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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 CARLOS HENDON,

12 Plaintiff,

13 vs.

14 BAROYA, et al.,

15 Defendants.  
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1:05-cv-01247-AWI-GSA-PC

FINDINGS AND RECOMMENDATION,  
RECOMMENDING THAT DEFENDANT  
GRIFFIN BE DISMISSED FROM THIS  
ACTION UNDER RULE 25 PURSUANT  
TO NOTICE OF DEATH

OBJECTIONS, IF ANY, DUE WITHIN  
TWENTY (20) DAYS

17 **I. BACKGROUND**

18 Carlos Hendon ("Plaintiff") is a state prisoner proceeding pro se with this civil rights  
19 action under 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on  
20 September 30, 2005. (Doc. 1.) This action now proceeds on Plaintiff's Second Amended  
21 Complaint filed on June 26, 2008, against defendants Baroya, Pham, Nguyet, Hoppe, Griffin  
22 and Reidman ("Defendants") for subjecting him to cruel and unusual punishment in violation  
23 of the Eighth Amendment. (Doc. 18.)

24 On August 14, 2014, Defendants filed a notice of the death of defendant Griffin. (Doc.  
25 133.)

26 **II. FEDERAL RULE OF CIVIL PROCEDURE 25**

27 Pursuant to Rule 25 of the Federal Rules of Civil Procedure, "[i]f a party dies and the  
28 claim is not thereby extinguished, the court may order substitution of the proper parties. Fed.

1 R. Civ. P. 25(a)(1). The motion for substitution may be made by any party or by the successors  
2 or representatives of the deceased party and, together with the notice of hearing, shall be served  
3 on the parties as provided in Rule 5 and upon persons not parties in the manner provided in  
4 Rule 4 for the service of a summons, and may be served in any judicial district. Id. Unless the  
5 motion for substitution is made not later than 90 days after the death is suggested upon the  
6 record by service of statement of the fact of the death as provided for herein for the service of  
7 the motion, the action shall be dismissed as to the deceased party.” Id.

8 **III. CONCLUSION AND RECOMMENDATION**

9 Plaintiff was informed more than 90 days ago by Defendants that defendant Griffin is  
10 deceased, and Plaintiff has not filed a motion for substitution.

11 Accordingly, **IT IS HEREBY RECOMMENDED THAT** defendant Griffin be  
12 dismissed from this action under Rule 25.

13 These findings and recommendation are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within twenty**  
15 **(20) days** after being served with these findings and recommendations, any party may file  
16 written objections with the court. Such a document should be captioned "Objections to  
17 Magistrate Judge's Findings and Recommendation." Any reply to the objections shall be  
18 served and filed within ten days after service of the objections. The parties are advised that  
19 failure to file objections within the specified time may waive the right to appeal the District  
20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 IT IS SO ORDERED.

22  
23 Dated: November 21, 2014

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