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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DONALD FISHER,		1:09-cv-01990-OWW-MJS (HC)
Petitioner,		ORDER ADOPTING FINDINGS AND RECOMMENDATION
v.		ORDER DENYING RESPONDENT'S MOTION TO DISMISS
J.D. HARTLEY, Warden,		ORDER REFERRING ACTION BACK TO MAGISTRATE JUDGE
Respondent.		

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/ [Docs. 12,16]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 7, 2010, the Magistrate Judge issued Findings and Recommendation that the petition be dismissed for failure to file the petition for Habeas Corpus within the one year limitation period required by 28 U.S.C. § 2244(d). (Findings and Recommendation, ECF No. 16.) This Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. On October 7, 2010, Respondent filed objections to the Findings and Recommendation, and on October 20, 2010, Petitioner filed a reply to the objections. (Objections and Reply, ECF Nos. 17-18.)

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Respondent's objections, the Court concludes that the Magistrate Judge's Findings and

1 Recommendation is supported by the record and proper analysis.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Respondent's motion to dismiss to for failure to file the petition for Habeas  
4 Corpus within the one year limitation period required by 28 U.S.C. § 2244(d)  
5 is DENIED; and
- 6 2. This action is REFERRED to the assigned Magistrate Judge for further  
7 proceedings.

8  
9 IT IS SO ORDERED.

10 **Dated:** November 12, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE