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

SAMUEL DANCY, JR.,

Case No. 1:07-cv-00716 JLT (PC)

Plaintiff,

ORDER VACATING TRIAL DATE; ORDER
SETTING STATUS CONFERENCE

vs.

A. K. SCRIBNER, et al.,

Defendants.

_____ /

On January 27, 2012, Defendants filed a “Statement Noting the Death of a Party.” (Doc. 117) In it, Defendants reported that Defendant Dr. M. Posner died on December 29, 2011. *Id.* at 1. Though Defendants indicated a willingness to proceed to trial on February 7, 2012 as scheduled, the Court held a telephonic conference on February 1, 2012 to be sure that Plaintiff wished to proceed.

At the conference, Plaintiff indicated that he preferred to proceed against the successors of Dr. Posner and was unwilling to dismiss Dr. Posner at this time. Therefore, according Fed. R. Civ. P. 25(a) and within the time frames set forth in the Rule, Plaintiff will file a motion under Rule 25 to substitute the proper party for Dr. Posner. Plaintiff is required to comply with Rule 25(a)(3) which requires service of the motion on the relevant parties and the successors.

Alternatively, should Plaintiff reconsider, he may notify the Court and the parties that he has decided not to seek the substitution. In this event, he SHALL file a request to dismiss Dr.

1 Posner from the litigation.

2 **ORDER**

3 Based upon the foregoing, the Court **ORDERS**:

- 4 1. The trial set on February 7, 2012 and all associated dates are **VACATED**;
- 5 2. If Plaintiff chooses, he may file a motion according to Fed. R. Civ. P. 25 to seek
- 6 to substitute Dr. Posner's successors into the litigation. If he chooses to proceed
- 7 in this manner, he is cautioned that he must comply with Rule 25(a)(3) and serve a
- 8 copy of the motion on the parties to this case and the successors. Likewise, his
- 9 failure to seek the substitution within the time frame set forth in the Rule may
- 10 result in the Court dismissing the lawsuit against Dr. Posner without the
- 11 substitution;
- 12 3. Alternatively, Plaintiff may file a request for dismissal of the lawsuit against Dr.
- 13 Posner. In this event, the Court will re-set the trial date as quickly as its calendar
- 14 will allow;
- 15 4. A telephonic status conference in this matter is set on May 17, 2012 at 9:00 a.m.
- 16 Mr. Steele will arrange the telephonic conference call.

17 IT IS SO ORDERED.

18 Dated: February 1, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE