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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *RM*

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL AGUON,
Petitioner,
v.
WARREN L. MONTGOMERY, Warden,
Respondent.

Case No.: 3:16-cv-02421-BEN-AGS

ORDER:

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

**(2) GRANTING MOTION TO STAY;
and**

**(3) DENYING RESPONDENT'S
MOTION TO DISMISS**

Petitioner Michael Aguon has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Docket No. 1). Subsequently, the Honorable Jan M. Adler issued a notice regarding possible dismissal of Petitioner's petition for failure to exhaust state court remedies. (Docket No. 2). Four of the five claims in Petitioner's federal petition have not been exhausted in state court. Respondent filed a motion to dismiss for failure to exhaust. (Docket No. 10). Petitioner responded, requesting a stay under *Rhines v. Weber*, 544 U.S. 269 (2005). (Docket No. 12).

On June 12, 2017, the Honorable Andrew G. Schopler issued a Report and Recommendation, which recommended granting Petitioner's request for a stay and

1 denying Respondent's motion to dismiss. (Docket No. 13). Judge Schopler found that
2 Petitioner is entitled to a *Rhines* stay. Judge Schopler set a deadline for any party to file
3 objections to the Report and Recommendation, but that deadline has now passed, and
4 neither party has filed any objections.

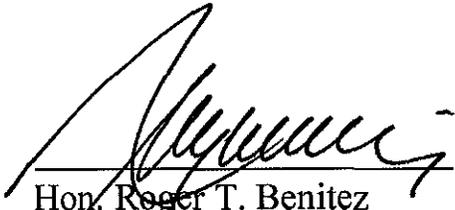
5 A district judge "may accept, reject, or modify the recommended disposition" of a
6 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.
7 § 636(b)(1). "[T]he district judge must determine de novo any part of the [report and
8 recommendation] that has been properly objected to." Fed. R. Civ. P. 72(b)(3).
9 However, "[t]he statute makes it clear that the district judge must review the magistrate
10 judge's findings and recommendations de novo *if objection is made*, but not otherwise."
11 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also*
12 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). "Neither the Constitution nor
13 the statute requires a district judge to review, de novo, findings and recommendations
14 that the parties themselves accept as correct." *Reyna-Tapia*, 328 F.3d at 1121.

15 The Court has considered and agrees with the Report and Recommendation. The
16 Court **ADOPTS** the Report and Recommendation. (Docket No. 13). Petitioner's request
17 for a stay is **GRANTED** (Docket No. 12) and Respondent's motion to dismiss for failure
18 to exhaust is **DENIED** (Docket No. 10).

19 This action is **STAYED** until the California Supreme Court rules on Petitioner's
20 pending state habeas petition. Petitioner is required to file a status report about his state
21 habeas petition every two months. Petitioner is further ordered to file a final status report
22 within seven (7) days of any ruling on his state habeas petition.

23 **IT IS SO ORDERED.**

24
25 Dated: August 28, 2017

26 
27 Hon. Roger T. Benitez
28 United States District Judge