2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA 9 10 11 RICHARD SCOTT KINDRED. Case No.: 1:19-cv-901 JLT CDB 12 Plaintiff, ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING THE 13 ACTION WITH PREJUDICE PURSUANT TO v. RULE 25 OF THE FEDERAL RULES OF CIVIL 14 WUILMER CABRERA, et al., **PROCEDURE** 15 Defendants. (Docs. 45, 46) 16 17 Defendants filed a Notice of Death of Plaintiff Richard Scott Kindred on October 31, 2022. (Doc. 42.) On April 21, 2023, this Court observed: "Because the 'Suggestion of Death' has been filed 18 19 on the record—and Plaintiff's next of kin were both served as of January 17, 2023—the action must be 20 dismissed if no motion for substitution is filed within 90 days." (Doc. 45 at 1, citing Summerfield v. 21 Fackrell, 2012 WL 113281, at *2 (E.D. Cal. Jan. 11, 2012) [before the 90-day period begins to run, 22 the suggestion of death must be filed on the record and served to the other parties]; Barlow v. Ground, 23 39 F.3d 231, 233 (9th Cir. 1994).) Accordingly, the Court ordered: "Any motion to substitute a party 24 as plaintiff **SHALL** be filed **no later than April 17, 2023**." (*Id.*, emphasis in original.) 25 After a motion was not filed in compliance with the deadline imposed by Rule 25 and 26 identified in this Court's order, the magistrate judge recommended the matter be dismissed. (Doc. 46.)

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The magistrate judge granted an extension of time to file any objections, after noting a scrivener's

error. (See Doc. 47.) To date, no objections have been filed and the time to do so has expired.