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

JOHN OSCAR PHILLIPS,

Petitioner,

No. CIV S-07-2110 JAM DAD P

vs.

ROBERT AYERS, JR., et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On June 24, 2009, the magistrate judge filed findings and recommendations herein 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 days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed June 24, 2009, are adopted in full;

and

2. Respondents' December 22, 2008 motion to dismiss the amended petition for failure to exhaust state remedies (Doc. No. 17) is denied.

DATED: August 31, 2009

/s/ John A. Mendez

U. S. District Court Judge

/phil2110.801