In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed January 25, 2010, are adopted in full;
- 2. The motions to dismiss (Docket Nos. 41 and 49) are denied without prejudice;
- 3. The second amended petition is dismissed for failure to state a claim on which relief can be granted; and
- 4. Petitioner is allowed forty-five days in which to file a civil rights complaint based on the claims and allegations asserted in the second amended petition.

Dated: March 31, 2010

States District Judge