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

DAVID WAYNE JOHNSON,

Petitioner,

No. CIV S-10-1568 KJM DAD P

vs.

SWARTHOUT, Warden,

Respondent.

ORDER

_____ /

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

On April 22, 2011, the magistrate judge filed findings and recommendations, 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 has 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.

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1 1983). Having carefully reviewed the file, the court finds the findings and recommendations to
2 be supported by the record and by the proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed April 22, 2011, are adopted in full;
5 2. Respondent's November 15, 2010 motion to dismiss (Doc. No. 13) is denied;

6 and

7 3. Respondent is directed to file an answer to petitioner's amended petition
8 within sixty days. See Rule 4, Fed. R. Governing § 2254 Cases. The answer shall be
9 accompanied by all transcripts and other documents relevant to the issues presented in the
10 petition. See Rule 5, Fed. R. Governing § 2254 Cases.

11 DATED: August 11, 2011.

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14 UNITED STATES DISTRICT JUDGE
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