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

CHARLES RAY SMITH,

Petitioner,

No. CIV S-09-2967 MCE GGH P

vs.

M. MCDONALD,

ORDER

Respondent.
_____ /

Petitioner is a state prisoner proceeding with appointed counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed a motion for an evidentiary hearing (Second Amended Notice) and set it for argument on October 13, 2011. Doc. 39. However, the hearing is approximately one week away and respondent has not filed an opposition or a statement of non-opposition. See Local Rule 230. Nevertheless, the hearing shall go forward on the scheduled date. Whether respondent will be heard depends on the reason why no opposition was filed.

IT IS SO ORDERED.

Dated: October 6, 2011

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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