

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ERIC HOLMES, 1:05-cv-00825-LJO-GSA-PC

Plaintiff,
al.,

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION,
WITH PREJUDICE, FOR FAILURE TO
STATE A CLAIM UPON WHICH RELIEF
MAY BE GRANTED**

Defendants. (Doc. 15.)

**OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS**

Plaintiff Eric Holmes ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis.

in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 24, 2005. (Doc. 1.) On October 5, 2006, the court dismissed plaintiff's complaint with leave to amend. On February 28, 2007, plaintiff filed an amended complaint. (Doc. 15.) On November 26, 2008, the undersigned dismissed Plaintiff's amended complaint for failure to state a claim upon which relief may be granted, with leave for Plaintiff to file a second amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc. 20.) More than thirty days have passed, and plaintiff has not filed a second amended complaint or otherwise responded to the Court's order. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted under section 1983.

Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the undersigned
HEREBY RECOMMENDS that this action be dismissed, with prejudice, based on Plaintiff's failure
to state any claims upon which relief may be granted under section 1983.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: January 16, 2009

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE