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

NICK TERRY,

Plaintiff,

No. CIV S-10-1842 GGH P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER

_____/

Plaintiff was directed, by Order filed on October 14, 2011, to show cause why all defendants should not be dismissed pursuant to Fed. R. Civ. P. 4(m) or, in the alternative, for plaintiff's failure to prosecute. Plaintiff, a state prisoner proceeding pro se, in an action pursuant to 42 U.S.C. § 1983, had paid his filing fee in full¹ and had been directed to complete service of process of his second amended complaint within sixty days in accordance with Fed. R. Civ. P. 4, but there was no evidence that the defendants had subsequently been served.

However, the show cause order was returned, indicating that plaintiff is deceased. At this time, although it is not clear that any defendant was served,² the court will direct the state

¹ Plaintiff had been granted ample opportunity to file an in forma pauperis affidavit to determine whether he could qualify for in forma pauperis status, but ultimately indicated that he could not do so based on the amount of his financial resources, which left him responsible for service of process. See, e.g., Order, filed on October 14, 2011, n. 1.

² Matthew Cate, Secretary of the California Department of Corrections and

1 Attorney General's Office to file a notice of suggestion of death pursuant to Fed. R. Civ. P.
2 25(a)(1). The suggestion of death, in order to be valid and to invoke the ninety day limit for
3 filing of a motion for substitution, should, if possible, identify the successor or representative
4 who may be substituted for decedent. Smith v. Planas, 151 F.R.D. 547 (S.D. N.Y. 1993).

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Within twenty-eight days of the date of this order, the state Attorney General,
7 or a designee, shall, if known, file a Suggestion of Death identifying plaintiff's successor or
8 representative. The Attorney General, or her designee, shall also, if practicable, also serve a copy
9 of the Suggestion of Death on plaintiff's successor;

10 2. The Clerk of the Court is directed to serve a copy of this order on Monica
11 Anderson, Supervising Deputy Attorney General; and

12 3. As plaintiff is evidently deceased, the Clerk of the Court is directed not to serve
13 a copy of this order upon him at the prison address, as the mail will simply be returned.

14 DATED: November 3, 2011

15 /s/ Gregory G. Hollows
16 UNITED STATES MAGISTRATE JUDGE

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Rehabilitation, is among the named defendants but he is an official capacity defendant only.