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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 CLARENCE O. SMITH,

10 Plaintiff,

No. CIV S-02-1473 LKK GGH P

11 vs.

12 M. R. MALDONADO, et al.,

13 Defendants.

14 ORDER


15 Plaintiff has died pending defendants' appeal in this matter, and the district
16 court's September 27, 2006, Order,¹ granting in part and denying in part defendants' motion for
17 summary judgment, has been vacated and the case has been remanded from the Ninth Circuit
18 with instructions that it be dismissed due to the death of Clarence O. Smith, plaintiff/appellee.
19 Defendants Maldonado and Scharosch had appealed from the denial of their claim of entitlement
20 in the motion for summary judgment to qualified immunity in this action, brought pursuant to 42
21 U.S.C. § 1983, alleging a violation of plaintiff's Eighth Amendment rights when he was housed
22 with an inmate who thereafter attacked him.

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26 ¹ Filed on September 28, 2007, at docket # 93.

1 Accordingly, IT IS ORDERED that, pursuant to the mandate, filed in this court on
2 April 3, 2009, this case is dismissed due to the death of plaintiff/appellee Clarence O. Smith.
3 DATED: April 14, 2009.

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7 LAWRENCE K. KARLTON
8 SENIOR JUDGE
9 UNITED STATES DISTRICT COURT
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