

1 The R&R directed the parties to file their objections no later than January 2, 2008, and
2 replies to the objections no later than January 16. The R&R specifically warned the parties
3 that failure to file objections may waive the right to raise those objections on appeal. Neither
4 party filed objections within the time permitted or sought an extension of time in which to
5 object.

6 A district court has jurisdiction to review a Magistrate Judge’s report and
7 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “The district judge to whom
8 the case is assigned shall make a de novo determination upon the record, or after additional
9 evidence, of any portion of the magistrate judge’s disposition to which specific written
10 objection has been made in accordance with this rule.” *Id.* “A judge of the court may accept,
11 reject, or modify, in whole or in part, the findings or recommendations made by the
12 magistrate judge.” 28 U.S.C. § 636(b)(1)(C). If no objection is made, this Court may adopt
13 the R&R without review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003)
14 (“The statute makes it clear that the district judge must review the magistrate judge's findings
15 and recommendations de novo *if objection is made*, but not otherwise.”) (en banc).

16 The Court has reviewed the R&R and now modifies it in two respects. First, the R&R
17 denied Petitioner’s request for judicial notice of certain documents, characterizing
18 Petitioner’s request as one for judicial notice of adjudicative facts in *McQuillion v. Duncan*,
19 342 F.3d 1012 (9th Cir. 2003), yet accepting submitted documents as lodgments. (R&R at
20 12:13–13:5.) Plaintiff in fact twice requested judicial notice, first in his amended petition at
21 6f–6h, and again by motion on April 25, 2007. Judge Battaglia did rely on *McQuillion*, and
22 cited it throughout the R&R, but properly did not rely on any adjudicative facts from the
23 underlying case.

24 Petitioner also, however, requested judicial notice of additional documents. (See
25 Motion for Judicial Notice of Psychological Evaluation, filed April 25, 2007, and attached
26 exhibits.) The documents consist of a transcript of the 2003 hearing, as well as several
27 documents created after the 2003 decision. The transcript of the Board’s 2003 decision

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1 was already in the record, attached as an exhibit to the amended petition, (Am. Pet., Ex. A),
2 and the R&R accepts and relies on it. (R&R at 8:19–9:4.)

3 The later documents include a psychological report dated August 19, 2004 and
4 portions of the transcript of the 2005 Board hearing. These are irrelevant to the issue of
5 whether the Board’s decision in 2003 warrants habeas relief. Events following the Board’s
6 2003 denial of parole could not have formed the basis of the Board’s decision in 2003, and
7 Petitioner has not shown these later documents are relevant in any other way. While these
8 documents might be relevant if Petitioner were seeking relief from the Board’s 2005 denial
9 of parole, they are not relevant in this case. While the R&R did not specifically rule on the
10 question of judicial notice of the documents created after 2003, denial of Petitioner’s request
11 is proper under Fed. R. Evid. 201 and 402.

12 The R&R also address Petitioner’s argument that he entered into an agreement with
13 the state of California when he signed a “Notice and Conditions of Parole” in 1991, and that
14 the state subsequently breached this agreement. The R&R indicates Petitioner never
15 explained what the terms of this agreement were. (R&R at 10:22–23.) On review it is
16 apparent Petitioner is referring to a document filed as Exhibit F to his amended petition. (See
17 Am. Pet. at 6f:8–11 (citing Exhibits B and F).) In his amended petition, Petitioner argues the
18 Board never mentioned any violation of the agreement, as he characterizes it, which would
19 merit revocation or rescission of parole. (*Id.*) Any claim Petitioner might have for habeas
20 relief based on the Board’s decision in 1992 to revoke or rescind parole is obviously time-
21 barred. (See R&R at 9:24–10:30.) The R&R, however, liberally construed the amended
22 petition as challenging the 2003 decision based on the 1991 agreement. (*Id.* at 10:4–19.)

23 Exhibit F, the agreement Petitioner relies on, is a document titled Notice and
24 Conditions of Parole and was signed by Petitioner and an institutional representative on April
25 1, 1992. It is not fully clear whether such an agreement represents a contract the state must
26 abide by, or whether it represents the state’s unilateral imposition of conditions. See *United*
27 *States v. Crawford*, 372 F.3d 1048, 1084 (9th Cir. 2004) (Fletcher, J., dissenting) (noting
28 unresolved disagreement).

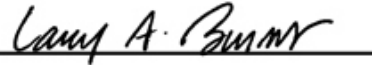
1 Even if this type of document would ordinarily be binding on the state, however, the
2 document contemplates Petitioner's release on parole beginning on July 27, 1991. Because
3 he was not released, the purpose of such an agreement is frustrated and the conditions of
4 release, which are meaningless when applied to a prisoner, are a dead letter.

5 Furthermore, regardless of how the Court reads the Notice and Conditions of Parole,
6 it is plain the state did not breach its agreement with Plaintiff. The document specifically
7 states: "When the Board of Prison Terms determines, based on psychiatric reasons, that you
8 pose a danger to yourself or others, the Board . . . may revoke your parole and order your
9 return to prison." (Am. Pet., Ex. F.) At the hearing held in 1992, the Board reconsidered a
10 decision to grant parole based on both the seriousness of the offense and negative
11 psychiatric reports. (*Id.*, Ex. B (citing transcript at 83:24-84:6).) It is apparent the Board in
12 1992 determined Petitioner was dangerous, and based its decision on psychiatric reasons.
13 Petitioner appears to be reading into this document a provision that, once parole is revoked
14 or rescinded, the Board must again grant it on the same terms. No such provision is found
15 in the document, however. Nothing in this document purports to bind the Board or the state
16 to its terms in all future parole determinations.

17 For these reasons, the Court **ADOPTS** the R&R as modified herein. The Petition is
18 **DENIED.**

19 **IT IS SO ORDERED.**

20 DATED: January 31, 2008

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22 **HONORABLE LARRY ALAN BURNS**
23 United States District Judge

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