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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 RICHARD SCOTT KINDRED,

11 Plaintiff,

12 v.

13 ALLENBY, *et al.*,

14 Defendants.
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Case No. 1:18-cv-00554-ADA-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION BE
DISMISSED PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 25(A)(1)

(ECF Nos. 111, 113, 114, & 118)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

17 On October 31, 2022, defense counsel (“Counsel”) filed a “Notice of Death of Plaintiff
18 Richard Scott Kindred,” which states that Plaintiff died during the pendency of this action.
19 (ECF No. 111). On February 8, 2023, Counsel filed a declaration, detailing her attempts to
20 serve the Notice of Death on the executor of Plaintiff’s estate. (ECF No. 118). The declaration
21 also includes proofs of service. (Id.).

22 “If a party dies and the claim is not thereby extinguished, the court may order
23 substitution of the proper parties. A motion for substitution may be made by any party or by
24 the decedent’s successor or representative. If the motion is not made within 90 days after
25 service of a statement noting the death, the action by or against the decedent must be
26 dismissed.” Fed. R. Civ. P. 25(a)(1).

27 The Notice of Death was filed and served more than ninety days ago, and no motion for
28 substitution has been made.

1 Accordingly, the Court HEREBY RECOMMENDS that:

- 2 1. This action be DISMISSED pursuant to Federal Rule of Civil Procedure
3 25(a)(1); and
4 2. The Clerk of Court be directed to close this case.

5 These findings and recommendations are submitted to the United States district judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
7 (14) days after being served with these findings and recommendations, any party may file
8 written objections with the Court. Such a document should be captioned “Objections to
9 Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be
10 served and filed within fourteen (14) days after service of the objections. The parties are
11 advised that failure to file objections within the specified time may result in the waiver of rights
12 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v.
13 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 IT IS SO ORDERED.

15 Dated: May 22, 2023

16 /s/ Eric P. Grogan
17 UNITED STATES MAGISTRATE JUDGE
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