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

EUGENE A. ALLEN,

Plaintiff,

No. CIV S-08-2109 WBS EFB P

vs.

CONSTANCE PICCIANO,

Defendant.

FINDINGS AND RECOMMENDATIONS

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On November 3, 2008, the court ordered plaintiff to either file an *in forma pauperis* affidavit or pay the appropriate filing fee within 30 days and warned him that failure to do so would result in a recommendation that this action be dismissed. The Clerk of the Court also mailed to plaintiff a form application for leave to proceed *in forma pauperis*. On December 1, 2008, plaintiff requested an extension of time to file his application for leave to proceed *in forma pauperis*. On December 10, 2008, the court granted plaintiff's request and ordered plaintiff to file an application to proceed *in forma pauperis* within 30 days. The court again warned plaintiff that failure to do so would result in a recommendation that this action be dismissed. The Clerk of the Court also mailed to plaintiff another form application.

The 30-day period has expired and while plaintiff has requested a hearing and filed a statement regarding the background of his case, he has not filed an *in forma pauperis* affidavit or

1 otherwise responded to the December 10, 2008 order.

2 It therefore is RECOMMENDED that this action be dismissed without prejudice.

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

10 Dated: January 21, 2009.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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