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

FRANK JOHNSON,

Petitioner,

v.

R. MADDEN, Warden,

Respondent.

Case No. 15-cv-1559-BAS(PCL)

ORDER:

**(1) APPROVING AND
ADOPTING REPORT AND
RECOMMENDATION IN ITS
ENTIRETY; AND**

**(2) DIRECTING JUDGMENT BE
ENTERED DENYING
PETITIONER'S HABEAS
PETITION**

[ECF No. 11]

22 On July 13, 2015, Petitioner Frank Johnson, a state prisoner proceeding *pro*
23 *se*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging a
24 prison disciplinary decision. Thereafter, Respondent R. Madden, in his capacity as
25 Warden, responded to the petition. On August 4, 2016, United States Magistrate
26 Judge Peter C. Lewis issued a Report and Recommendation (“R&R”) recommending
27 that this Court deny Petitioner’s habeas petition and enter judgment accordingly.
28 Judge Lewis ordered any objections to be filed no later than August 18, 2016, and

1 any replies no later than September 1, 2016. To date, no objections have been filed,
2 and neither party has requested additional time to do so.

3 The Court reviews *de novo* those portions of the R&R to which objections are
4 made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or
5 in part, the findings or recommendations made by the magistrate judge.” *Id.* But
6 “[t]he statute makes it clear that the district judge must review the magistrate judge’s
7 findings and recommendations *de novo if objection is made*, but not otherwise.”
8 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
9 (emphasis in original); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226
10 (D. Ariz. 2003) (concluding that where no objections were filed, the district court had
11 no obligation to review the magistrate judge’s report). “Neither the Constitution nor
12 the statute requires a district judge to review, *de novo*, findings and recommendations
13 that the parties themselves accept as correct.” *Id.* “When no objections are filed, the
14 *de novo* review is waived.” *Marshall v. Astrue*, No. 08cv1735, 2010 WL 841252, at
15 *1 (S.D. Cal. Mar. 10, 2010) (Lorenz, J.) (adopting report in its entirety without
16 review because neither party filed objections to the report despite the opportunity to
17 do so).

18 In this case, the deadline for filing objections was on August 18, 2016.
19 However, no objections have been filed, and neither party has requested additional
20 time to do so. Consequently, the Court may adopt the R&R on that basis alone. *See*
21 *Reyna-Tapia*, 328 F.3d at 1121. Having nonetheless conducted a *de novo* review of
22 the habeas petition, Respondent’s response, the lodgment, and the R&R, the Court
23 concludes that Judge Lewis’ reasoning is sound. Accordingly, the Court hereby
24 approves and **ADOPTS** the R&R in its entirety (ECF No. 11), **DENIES** Petitioner’s
25 writ of habeas corpus (ECF No. 1), and **ORDERS** the Clerk of the Court to enter
26 judgment accordingly. *See* 28 U.S.C. § 636(b)(1).

27 Additionally, a certificate of appealability may issue only if the applicant
28 makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §

1 2253(c)(2). Petitioner has made no such showing. Because reasonable jurists would
2 not find the Court's assessment of the claims debatable or wrong, the Court
3 **DECLINES** to issue a certificate of appealability. *See Slack v. McDaniel*, 529 U.S.
4 473, 484 (2000).

5 **IT IS SO ORDERED.**

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7 **DATED: September 16, 2016**


8 **Hon. Cynthia Bashant**
9 **United States District Judge**

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