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

RUBEN DAVILA,

No. CIV S-09-1747-FCD-CMK-P

Plaintiff,

vs.

ORDER

D. MEDINA,

Defendant.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On February 12, 2010, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within a specified time. Timely objections to the findings and recommendations have been filed.

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1 In his objections, plaintiff challenges the Magistrate Judge's conclusion that
2 supervisory defendants McDonald and Nepomuceno should be dismissed. In particular, plaintiff
3 states that "since the filing of the complaint the plaintiff has determined . . . the actions of
4 Nepomuceno . . . and McDonald." Citing Forman v. Davis, 371 U.S. 178 (1962), plaintiff
5 asserts that this court must "grant leave freely to amend a complaint." A review of the docket
6 reflects that plaintiff was provided an opportunity to amend and chose not to do so. On October
7 5, 2009, the Magistrate Judge issued an order outlining plaintiff's factual allegations and
8 providing plaintiff an opportunity to file an amended complaint in order to set forth additional
9 allegations as to the two supervisory defendants. The court stated:

10 Because the complaint appears to otherwise state
11 cognizable claims, if no amended complaint is filed within the time
12 allowed therefor, the court will issue findings and recommendations that
13 the claims identified herein is defective be dismissed, as well as such
14 further orders as are necessary for service of process as to the cognizable
15 claims.

16 Upon plaintiff's failure to file any amended complaint within the time provided, the Magistrate
17 Judge properly construed such failure as plaintiff's assent to dismissal of the supervisory
18 defendants in favor of proceeding directly against the remaining defendant. While plaintiff now
19 states that he can present factual allegations sufficient to state claims against the supervisory
20 defendants, he has not indicated why such allegations were not presented in an amended
21 complaint filed within the time allowed by the Magistrate Judge's October 2009 order.

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
23 304(f), this court has conducted a de novo review of this case. Having carefully reviewed the
24 entire file, the court finds the findings and recommendations to be supported by the record and
25 by proper analysis.

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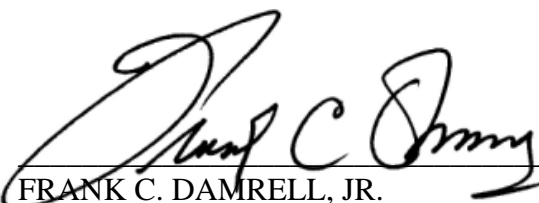
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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 12, 2010, are adopted in full;
2. Plaintiff's request to amend the complaint (Doc. 25) is denied;
3. Defendants McDonald and Nepomuceno are dismissed; and
4. This action proceeds against defendant Medina only.

DATED: March 30, 2010.


FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE