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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KEVIN KEITH SELLERS,

12 Petitioner,

13 vs.

14 CONNIE GIPSON, Warden,

Respondent.

Case No. 13cv1017 DMS (PCL)

ORDER DENYING PETITION

15 On April 29, 2013, Petitioner Kevin Keith Sellers, a state prisoner proceeding *pro se*, filed a
16 petition for writ of habeas corpus under 28 U.S.C. Section 2254 challenging his conviction and
17 sentence for five counts of first degree robbery of an inhabited dwelling, five counts of assault with
18 caustic chemicals, five counts of making criminal threats, one count of forcible rape, one count of
19 forcible rape while acting in concert, and one count of attempted sodomy by use of force, as well as
20 findings on firearm use allegations and allegations of sexual assaults during burglary and involving
21 tying or binding the victim. The petition was referred to United States Magistrate Judge Peter C.
22 Lewis for a report and recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B) and Civil Local
23 Rule 72.1(d). On October 25, 2013, the Magistrate Judge issued a Report and Recommendation
24 recommending to deny the Petition. Petitioner has not filed objections to the Report and
25 Recommendation.

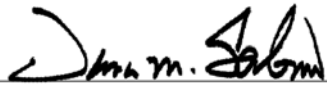
26 A district judge "may accept, reject, or modify the recommended disposition" on a dispositive
27 matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.
28 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of

1 those portions of the [report and recommendation] to which objection is made." 28 U.S.C. §
2 636(b)(1). When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not
3 require review by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50
4 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings
5 and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*,
6 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); see *Schmidt v. Johnstone*, 263
7 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003) (applying *Reyna-Tapia* to habeas review).

8 In the absence of objections, the court adopts the Report and Recommendation. The petition
9 is denied for the reasons stated in the Report and Recommendation. For the same reasons, certificate
10 of appealability is also denied.

11 **IT IS SO ORDERED.**

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13 DATED: December 16, 2013

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16 HON. DANA M. SABRAW
17 United States District Judge
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