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7	IN THE UNITED STATES DISTRICT COURT
8	FOR THE EASTERN DISTRICT OF CALIFORNIA
9	HAROLD E. CARMONY,
10	Petitioner, No. CIV S-10-3381 GEB GGH P
11	VS.
12	STEPHEN MAYBERG, Director of D.M.H.,
13	et al.,
14	Respondent. <u>FINDINGS AND RECOMMENDATIONS</u>
15	/
16	Petitioner brought an application for a writ of habeas corpus pursuant to 28 U.S.C.
17	§ 2254 challenging his continued confinement/civil commitment pursuant to the Sexually
18	Violent Predator Act, Cal. Welf. & Inst. Code § 6600, et.seq. On June 23, 2011, respondent
19	filed a motion to dismiss based on petitioner's death during the pendency of this action. By order
20	filed on June 30, 2011, the court indicated it had been notified of petitioner's death, pursuant to
21	Fed. R. Civ. P. 25(a). It was further stated that within 90 days of service of the order, absent a
22	motion for substitution of another party or an opposition to respondent's motion to dismiss, the
23	case would be dismissed. The order served upon petitioner was returned. On July 8, 2011,
24	respondent's counsel submitted a declaration, avowing that she had attached a true and correct
25	copy of petitioner's death certificate. Petitioner's death is noted therein as having occurred on
26	June 2, 2011.

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The time has expired for any motion for a substitution of another party, or
 opposition to respondent's dismissal motion, to be made and none has been forthcoming.
 Therefore, in accordance with Fed. R. Civ. P. 25(a)(1), the court must recommend dismissal of
 this action.

5 IT IS ORDERED that the Clerk of the Court is not to attempt to serve these
6 findings and recommendations upon petitioner at his address in the court's docket because he is
7 deceased.

Accordingly, IT IS HEREBY RECOMMENDED that respondent's motion to
dismiss, filed on June 23, 2011, be granted and petitioner's application for a writ of habeas
corpus be dismissed in light of his death during the pendency of the action, pursuant to Fed. R.
Civ. P. 25(a)(1).

12 These findings and recommendations are submitted to the United States District 13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written 14 15 objections with the court and serve a copy on all parties. Such a document should be captioned 16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections 17 shall be served and filed within fourteen days after service of the objections. The parties are 18 advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 19

20 DATED: November 10, 2011

## /s/ Gregory G. Hollows UNITED STATES MAGISTRATE JUDGE

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