1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 TERRYLYN McCAIN, No. 2:11-cv-1265 KJM AC PS 12 Plaintiff. 13 **FINDINGS & RECOMMENDATIONS** v. 14 CALIFORNIA HIGHWAY PATROL, ET AL., 15 Defendants. 16 17 On June 18, 2014, the Court held a status conference in this matter. Alberto Gonzalez 18 19 appeared for the California High Patrol and Officers Mangham, Walling and Pint. Floyd 20 Cranmore appeared for defendants Mike's Towing Service, Inc., and Michael D. Olivarez. 21 Plaintiff pro se Terrylyn McCain did not make an appearance for the reason that she is currently 22 in custody for violation of a condition of release in a pending criminal matter before the Honorable Troy L. Nunley, <u>USA v. McCain</u>, 2:12-cr-0144-TLN.¹ 23 24 This civil case has been stalled for over a year due to plaintiff's failure to participate in 25 discovery. Plaintiff's ongoing criminal case, which has involved mental competency proceedings 26 ¹ The undersigned had issued a writ to ensure plaintiff's appearance at the status conference, see ECF No. 177, and court staff subsequently made arrangements with the Sacramento County 27 Sheriff's Department Main Jail staff to have plaintiff appear telephonically. Due to an apparent 28 error by jail staff, plaintiff did not telephonically appear as scheduled. 1

and changes in her custodial status, has complicated scheduling. The undersigned had hoped to address matters raised in the defendant's status report, ECF No. 175, and to issue a scheduling order. Once again, the status of plaintiff's criminal case has made scheduling impractical.

A jury trial was scheduled in the criminal matter for June 30, 2014. Plaintiff had previously waived her right to counsel in that case and is proceeding pro se. However, following a status conference on June 19, 2014, and based on Ms. McCain's filings in that case and on her conduct during the conference, Judge Nunley declared a doubt regarding her competency and vacated the trial date. <u>USA v. McCain</u>, ECF No. 140. On June 24, 2014, Judge Nunley ordered Ms. McCain to be committed for a mental competency examination² and set a further status conference for August 7, 2014 at 9:30 a.m. to address the results of that examination. In light of foregoing, the undersigned will recommend that this matter be stayed pending Judge Nunley's ruling on plaintiff's competency to proceed in the criminal matter and the further scheduling, if any, of that case.

Accordingly, IT IS HEREBY RECOMMENDED that:

- 1. This action be stayed pending Judge Nunley's ruling on plaintiff's competency; and
- 2. Plaintiff be directed to notify the Court within seven (7) days of Judge Nunley's ruling on her competency to proceed in the criminal matter.

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 fourteen 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. <u>Turner v.</u>

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² This is plaintiff's second commitment for a determination regarding her competency in the pending criminal matter. <u>See USA V. McCain</u>, 2:12-cr-0144-TLN, ECF Nos. 46-47.

1	<u>Duncan</u> , 158 F.3d 449, 455 (9th Cir. 1998); <u>Martinez v. Ylst</u> , 951 F.2d 1153, 1156-57 (9th
2	Cir. 1991).
3	DATED: June 24, 2014
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5	ALLISON CLAIRE UNITED STATES MAGISTRATE JUDGE
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