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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KENT KEIGWIN,
Petitioner,
v.
J. LIZARRAGA,
Respondent.

Case No.: 3:16-cv-01451-GPC-NLS
**ORDER ADOPTING REPORT AND
RECOMMENDATION, GRANTING
MOTION TO DISMISS, AND
DISMISSING PETITION AS MOOT**
[ECF Nos. 14, 17.]

On June 10, 2016, Petitioner Kent Keigwin (“Petitioner”), a state inmate proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254 challenging his judgment of conviction in the Superior Court of California in San Diego. (Dkt. No. 1.) On October 12, 2016, Respondent J. Lizarraga (“Respondent”) filed a motion to dismiss the Petition, requesting that the Court dismiss the Petition as moot, because Petitioner died on August 8, 2016. (Dkt. No. 14 at 2, 4.)

Before the Court is a Report and Recommendation (“Report”) issued by Magistrate Judge Nita L. Stormes recommending that this Court grant Respondent’s motion to

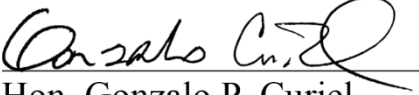
1 dismiss and dismiss the Petition as moot. (Dkt. No. 17.) For the reasons set forth below,
2 this Court **ADOPTS** the Magistrate Judge’s Report, **GRANTS** Respondent’s motion to
3 dismiss the Petition, and **DISMISSES AS MOOT** the Petition.

4 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
5 judge’s duties in connection with a magistrate judge’s report and recommendation. The
6 district judge must “make a de novo determination of those portions of the report to
7 which objection is made,” and “may accept, reject, or modify, in whole or in part, the
8 finding or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see*
9 *also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). But “[t]he statute
10 makes it clear that the district judge must review the magistrate judge’s findings and
11 recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
12 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original).

13 In this case, the Court may adopt the Report on the basis that it is unopposed. *See*
14 *Reyna-Tapia*, 328 F.3d at 1121. Where a habeas petitioner dies while the petition is
15 pending, the petition must be dismissed as moot. *Garceau v. Woodford*, 399 F.3d 1101
16 (9th Cir. 2005); *Griffey v. Lindsey*, 349 F.3d 1157 (9th Cir. 2003). Respondent provided
17 proof that Mr. Keigwin died on August 8, 2016. (Dkt. No. 14 at 4.) Accordingly, the
18 Court **ADOPTS** the Magistrate Judge’s Report, **GRANTS** Respondent’s motion to
19 dismiss the Petition, and **DISMISSES AS MOOT** the Petition.

20 **IT IS SO ORDERED.**

21 Dated: December 15, 2016

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23 Hon. Gonzalo P. Curiel
24 United States District Judge
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