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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN SCOTT MCCLINTOCK,
Petitioner,
v.
GENA JONES,
Respondent.

No. 2:24-cv-01599-TLN-AC

ORDER

Petitioner, a state prisoner proceeding pro se, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 15, 2024, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty one days. Neither party filed objections to the findings and recommendations.

The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). The Court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (ECF No. 18) are ADOPTED IN FULL.

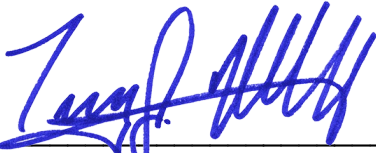
2. Respondent’s motion to dismiss (ECF No. 11) is GRANTED.

3. Petitioner’s motion for a stay (ECF No. 16) is DENIED as moot.

4. Petitioner’s application for a writ of habeas corpus (ECF No. 1) is DISMISSED without prejudice to refile as a 42 U.S.C. § 1983 action.

5. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

Date: January 7, 2025



TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE