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

DANIEL HARPER,

Plaintiff,

No. 2:09-cv-01969 GEB KJN P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding in this civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, this court recommends that this action be dismissed.

On September 15, 2010, the district judge adopted the findings and recommendations filed by the undersigned on June 8, 2010, and concluded, pursuant to the “three strikes” rule of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), that plaintiff should be barred from filing further civil rights complaints in this court without prepayment of the full filing fee. (Dkt. No. 28.) The court therefore denied plaintiff’s application to proceed in forma pauperis, but granted plaintiff leave to file, within thirty days, a Second Amended Complaint together with payment of the full filing fee. Plaintiff was clearly informed that “[f]ailure . . . to timely file a Second Amended Complaint and pay the full filing fee shall result in dismissal of this action.” (Id. at 2.)

1 Plaintiff thereafter filed an interlocutory appeal, which was dismissed on January  
2 4, 2011, for failure to perfect the appeal; the order was effective immediately (“[t]his order  
3 served on the district court shall constitute the mandate of this court”). (Dkt. No. 33.)


4 Plaintiff has made no other filings in this court or on appeal.

5 More than thirty days have passed since the Court of Appeals’ decision, and hence  
6 the operative period for plaintiff’s compliance with this court’s September 15, 2010 order has  
7 expired. Because plaintiff has not paid the filing fee to pursue this action, as required by 28  
8 U.S.C. § 1915(g), this action should be dismissed.

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed  
10 without prejudice.

11 These findings and recommendations are submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days  
13 after being served with these findings and recommendations, plaintiff may file written objections  
14 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings  
15 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
16 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
17 (9th Cir. 1991).

18 DATED: February 23, 2011

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21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

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