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

AL GENE FISHER,

Plaintiff,

vs.

T. FELKER, *et al.*,

Defendants.

Case No. 2:07-cv-02271-PMP-GWF

**FINDINGS AND  
RECOMMENDATIONS**

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On March 31, 2009, the Court screened the First Amended Complaint (#13) and dismissed without prejudice Plaintiff's claims against Defendants Wong, Jackson, Grannis, Roche, Felker, Amero, Smith, Richardson and Chrones. (#20). The Court granted Plaintiff 30 days leave to amend the complaint if he believed he could correct the noted deficiencies. (*Id.*) In the order, the Court also notified Plaintiff that failure to timely amend would result in the Court's recommendation that the claims against Defendants Wong, Jackson, Grannis, Roche, Felker, Amero, Smith, Richardson and Chrones be dismissed with prejudice. (*Id.* at 8). Plaintiff initially indicated that he intended to amend the complaint (*see* #21), but later informed the Court (*see* #25) that he would proceed in this action based on the Eighth Amendment claims that survived the Court's screening of the First Amended Complaint.<sup>1</sup> Accordingly,

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<sup>1</sup> The Court ordered that Plaintiff could proceed in this action with the viable Eighth Amendment claims against Defendants Shelton, Robertson, Savage, Plainer and Hanks.

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2 **RECOMMENDATION**

3 **IT IS HEREBY RECOMMENDED** that Plaintiff's claims against Defendants Wong, Jackson,  
4 Grannis, Roche, Felker, Amero, Smith, Richardson and Chrones be **dismissed with prejudice** for  
5 failure to state a claim upon which relief may be granted.

6 **NOTICE**

7 These findings and recommendations are submitted to the United States District Judge assigned  
8 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any objection to this Finding and  
9 Recommendation must be in writing and filed with the Clerk of the Court within twenty (20) days. The  
10 Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to  
11 the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This  
12 circuit has also held that (1) failure to file objections within the specified time and (2) failure to  
13 properly address and brief the objectionable issues waives the right to appeal the District Court's order  
14 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157  
15 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

16 DATED this 16th day of December, 2010.

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20 GEORGE FOLEY, JR.  
21 United States Magistrate Judge  
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