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

WALTER BOYD,

Plaintiff,

vs.

1:07 cv 01541 OWW MJS PC

ORDER RE REPORTED DEATH OF
PLAINTIFF

ESTIOCO, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

On April 16, 2010, counsel for Defendants filed a document entitled "Suggestion of Death" which reflected counsel's belief that the Plaintiff died in March 2010. In an attached declaration, counsel stated that on April 14, 2010, he had received electronic notice that an attempt to serve an order on Plaintiff had been returned as undeliverable due to "death." Counsel then contacted the Litigation Office at California State Prison, Sacramento, and was advised by the Litigation Coordinator that Plaintiff had died in March 2010 although a death certificate had

1 not yet been issued.

2 Absent evidence to the contrary, the court accepts the hearsay declaration of
3 counsel as a reasonable basis for proceeding that the claimant has in fact died.

4 Fed. R. Civ. P. 25(a)(1) and (2) provide, in an appropriate case, for continuation of
5 an action by properly substituted parties, if any, following the death of a party. Successors or
6 representatives of a deceased party may make a motion for substitution not later than 90 days after
7 service of a statement noting the death of the party. Absent such a motion for substitution, the
8 action must be dismissed as to a deceased party.

9 IT THEREFORE IS ORDERED that unless a motion for substitution of plaintiff or
10 other proper motion for relief is filed within ninety days of the date of service of this Order, this
11 case shall be dismissed.

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16 IT IS SO ORDERED.

17 Dated: May 4, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE