

1 On February 14, 2008, Plaintiff was given leave to file a second amended complaint.
2 (Doc. 37.) On March 7, 2008, Plaintiff filed a second amended complaint. On May 6, 2008,
3 findings and recommendations were made to the district court judge, recommending that
4 Plaintiff's Eighth Amendment claims against Defendants Ashraf, Spaeder, and Iyer be stricken
5 from the second amended complaint. (Doc. 44.) Plaintiff filed objections on May 27, 2008.
6 (Doc. 49.) On July 14, 2008, Judge Ishii issued an order adopting the findings and
7 recommendations. (Doc. 55.) On October 20, 2008, Defendant Spaeder filed an answer to the
8 complaint. (Doc. 63.) On January 8, 2009, Defendant Ashraf filed an answer to the complaint.
9 (Doc. 67.)

10 On July 17, 2009, Plaintiff filed a motion to substitute Mary Lee Gill, as successor in
11 interest to Defendant Spaeder, as Ms. Spaeder passed away on November 28, 2008. (Doc. 107.)¹

12 On October 16, 2009, Plaintiff filed a third amended complaint. The complaint names
13 Sampath Suryadevara, M.D., Mohammad Ashraf, M.D., and the Estate of Nancy Spaeder, R.N.
14 (Doc. 121.)

15 On October 26, 2009, Defendants Suryadevara and Ashraf filed answers to the third
16 amended complaint. (Docs. 124 & 125.)

17 On October 30, 2009, this Court issued a summons to the Estate of Nancy Spaeder, R.N.,
18 Deceased. (Doc. 126.)

19 On January 11, 2010, this Court issued Findings and Recommendations pertaining to the
20 issue of Ms. Spaeder's estate and Plaintiff's then pending motion. (Doc. 128.) The findings
21 provided, in pertinent part:

22 The second amended complaint has been superceded by the filing of the
23 third amended complaint, in which the Estate of Nancy Spaeder, R.N. is named as
24 a defendant. No evidence in the record to the contrary and with time left for
service to be effected, the Court presumes service on the party found to be proper
by Plaintiff's counsel is pending. Plaintiff's motion to substitute Mary Lee Gill

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26 ¹In May 2009, the Court determined the appointment of counsel for Plaintiff was
27 warranted. (Docs. 86 & 88.) On June 1, 2009, attorney John F. Garland filed a Designation of
Counsel. (Doc. 93.)

1 for Nancy Spaeder, named in the second amended complaint, has been rendered
2 moot, and the Court HEREBY RECOMMENDS denial of the motion, without
prejudice on that ground.

3 (Doc. 128 at 2.) No party filed objections. On February 4, 2010, Judge Ishii issued an Order
4 adopting the findings and recommendations. (Doc. 129.)

5 To date, no appearance has been made on behalf of the Estate of Nancy Spaeder, R.N.

6 **DISCUSSION**

7 Rule 4(m) of the Federal Rules of Civil Procedure provides in part:

8 If service of the summons and complaint is not made upon a defendant
9 within 120 days after the filing of the complaint, the court, upon motion or on its
10 own initiative after notice to the plaintiff, shall dismiss the action without
11 prejudice as to that defendant or direct that service be effected within a specified
time; provided that if the plaintiff shows good cause for the failure, the court shall
extend the time for service for an appropriate period.

12 More than 120 days have elapsed since Plaintiff filed the third amended complaint in this
13 action. That complaint was filed October 16, 2009; thus, 120 days elapsed as of February 13,
14 2010. Moreover, more than 120 days have elapsed since this Court issued the summons to the
15 Estate of Nancy Spaeder, R.N., Deceased. The summons issued October 30, 2009; thus, 120
16 days elapsed as of February 27, 2010.

17 In light of the foregoing, this **Court ORDERS Plaintiff, no later than August 11, 2010,**
18 to show cause in writing why Plaintiff has failed to: (1) file documents to show proof of service
19 of the summons and third amended complaint on the aforementioned defendant to comply with
20 Rule 4(i) of the Federal Rules of Civil Procedure; and (2) accomplish service of the summons
21 and third amended complaint on the aforementioned defendant within 120 days of filing the
22 complaint to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

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