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

FIDEL PADILLA,

Plaintiff,

No. CIV S-10-0239 FCD EFB P

vs.

ROOTER, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 20, 2010, the court found that the complaint stated cognizable First Amendment claims against defendants Perez, Rooter, Sixtos, Aguilar, Montano, and Garrete for their alleged interference with plaintiff’s outgoing mail. The court further found that plaintiff had failed to state cognizable supervisory liability, access to the courts, retaliation, conditions of confinement and medical care claims, and dismissed those claims with leave to amend. The court gave plaintiff 30 days to submit materials for service of process on defendants Perez, Rooter, Sixtos, Aguilar, Montano and Garrete, or, alternatively, 30 days to file an amended complaint to attempt to state cognizable supervisory liability, access to the courts, retaliation, conditions of confinement and medical care claims.


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1 The times for acting passed and plaintiff did not submit the materials necessary to serve  
2 process on defendants, did not file an amended complaint or otherwise respond to the court's  
3 order.<sup>1</sup>

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without  
5 prejudice. See Fed. R. Civ. P. 41(b); Local Rule 110.

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: September 27, 2010.

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15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Although it appears from the file that plaintiff's copy of the order was returned,  
23 plaintiff was properly served. It is the plaintiff's responsibility to keep the court apprised of his  
24 current address at all times. Pursuant to Local Rule 182(f), service of documents at the record  
25 address of the party is fully effective. The court notes, however, that on March 29, 2010,  
26 plaintiff filed a notice of change of address. Plaintiff provided a new address, which is properly  
reflected on the docket, but plaintiff also listed a second address and requested that mail be sent  
to that address as well. Dckt. No. 14. Therefore, the court directs the Clerk of the Court to serve  
these findings and recommendations at the second address for plaintiff (Fidel Padilla, 4435 First  
Street #405, Livermore, CA, 94551), in addition to the address reflected on the docket.