IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

RICHARD SECRETAN,	)	**1:08-CV-1059-OWW WMW HC**
	)	
Petitioner,	)	**ORDER VACATING FINDINGS AND**
	)	**RECOMMENDATIONS AND**
vs.	)	**CONSTRUING DENIAL AND**
	)	**EXCEPTION AS OPPOSITION**
WARDEN,	)	**TO MOTION TO DISMISS**
	)	
Respondent.	)	[Doc. 23, 25]
	)	
	)	

Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

Petitioner filed his petition in this case on June 25, 2008, and filed an amended petition on July 15, 2008. On July 23, 2008, the case was transferred from the Sacramento division of the Eastern District to this court. On September 2, 2008, the court served a screening order on Petitioner by mail. On September 15, 2008, the United States Postal Service returned the order, as undeliverable. Again on October 17, 2008, a second order

mailed to Petitioner by the court was returned as undeliverable. Accordingly, on December 2, 2008, the undersigned entered findings and recommendations that this action be dismissed for failure to prosecute, based on Petitioner's failure to keep the court advised of his current address.

On December 9, 2008, Petitioner filed objections to the findings and recommendations. In his objections, Petitioner states that he was out to court in Santa Barbara County during the relevant time period, and that he did not have access to his court papers. Petitioner provides supporting documentation. Based on Petitioner's representation, the court will vacate the findings and recommendations. Petitioner is cautioned, however, that he has a continuing duty to keep the court apprised of his current address.

On December 22, 2008, Petitioner filed with the court and served on Respondent a document entitled "Denial and Exception." The court will construe this document as an opposition to Respondent's motion to dismiss now pending before the court.

Based on the foregoing, IT IS HEREBY ORDERED as follows:

1) The findings and recommendations entered December 2, 2008, are VACATED;

2) The denial and exception filed December 22, 2008, is CONSTRUED as an opposition to Respondent's motion to dismiss;

3) Respondent is GRANTED twenty (20) days from the date of service of this order within which to file a reply to Petitioner's opposition to the motion to dismiss.

IT IS SO ORDERED.

Dated: January 22, 2009 **/s/ William M. Wunderlich**
UNITED STATES MAGISTRATE JUDGE