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

BILLY PAUL BIRDWELL, II,

Plaintiff,

No. 2:10-cv-0719 KJM GGH P

vs.

M. CATES, et al.,

ORDER

Defendants.

_____ /

Plaintiff is state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Service was effectuated on approximately 17 defendants in April and May of 2011. One defendant remains unserved, Petersen, and on August 23, 2011, the undersigned recommended that Petersen be dismissed as plaintiff did not return the service forms. Discovery commenced and finished and the remaining defendants filed a motion for summary judgment. On May 9, 2012, the undersigned recommended that the motion for summary judgment be granted and this case closed. The undersigned also looked to the merits of the claims against Petersen and recommended that Petersen be dismissed, despite being unserved. On June 1, 2012, the district judge assigned to this case declined to adopt the August 23, 2011, findings and recommendations that Petersen be dismissed for failure to return the service forms and provided plaintiff another opportunity to return the service forms. Plaintiff has returned the completed

