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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DANA SMITHEE, et al.,	)	Case No.: 1:19-cv-00004-NONE-JLT
	)	
Plaintiffs,	)	FINDINGS AND RECOMMENDATIONS TO
	)	DISMISS CERTAIN CLAIMS
v.	)	
	)	[FOURTEEN-DAY OBJECTION DEADLINE]
CALIFORNIA CORRECTIONAL	)	
INSTITUTION, et al.,	)	
Defendants.	)	
	)	

After Cyrus Ayers killed himself while in custody, his child, E.M. and his mother, Dana Smithee, filed this lawsuit. They allege Ayers was not provided proper medical care during his incarceration at the California Correctional Institution in Tehachapi and this resulted in his death. In their fourth amended complaint, Plaintiffs claim that Defendant Litt-Stoner, Chief Executive Officer for Health Care Services at CCI, Defendant Narayan, Chief Psychiatrist at CCI, and Defendants Seymour and Celosse, psychologists at CCI, are liable for Ayers' death. (Doc. 65.)

On January 30, 2020, Defendants Litt-Stoner, Narayan, Seymour, and Celosse moved the Court to dismiss the action. (Docs. 66, 67.) The Court dismissed Defendants Narayan, Seymour, and Litt-Stoner from the action, and denied Defendants' motion to dismiss Plaintiffs' survival claim against Celosse based on Ayers' Eighth Amendment rights and Plaintiffs' Fourteenth Amendment claim. (Doc. 88.) The Court also dismissed with leave to amend Plaintiffs' wrongful death claims against Celosse. (Id.)

1 On September 17, 2020, Plaintiffs filed a notice of election not to amend the fourth amended  
2 complaint and to proceed on their survival claim against Celosse based on Ayers' Eighth Amendment  
3 Rights and their Fourteenth Amendment claim. (Doc. 90 at 2.)

4 **RECOMMENDATION**

5 Based upon the foregoing, the Court RECOMMENDS:

- 6 1. Plaintiffs' wrongful death claims against Defendant Celosse be DISMISSED; and
- 7 2. Defendant Celosse be required to file an answer within SIXTY DAYS of this order  
8 becoming final.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local  
11 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen  
12 days after being served with these findings and recommendations, Plaintiffs may file written  
13 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's  
14 Findings and Recommendations." Plaintiffs are advised that failure to file objections within the  
15 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
16 1153 (9th Cir. 1991); Wilkerson v. Wheeler, 772 F.3d 834, 834 (9th Cir. 2014).

17  
18 IT IS SO ORDERED.

19 Dated: September 20, 2020

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE