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

DUANE REED MOORE, SR.,

Plaintiff,

No. CIV S-06-2187 FCD EFB P

vs.

SUE HUBBARD, Warden, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The action proceeds on plaintiff’s November 28, 2007 amended complaint.

On June 5, 2008, process was returned unexecuted because defendant Muller could not be located. On June 13, 2008, the court directed plaintiff to discover defendant Muller’s whereabouts and gave him time to submit papers to again attempt service of process on defendant Muller. Plaintiff failed to comply with that order and on October 2, 2008, the court gave plaintiff 90 additional days to submit the information necessary to serve defendant Muller. The court warned plaintiff that failure to comply with this order would result in a recommendation that claims against defendant Muller be dismissed.

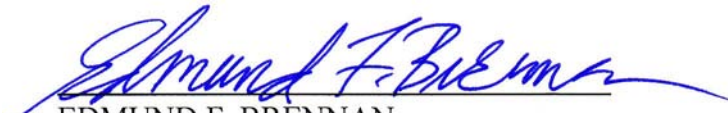
The 90 day period given by the court’s October 2, 2008 order has passed and plaintiff has not returned the USM-285 form necessary to effect service on defendant Muller or otherwise

1 responded to the court's order.

2 Accordingly, it is hereby RECOMMENDED that this action be dismissed without
3 prejudice with respect to defendant Muller.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
9 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: February 2, 2009.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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