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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KENT KEIGWIN,

12 Petitioner,

13 v.

14 J. LIZARRAGA,

15 Respondent.
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Case No.: 3:16-cv-01451-GPC-NLS

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION; AND**

**(2) DENYING MOTION FOR STAY
AND ABEYANCE AS MOOT**

[ECF Nos. 3, 10.]

20 On June 10, 2016, Petitioner Kent Keigwin (“Petitioner”), a state inmate
21 proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus
22 (“Petition”) pursuant to 28 U.S.C. § 2254 challenging his judgment of conviction in the
23 Superior Court of California in San Diego. (Dkt. No. 1.) Petitioner also filed a motion
24 for stay and abeyance on the same day, requesting this Court to stay the Petition pending
25 a final decision by the California Supreme Court for unexhausted claims he raised in the
26 Petition. (Dkt. No. 3.) In the response to the motion for stay and abeyance, Respondent
27 J. Lizarraga (“Respondent”) noted that the California Supreme Court issued a decision on
28 July 13, 2016 denying Petitioner’s habeas petition filed in that court. (Dkt. No. 9 at 4,

1 Opp’n, Ex. A.) Respondent states that accordingly, the stay and abeyance issue is now
2 moot.

3 Before the Court is a Report and Recommendation (“Report”) issued by Magistrate
4 Judge Nita L. Stormes recommending the Court deny as moot the motion for stay and
5 abeyance. (Dkt. No. 10.) Neither party has filed objections to the Magistrate Judge’s
6 Report. After a thorough review of the issues and for the reasons set forth below, this
7 Court **ADOPTS** the Magistrate Judge’s Report and **DENIES AS MOOT** Petitioner’s
8 motion for stay and abeyance.

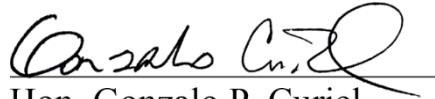
9 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
10 judge’s duties in connection with a magistrate judge’s report and recommendation. The
11 district judge must “make a de novo determination of those portions of the report to
12 which objection is made,” and “may accept, reject, or modify, in whole or in part, the
13 finding or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see*
14 *also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). But “[t]he statute
15 makes it clear that the district judge must review the magistrate judge’s findings and
16 recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
17 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original); *see*
18 *also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (concluding that
19 where no objections were filed, the district court had no obligation to review the
20 magistrate judge’s report). “Neither the Constitution nor the statute requires a district
21 judge to review, *de novo*, findings and recommendations that the parties themselves
22 accept as correct.” *Id.* “When no objections are filed, the *de novo* review is waived.”
23 *Marshall v. Astrue*, No. 08cv1735, 2010 WL 841252, at *1 (S.D. Cal. Mar. 10, 2010)
24 (Lorenz, J.) (adopting report in its entirety without review because neither party filed
25 objections to the report despite the opportunity to do so).

26 In this case, neither party has timely filed objections to the Magistrate Judge’s
27 Report. Consequently, the Court may adopt the Report on the basis that it is unopposed.
28 *See Reyna-Tapia*, 328 F.3d at 1121. Having reviewed the Report, the Court finds that the

1 Report is well-reasoned and contains no clear error. The California Supreme Court
2 issued a decision on July 13, 2016 summarily denying Petitioner's habeas petition filed in
3 that court. (Dkt. No. 9 at 4, Opp'n, Ex. A.) The stay and abeyance issue is now moot.
4 Accordingly, the Court hereby (1) **ADOPTS** the Magistrate Judge's Report in its entirety,
5 and (2) **DENIES AS MOOT** Petitioner's motion for stay and abeyance.

6 **IT IS SO ORDERED.**

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8 Dated: September 30, 2016


Hon. Gonzalo P. Curiel
United States District Judge