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

ARMANDO ABREU,

Plaintiff,

No. CIV S-09-0763 KJM EFB P

vs.

F. BRAGA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. For the reasons stated below, the court recommends that defendant Robinson be dismissed pursuant to Federal Rule of Civil Procedure (“Rule”) 4(m).

On April 30, 2010, the court screened plaintiff’s February 10, 2010 amended complaint pursuant to 28 U.S.C. § 1915A, and found that plaintiff had stated a cognizable due process claim against defendant Robinson. Dckt. No. 26. After plaintiff submitted the required papers, the court, on August 5, 2010, ordered the United States Marshal to serve the amended complaint on Robinson. Dckt. No. 38. On October 6, 2010, the United States Marshal returned process directed to Robinson, certifying that Robinson could not be located based on the information provided by plaintiff. See Dckt. No. 49. Accordingly, on October 18, 2010, the court ordered plaintiff to provide new information about where Robinson may be served with process. Dckt.

1 No. 51. The court also warned plaintiff that Rule 4(m) requires that an action be dismissed as to  
2 a defendant not served within 120 days after filing the complaint unless the time is enlarged  
3 based upon a demonstration of good cause. *Id.*

4 On October 25, 2010, plaintiff filed a request for an order permitting him to serve  
5 Robinson by publication. Dckt. No. 56. On December 8, 2010, the court denied plaintiff's  
6 motion because it was not satisfied that Robinson's address for service could not be ascertained  
7 by means other than publication. Dckt. No. 64. Again, the court directed plaintiff to, within  
8 thirty days, provide the court with new information about where Robinson may be served with  
9 process and informed plaintiff he could seek such information through discovery, the California  
10 Public Records Act, California Government Code §§ 6250, *et seq.*, or any other means available.  
11 *Id.* The court also repeated its warning that plaintiff must proceed with haste because Fed. R.  
12 Civ. P. 4(m) requires that an action be dismissed as to a defendant not served within 120 days  
13 after filing the complaint unless the time is enlarged based upon a demonstration of good cause.  
14 *Id.*

15 Subsequently, plaintiff requested that the court enter default for Robinson. Dckt. No. 66.  
16 The Clerk of the Court properly declined to enter Robinson's default as he had not been served  
17 with process. Dckt. No. 67.

18 Thereafter, plaintiff requested an extension of time to serve Robinson. Dckt. No. 68. In  
19 that request, plaintiff argued that defendants Braga and Campbell had failed to provide plaintiff  
20 with Robinson's address "as requested." *Id.* However, plaintiff did not state whether he had  
21 properly served defendants Braga or Campbell with a discovery request seeking Robinson's  
22 address, or on what grounds defendants objected to such request, if any. *See id.* The court  
23 informed plaintiff that without such information, the court could not compel defendants to  
24 provide him with the requested information. Dckt. No. 75. The court also noted that plaintiff  
25 did not state whether he had attempted to obtain Robinson's address through any other means.  
26 *Id.* Because it appeared that avenues for seeking the address of Robinson remained available to

1 plaintiff, the court denied plaintiff's request for an extension of time to serve Robinson. *Id.*

2 The time for acting has passed and plaintiff has not provided new instructions for service  
3 on defendant Robinson, nor has he shown good cause for such failure. *See* Fed. R. Civ. P. 4(m).

4 Accordingly, it is hereby RECOMMENDED that defendant Robinson be dismissed from  
5 this action without prejudice.

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

13 DATED: June 22, 2011.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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