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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD SCOTT KINDRED,
Plaintiff,
v.
ALLENBY, *et al.*,
Defendants.

Case No. 1:18-cv-00554-ADA-EPG (PC)
ORDER DIRECTING DEFENSE COUNSEL
TO SUBMIT EVIDENCE OF ACTUAL
DELIVERY OR FILE BRIEF WITHIN
TWENTY-ONE DAYS
(ECF Nos. 113 & 114)

On November 18, 2022, defense counsel filed a “Notice of Death of Plaintiff Richard Scott Kindred,” which states that Richard Scott Kindred (“Plaintiff”) died during the pendency of the action. (ECF No. 113). Defense counsel also asserts that the executor of Plaintiff’s estate, Bryen Kindred, was served with a copy of the notice and the complaint in this case pursuant to Federal Rule of Civil Procedure 4(e)(1) and California Code of Civil Procedure section 415.40. (Id.). According to the amended proof of service, Bryen Kindred was served via certified mail on November 18, 2022. (ECF No. 114).

However, defense counsel has not submitted a signed return receipt or other evidence of actual delivery. It appears that such a receipt, or other evidence of actual delivery, is required when service is made by mail pursuant to section 415.40. Cal. Civ. Proc. Code § 417.20(a) (“If served in a manner specified in a statute of this state, as prescribed by Section 417.10, and if service is made by mail pursuant to Section 415.40, proof of service shall include evidence satisfactory to the court establishing actual delivery to the person to be served, by a signed return

1 receipt or other evidence.”).

2 Accordingly, IT IS HEREBY ORDERED that defense counsel has twenty-one days from
3 the date of service of this order to file the signed return receipt (or other evidence of actual
4 delivery), or to file a brief explaining why defense counsel believes she is not required to do so.

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6 IT IS SO ORDERED.

7 Dated: December 14, 2022

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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