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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 WILLIAM CECIL THORNTON,
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Petitioner,
v.
MATTHEW CATE, Secretary, et al.,
Respondents.

Civil No. 11cv338-CAB(DHB)

**ORDER ADOPTING REPORT AND
RECOMMENDATION [Doc. No. 75] AND
DENYING SECOND AMENDED
PETITION [Doc. No. 42]**

On February 17, 2011, Petitioner William Cecil Thornton (“Petitioner”), a state prisoner proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, [Doc. No. 1.] On September 29, 2011, Petitioner filed a Second Amended Petition. [Doc. No. 42.] On March 7, 2012, Magistrate Judge Louisa Porter issued a Report and Recommendation (“Report”) recommending that the Petition be denied. [Doc. No. 75.] The Report also ordered that any objections were to be filed by April 6, 2012. [Report at 29.] On April 2, 2012, Petitioner filed a motion for an extension of time to file objections. [Doc. No. 78.] The motion was granted and Petitioner was given until May 6, 2012 to file an objection. [Doc. No. 80.]¹ On April 18, 2012, Petitioner filed a second motion for extension of time to file an objection. [Doc. No. 83.] That motion was also granted and Petitioner was given until June 5, 2012 to file an objection. To date, no objection has been filed, nor

¹ On April 4, 2012, Petitioner also filed a motion to stay and obey the Petition. [Doc. No. 79.] On April 5, 2012, the case was transferred to Magistrate Judge David H. Bartick. [Doc. No. 81.] On May 29, 2012, Magistrate Judge Bartick issued a Report and Recommendation recommending that the Court deny Petitioner’s motion to stay and obey. [Doc. No. 86.] On September 4, 2012, this Court adopted Judge Bartick’s report and recommendation and denied the motion to stay and obey. [Doc. No. 88.]


1 have there been any additional requests for an extension of time in which to file an objection.

2 A district court's duties concerning a magistrate judge's report and recommendation and a
3 respondent's objections thereto are set forth in Rule 72(b) of the Federal rules of Civil Procedure and 28
4 U.S.C. § 636(b)(1). When no objections are filed, the district court is not required to review the
5 magistrate judge's report and recommendation. The Court reviews *de novo* those portions of the Report
6 and Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may "accept,
7 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."
8 *Id.* However, "[t]he statute makes it clear that the district judge must review the magistrate judge's
9 findings and recommendations *de novo* if objection is made, but not otherwise." *United States v.*
10 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc) (emphasis in original). "Neither the
11 Constitution nor the statute requires a district judge to review, *de novo*, findings and recommendations
12 that the parties themselves accept as correct." *Id.*

13 The Court, therefore, accepts Judge Porter's recommendation, and **ADOPTS** the Report [Doc.
14 No. 75] in its entirety. For the reasons stated in the Report, which is incorporated herein by reference,
15 the Court **DISMISSES** the Second Amended Petition [Doc. No. 42] **WITH PREJUDICE**.

16 Moreover, because the Court does not believe that reasonable jurists would find the Court's
17 assessment of the constitutional claims debatable or wrong it **DECLINES** to issue a Certificate of
18 Appealability. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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20 DATED: September 4, 2012

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23 **CATHY ANN BENCIVENGO**
United States District Judge