4	IT IS SO ORDERED.		
5	DATED: September 14, 2011 Michael Tu - Chello		
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7	Hon. Michael M. Anello United States District Judge		
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