

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

TYRONNE BATTLE,

Plaintiff, No. CIV S-06-0171 LKK GGH F

VS.

TERESA SCHWARTZ, et al.,

Defendants. FINDINGS AND RECOMMENDATIONS

A suggestion of death upon the record pertaining to the death of plaintiff was filed on January 22, 2008. Pursuant to Federal Rule of Civil Procedure 25, a motion for substitution of a proper party must be made no later than ninety days after the death is suggested upon the record. By Order, issued on January 29, 2008, the court stated that if a motion for substitution of a proper party were not made within ninety days, pursuant to Fed. R. Civ. P. 25(a)(1), dismissal of this action would be recommended. That period of time having expired without a motion for substitution by a proper party, the court on May 19, 2008, recommended this action be dismissed. Those findings and recommendations were vacated by Order, filed on May 28, 2008, when although untimely, Ms. Andrea Haygood, identifying herself as the daughter of the deceased plaintiff Tyronne Battle, communicated with the court asking that she and her brother be substituted in as proper parties in place of Mr. Battle. The May 28, 2008, Order was served upon

1 both Ms. Haygood and her brother at the separate addresses provided, informing them that the
2 personal representative of Mr. Battle's estate must file a motion for substitution of the estate as
3 plaintiff within 45 days.

4 When Ms. Haygood filed a very abbreviated response in the form of a short and
5 informal letter, Ms. Haygood and her brother were informed of the deficiencies of the response in
6 an Order, filed on November 5, 2008, and the court afforded an additional 45 days for the
7 personal representative of deceased plaintiff's estate to file a properly supported motion for
8 substitution of the estate. That time period has now expired, and no motion for substitution has
9 been filed.

10 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
13 after service of these findings and recommendations, any written objections may be filed with the
14 court. The document should be captioned “Objections to Magistrate Judge’s Findings and
15 Recommendations.” Failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 || DATED: April 1, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH:009/035
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