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

10 GREGORY WANTON,

11 Petitioner,

12 vs.

13 TIM VIRGA, et al.,

14 Respondents.

CASE NO. 13cv1240-MMA (RBB)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE**

[Doc. No. 14]

15 Petitioner Gregory Wanton, a state prisoner proceeding *pro se*, has filed a  
16 petition for writ of habeas corpus pursuant to Title 28 of the United States Code,  
17 section 2254, challenging his May 4, 2009 conviction for, *inter alia*, first degree  
18 murder, and his sentence of an indeterminate term of seventy-five years to life in  
19 prison with a consecutive determinate term of nine years. *See* Doc. No. 1. United  
20 States Magistrate Judge Ruben B. Brooks previously determined that the petition  
21 contains both exhausted and unexhausted claims. *See* Doc. No. 11. Judge Brooks  
22 advised Petitioner of his options to avoid dismissal of his “mixed” petition. *Id.* On  
23 January 8, 2014, Respondents filed a motion seeking clarification of the instant  
24 proceedings. *See* Doc. No. 13. Judge Brooks granted the motion and has issued a  
25 well-reasoned Report recommending dismissal without prejudice of Petitioner’s  
26 unexhausted claim 5 so that Petitioner may proceed as to claims 1 through 4 of his  
27 petition. *See* Doc. No. 14. Neither party has objected to Judge Brook’s Report and  
28 Recommendation.

1 After reviewing the Report and Recommendation, the Court finds that Judge  
2 Brooks' conclusions are thorough, well-reasoned, and supported by the record. In  
3 light of the foregoing, and the fact that neither party filed objections, the Court  
4 hereby **ADOPTS** the Report and Recommendation in its entirety and **DISMISSES**  
5 **WITHOUT PREJUDICE** claim 5 of the petition.

6 **IT IS SO ORDERED.**

7 DATED: February 14, 2014



Hon. Michael M. Anello  
United States District Judge