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

JOHN MICHAEL CAHILL,

Plaintiff,

No. CIV S-10-3181 DAD P

vs.

R.L. HARRINGTON et al.,

Defendants.

ORDER

FINDINGS AND RECOMMENDATIONS

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On September 29, 2011, counsel for defendant Harrington filed a Notice of Plaintiff's Death pursuant to Federal Rule of Civil Procedure 25(a)(1) informing the court that according to prison officials at Salinas Valley State Prison, plaintiff passed away on August 31, 2011 at that institution. (Doc. No. 13.) On October 6, 2011, the court issued an order allowing this case to remain pending for 90 days from the date of defendant's Notice of Plaintiff's Death, filed September 29, 2011. Under Rule 25(a)(1), a deceased plaintiff's successor or representative may file a motion to substitute as a party within 90 days after service of a statement notifying the court that a party has died. However, where as here, a deceased plaintiff's successor or representative fails to file a proper motion to substitute, the action must be dismissed.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly assign a United States District Judge to this action.

1 IT IS HEREBY RECOMMENDED that this action be dismissed. See Fed. R.  
2 Civ. P. Rule 25(a)(1).

3 These findings and recommendations are submitted to the United States District  
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
5 days 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.” Any reply to the objections  
8 shall be served and filed within seven days after service of the objections. The parties are  
9 advised that failure to file objections within the specified time may waive the right to appeal the  
10 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: January 10, 2012.

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15 DALE A. DROZD  
16 UNITED STATES MAGISTRATE JUDGE

14 DAD:9  
15 cahi3181.57