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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 CHARLES J. MCCRAW,
12 Petitioner,
13 v.
14 N. MCDOWELL, Warden,
15 Respondent.

Case No.: 17cv1106-LAB (BLM)

**ORDER ADOPTING REPORT
AND RECOMMENDATION; AND**

ORDER OF DISMISSAL

16
17 Petitioner Charles McCraw filed a petition for writ of habeas corpus under 28
18 U.S.C. § 2254. The matter was referred to Magistrate Judge Barbara Major
19 pursuant to 28 U.S.C. § 636. Respondent then moved to dismiss the petition on
20 the grounds that the claims McCraw was raising were not cognizable on habeas
21 review. On December 1, 2017, Judge Major issued her report and
22 recommendation (the "R&R"), recommending that the motion to dismiss be granted
23 and the petition dismissed without prejudiced to the claims being raised in a
24 petition under 42 U.S.C. § 1983.

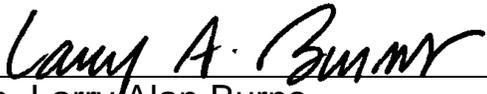
25 Objections to the R&R were due December 29, 2017 and the R&R warned
26 the parties that failure to file objections within the specified time may waive the
27 right to raise them later on appeal. Since then, McCraw has filed no objections,
28 nor sought additional time in which to do so.

1 A district court has jurisdiction to review a Magistrate Judge's report and
2 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge
3 must determine de novo any part of the magistrate judge's disposition that has
4 been properly objected to." *Id.* "A judge of the court shall make a de novo
5 determination of those portions of the report or specified proposed findings or
6 recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "A judge of
7 the court may accept, reject, or modify, in whole or in part, the findings or
8 recommendations made by the magistrate judge." *Id.* The Court reviews de novo
9 those portions of the R&R to which specific written objection is made. *United States*
10 *v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc). "The statute makes
11 it clear that the district judge must review the magistrate judge's findings and
12 recommendations de novo *if objection is made*, but not otherwise." *Id.*

13 Having considered the R&R, the Court finds it to be correct, and **ADOPTS** it.
14 Respondent's motion to dismiss is **GRANTED** and the petition is **DISMISSED**
15 without prejudice to its claims being raised in a civil rights complaint under 42
16 U.S.C. § 1983 or another appropriate action.

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18 **IT IS SO ORDERED.**

19 Dated: January 10, 2018

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23 Hon. Larry Alan Burns
24 United States District Judge
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