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10 MARK ANTHONY MORENO,

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to the court's order.

VS.

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25 26 IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff,

Defendants.

No. CIV S-08-1344 JAM EFB P

ERVIN, et al.,

FINDINGS AND RECOMMENDATIONS

On January 28, 2009, the court ordered the United States Marshal to serve the complaint on defendants. On March 31, 2009, process directed to defendant Waterman was returned unserved with the notations that there was no record of employment for that person at the institution plaintiff designated for service, and that the Department of Corrections and Rehabilitation was unable independently to locate the defendant in their personnel database. On April 29, 2009, the court directed plaintiff to provide additional information to serve defendant Waterman within 90 days. That period has passed and plaintiff has not returned the USM-285 forms necessary to effect service on defendant Waterman. Neither has he otherwise responded

Accordingly, it is hereby RECOMMENDED that defendant Waterman be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fifteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). DATED: August 19, 2009.

EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE