UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DANA SMITHEE, et al.,) Case No.: 1:19-cv-0004 - LJO - JLT
Plaintiffs,) ORDER ADOPTING IN FULL THE FINDINGS AND RECOMMENDATIONS GRANTING
v.) DEFENDANTS' MOTIONS TO DISMISS) (Docs. 29, 32, and 41)
CALIFORNIA CORRECTIONAL)
INSTITUTION, et al.,	ORDER DEEMING THE THIRD AMENDED
, ,) COMPLAINT FILED AUGUST 29, 2019 AS THE
Defendants.	OPERATIVE PLEADING
) (Doc. 45)

Plaintiffs allege decedent Cyrus Ayers was not provided proper medical care during his incarceration at the California Correctional Institution in Tehachapi, which resulted in his death. (See generally Doc. 26) Defendants Litt-Stoner, Seymour, Nesson and Celosse filed motions to dismiss the second amended complaint. (Docs. 29, 32) On August 15, 2019, the assigned magistrate judge determined Plaintiffs failed to allege facts sufficient to support their claims and recommended the second amended complaint be dismissed with leave to amend. (Doc. 41)

Plaintiffs were given fourteen days to file any objections to the recommendation that the complaint be dismissed with leave to amend. (Doc. 41 at 14) In addition, Plaintiff were "advised that failure to file objections within the specified time may waive the right to appeal the District Court's order." (Id., citing Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Wilkerson v. Wheeler, 772 F.3d 834, 834 (9th Cir. 2014)). To date, no objections have been filed. However, on August 29, 2019, Plaintiffs filed a Third Amended Complaint. (Doc. 45)

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court conducted a de novo review of the case. Having carefully reviewed the file, the Court finds the Findings and Recommendations are supported by the record and proper analysis. Accordingly, IT IS HEREBY ORDERED: The Findings and Recommendations dated August 15, 2019 (Doc. 41) are **ADOPTED** IN FULL; 2. Plaintiffs' Second Amended Complaint is **DISMISSED**; and 3. The Third Amended Complaint filed on August 29, 2019 (Doc. 45) is deemed the operative pleading in the action. IT IS SO ORDERED. /s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE Dated: **September 6, 2019**