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

ROBERT THOM,

Plaintiff,

No. CIV S-05-0872 LKK EFB P

vs.

M. PEREZ, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

On May 30, 2005, plaintiff commenced this action seeking relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On September 14, 2007, a fellow prisoner notified the court that plaintiff was deceased. Therefore, on September 21, 2007, the court stayed this action and directed defendants to determine whether this was in fact true, and if so to file a notice of suggestion of death as required by Rule 25 of the Federal Rules of Civil Procedure. On September 26, 2007, defendants filed a notice of suggestion of death. Once such a notice is filed, a person who wishes to substitute for the deceased has 90 days to file a motion to be substituted as the plaintiff. Fed. R. Civ. P. 25(a)(1). Dismissal is mandatory if no such motion is filed within the 90-day period. *Id.*

The court finds that 90 days have passed since defendants filed the notice, and no motion for substitution has been filed.

1 Accordingly, it is hereby ORDERED that the stay is lifted.

2 Further, it is hereby RECOMMENDED that this action be dismissed.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 Dated: January 10, 2008.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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