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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MICHAEL BROWN,

12 Plaintiff,

13 v.

14 W.L. MONTGOMERY, Warden, et al.,

15 Defendant.

Case No.: 19cv2021-CAB-WVG

**ORDER ADOPTING REPORT AND
RECOMMENDATION[Doc. No. 14],
GRANTING MOTION TO DISMISS
[Doc. No. 10], AND DISMISSING
PETITION**

16
17 On October 21, 2019, Petitioner Michael Brown (“Petitioner”), a state prisoner
18 proceeding pro se and in forma pauperis, filed a Petition for Writ of Habeas Corpus
19 pursuant to 28 U.S.C. § 2254, [Doc. No. 1.] On April 6, 2020, Respondent filed a motion
20 to dismiss the petition and lodged the state court record. [Doc. Nos. 10, 11.] Petitioner did
21 not file an opposition.

22 On August 13, 2020, Magistrate Judge William V. Gallo issued a Report and
23 Recommendation (“Report”), recommending that the Court **GRANT** Respondent’s
24 motion to dismiss. [Doc. No. 14.] The Report also ordered that any objections were to be
25 filed by October 30, 2020. [Report at 12.] To date, no objection has been filed, nor has
26 there been a request for additional time in which to file an objection.

27 A district court’s duties concerning a magistrate judge’s report and
28 recommendation and a respondent’s objections thereto are set forth in Rule 72(b) of the

1 Federal rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are
2 filed, the district court is not required to review the magistrate judge’s report and
3 recommendation. The Court reviews de novo those portions of the Report and
4 Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may
5 “accept, reject, or modify, in whole or in part, the findings or recommendations made by
6 the magistrate judge.” Id. However, “[t]he statute makes it clear that the district judge
7 must review the magistrate judge's findings and recommendations de novo if objection is
8 made, but not otherwise.” United States v. Reyna–Tapia, 328 F.3d 1114, 1121 (9th
9 Cir.2003) (en banc) (emphasis in original). “Neither the Constitution nor the statute
10 requires a district judge to review, de novo, findings and recommendations that the
11 parties themselves accept as correct.” Id.

12 Here, neither party has timely filed objections to the Report. Having reviewed it,
13 the Court finds that it is thorough, well-reasoned, and contains no clear error.
14 Accordingly, the Court **HEREBY ADOPTS** Magistrate Judge Gallo’s Report and
15 Recommendation [Doc. No. 14] in its entirety. For the reasons stated in the Report,
16 which is incorporated herein by reference, the Court **GRANTS** the motion to dismiss
17 [Doc. No. 10] and **DISMISSES** the Petition **WITHOUT LEAVE TO AMEND**. [Doc.
18 No. 1.]

19 Moreover, because the Court does not believe that reasonable jurists would find the
20 Court’s assessment of the constitutional claims debatable or wrong it **DECLINES** to
21 issue a Certificate of Appealability. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

22 **IT IS SO ORDERED.**

23 Dated: November 19, 2020

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26 Hon. Cathy Ann Bencivengo
27 United States District Judge
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