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

CURTIS R. KIMES,

Plaintiff,

No. CIV S-09-0853 KJM DAD PS

v.

ERIK K. SHINSEKI, Secretary,
U.S. Department of Veteran Affairs,

Defendant.

ORDER

Plaintiff is proceeding *pro se* with the above-entitled action. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On March 10, 2011, the magistrate judge filed findings and recommendations recommending denial of defendant’s motion to dismiss, which were served on all parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within twenty-one days after service of the findings and recommendations. The twenty-one-day period has expired, and no party has filed objections to the findings and

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1 recommendations. In fact, on April 5, 2011, defendant filed an answer to plaintiff's amended
2 complaint.¹

3 Accordingly, the court presumes any findings of fact are correct. *See Orand v.*
4 *United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are
5 reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir.
6 1983). The court has reviewed the file and finds the findings and recommendations to be
7 supported by the record and by the magistrate judge's analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The findings and recommendations filed March 10, 2011 (Doc. No. 32) are
10 adopted in full; and

11 2. Defendant's June 3, 2010 motion to dismiss (Doc. No. 27) is denied.

12 DATED: July 20, 2011.

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16 UNITED STATES DISTRICT JUDGE
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26 ¹ The court notes the parties have not consented to magistrate judge jurisdiction, although that option is available to them if they wish. *See* Docket No. 3.