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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS PHILLIPS,

Petitioner,

No. 2:10-cv-00386 WBS KJN P

vs.

C. NOLL,

Respondent.

FINDINGS & RECOMMENDATIONS

_____ /


By order filed October 19, 2010, petitioner was ordered to show cause, within twenty-one days, why his action should not be dismissed due to petitioner's failure to file an opposition to respondent's motion to dismiss filed April 26, 2010. Petitioner was cautioned that failure to respond to the court's order, or to file an opposition to the pending motion to dismiss, would result in a recommendation that this action be dismissed. The deadline has now expired, and petitioner has not shown cause or otherwise responded to the court's order or to respondent's motion to dismiss the petition.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110, 230(l); Fed. R. Civ. P. 41(b). Respondent's motion to dismiss (Dkt. No. 10) should be denied as moot.

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1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). These findings
3 and recommendations are submitted to the United States District Judge assigned to the case,
4 pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days after being served with these
5 findings and recommendations, any party may file written objections with the court and serve a
6 copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s
7 Findings and Recommendations.” Any response to the objections shall be filed and served
8 within 14 days after service of the objections. The parties are advised that failure to file
9 objections within the specified time may waive the right to appeal the District Court’s order.
10 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: November 22, 2010

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15 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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