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6 **UNITED STATES DISTRICT COURT**
7
8 **EASTERN DISTRICT OF CALIFORNIA**

9 CECILIA FRAHER,

CASE NO. 1:06-cv-01120-AWI-GSA PC

10 Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF MOTION,
WITHOUT PREJUDICE, AS MOOT

11 v.

12 SURYDEVARA, et al.,

(Doc. 107)

13 Defendants.

FIFTEEN-DAY OBJECTION PERIOD

14 _____ /
15 This is a civil action filed pursuant to 42 U.S.C. § 1983 and California tort law by Plaintiff
16 Cecilia Fraher. On August 25, 2009, the Court held a hearing during which, in relevant part,
17 Plaintiff's motion to substitute Mary Lee Gill as the successor in interest for deceased Defendant
18 Nancy Spaeder was discussed. Fed. R. Civ. P. 25(a)(1). As discussed during the hearing, Plaintiff's
19 counsel was to do further investigation into the proper party to substitute for Ms. Spaeder, who was
20 not a state employee and instead worked for a private company under contract with the California
21 Department of Corrections and Rehabilitation. At issue was whether Mary Lee Gill was in fact the
22 proper party to substitute or whether Ms. Spaeder's former employer should instead be subject to
23 substitution.

24 Subsequently, on October 16, 2009, Plaintiff filed a third amended complaint naming the
25 Estate of Nancy Spaeder, R.N., Sampath Suryadevara, M.D., and Mohammad Ashraf, M.D. as
26 defendants. A summons was issued for the Estate of Nancy Spaeder, R.N. on October 30, 2009, and
27 service is in process.

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1 The second amended complaint has been superceded by the filing of the third amended
2 complaint, in which the Estate of Nancy Spaeder, R.N. is named as a defendant. No evidence in the
3 record to the contrary and with time left for service to be effected, the Court presumes service on the
4 party found to be proper by Plaintiff's counsel is pending. Plaintiff's motion to substitute Mary Lee
5 Gill for Nancy Spaeder, named in the second amended complaint, has been rendered moot, and the
6 Court HEREBY RECOMMENDS denial of the motion, without prejudice, on that ground.

7 These Findings and Recommendations will be submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Any objections must
9 be in writing and must be filed within **fifteen (15) days** from the date of service of these Findings
10 and Recommendations. The document should be captioned "Objections to Magistrate Judge's
11 Findings and Recommendations." Failure to file objections within the specified time may waive the
12 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13
14 IT IS SO ORDERED.

15 **Dated: January 11, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE