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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 HUSSEIN ADEN IBRAHIM,
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Petitioner,
v.
ROBERT FOX, WARDEN,
Respondent.

Case No.: 3:17-cv-00696-BEN-AGS

ORDER:

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

**(2) GRANTING RESPONDENT'S
MOTION TO DISMISS PETITION**

18 Petitioner Hussein Aden Ibrahim, a state prisoner, commenced this action with the
19 filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on April 5,
20 2017. (Docket No. 1.) On May 5, 2017, Petitioner filed a First Amended Petition.
21 (Docket No. 2.) On June 21, 2017, Respondent filed a Motion to Dismiss the Petition for
22 Writ of Habeas Corpus and a Notice of Lodgment. (Docket Nos. 6-7.) On September 15,
23 2017, Petitioner filed an Opposition to Respondent's motion. (Docket No. 10.)

24 Subsequently, following review of Petitioner's First Amended Petition,
25 Respondent's Motion to Dismiss, Petitioner's Opposition, and the lodgments, Magistrate
26 Judge Andrew G. Schopler issued a thoughtful and thorough Report and
27 Recommendation ("Report") recommending that the Motion be granted. (Docket No.
28 13.) Objections to the Report were due by February 8, 2018. (*Id.*) Petitioner timely filed

1 his objections to the Report. (Docket No. 14.) For the reasons that follow, Petitioner’s
2 Objections are overruled, the Report is **ADOPTED**, and the Petition is **DENIED**.

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

13 Petitioner objects to the Report’s reliance on *Curiel v. Miller*, 830 F.3d 864 (9th
14 Cir. 2016) (en banc) in recommending that his petition be dismissed as untimely.
15 Petitioner argues that Magistrate Judge Schopler should have interpreted the California
16 Supreme Court’s summary denial as a decision on the merits, rather than applying the
17 “look through” doctrine and ultimately adopting the California Court of Appeal’s written
18 opinion that his petition was untimely. (Pet’r’s Objection at pp. 1-2.) The crux of
19 Petitioner’s objection is that the United States Supreme Court *might* disavow or otherwise
20 undermine the “look through” doctrine.¹ (*Id.* at pp. 2-4) (citing *Wilson v. Sellers*, 834
21 F.3d 1227 (11th Cir. 2016), *cert. granted*, 137 S. Ct. 1203 (U.S. February 27, 2017) (No.
22 16-6855).) However, as Magistrate Judge Schopler accurately stated, the Ninth Circuit
23 has given “clear guidance on how to deal with” the California Supreme Court’s issuance
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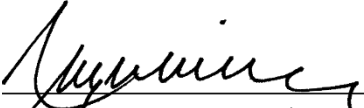
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26 ¹ The “look through” doctrine describes “a common practice of the federal courts
27 to examine the last reasoned state decision to determine whether a state-court decision is
28 ‘contrary to’ or ‘an unreasonable application of’ clearly established federal law. *Cannedy*
v. Adams, 706 F.3d 1148, 1158 (9th Cir. 2013) (citations omitted).

1 of a “postcard denial without explanation or citation,” which is to “analyze[] the last
2 ‘reasoned’ state court decision.” (Report at pp. 3-4) (quoting *Curiel*, 830 F.3d at 869.)
3 Unless and until a controlling court determines otherwise, application of the “look
4 through” doctrine is appropriate where, as here, the California Supreme Court declines to
5 issue a reasoned opinion or cite to any cases that indicates the basis for its determination.
6 *Curiel*, 830 F.3d at 869; *see also In re Robbins*, 18 Cal. 4th 770, 814 n.34 (1998)
7 (explaining that specific reference to certain cases indicates whether a decision has been
8 rendered on the merits or is time-barred).

9 In sum, the Court agrees with Magistrate Judge Schopler’s conclusions that
10 Petitioner’s state habeas petitions were untimely, that as a result his federal habeas
11 deadline was not tolled, and that therefore his Petition is also untimely. Thus, dismissal
12 with prejudice is appropriate. Accordingly, Petitioner’s objections are hereby
13 **OVERRULED**, the Report and Recommendation is fully **ADOPTED** and Petitioner’s
14 Petition is **DISMISSED with prejudice**.

15 **IT IS SO ORDERED.**

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17 Dated: February 20, 2018

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19 Hon. Roger T. Benitez
20 United States District Judge
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