

1 as an erroneous application of California law, contained no assertion of a federal constitutional
2 violation and therefore failed to state a cognizable claim for federal habeas relief. (*Id.* at 13.)

3 The findings and recommendations were served on petitioner with notice that any
4 objections thereto were to be filed within twenty-one (21) days of the date of their service. No
5 objections to the pending findings and recommendations have been filed with the court, and the
6 time for doing so has passed.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the undersigned concludes
9 that the magistrate judge’s findings and recommendations are supported by the record and proper
10 analysis. Therefore, the findings and recommendations will be adopted and petitioner’s request
11 for federal habeas relief will be denied on the merits.

12 In addition, the court declines to issue a certificate of appealability. A petitioner seeking a
13 writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition,
14 and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–
15 36 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may only
16 issue a certificate of appealability if “jurists of reason could disagree with the district court’s
17 resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues
18 presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327;
19 *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to
20 prove the merits of his case, he must demonstrate “something more than the absence of frivolity
21 or the existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338. In the present
22 case, the court concludes that reasonable jurists would not find the court’s determination that the
23 petition should be denied debatable or wrong, or that the issues presented are deserving of
24 encouragement to proceed further. Petitioner has not made the required substantial showing of
25 the denial of a constitutional right. Therefore, the court will decline to issue a certificate of
26 appealability.

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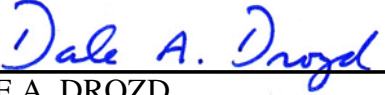
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Accordingly:

1. The findings and recommendations issued on August 21, 2023 (Doc. No. 18) are adopted in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
3. The court declines to issue a certificate of appealability (28 U.S.C. § 2253(c)); and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: November 18, 2023



DALE A. DROZD
UNITED STATES DISTRICT JUDGE