1			
2			
3			
4			
5			
6			
7			
8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
10			
11	SAAHDI COLEMAN,)	Case No.: 1:06-cv-00836-AWI-SAB (PC)
12	Plaintiff,)	FINDINGS AND RECOMMENDATION REGARDING DISMISSAL OF DEFENDANT
13	V.)	DEERING
14	A. QUEZADA, et al.,)	[ECF Nos. 27, 90]
15	Defendants.)	
16			
17	Plaintiff Saahdi Coleman is appearing pro se and in forma pauperis in this civil rights action		
18	pursuant to 42 U.S.C. § 1983.		
19	On August 24, 2009, the Marshal returned the summons and USM-285 forms as to Defendant		
20	Dr. Deering with a notation that he is deceased. (ECF No. 21.) The USM-285 form was served by		
21	mail on Plaintiff at his address of record. (<u>Id.</u>)		
22	On August 24, 2012, an order to show cause was issued as to why Defendant Deering should		
23	be dismissed for unsuccessful service. Plaintiff did not respond to the order to show cause.		
24	Rule 25(a)(1) of the Federal Rules of Civil Procedure states:		
25	If a party dies and the claim is not extinguished, the court may order substitution of a		
26	proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not make within 90 days after service of a		
27	statement noting the death, the action by or against the decedent must be dismissed.		
28			

Fed. R. Civ. P. 25(a)(1).

As just stated, Plaintiff was served with the notice of death on August 24, 2009, and ninety days have passed and Plaintiff has failed to file a motion for substitution, and/or respond to the order to show cause. Accordingly, Defendant Deering is subject to dismissal.

Accordingly, the Court HEREBY RECOMMENDS that Defendant Deering be dismissed from the action.

This Findings and Recommendation 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)(l). Within **thirty** (**30**) **days** after being served with the Findings and Recommendation, the parties may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The parties are 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: May 21, 2014

UNITED STATES MAGISTRATE JUDGE

1.15e