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

JOSEPH MARPEL,

Plaintiff,

No. 2:11-cv-0387 KJM KJN P

vs.

SAUKHLA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On April 9, 2012, this court issued the following order in response to a Notice of Plaintiff's Death, filed by defendants on March 28, 2012 (Dkt. No. 40 at 1-2):

On March 28, 2012, [counsel for sole defendant Saukhla] filed a Notice of Plaintiff's Death, together with a copy of plaintiff's death certificate, and served a copy of the Notice and certificate on plaintiff's last address of record, the California Medical Facility. (See Dkt. No. 38.) Although the Notice states that "[d]efendants' (sic) counsel is not aware of any next of kin" (Dkt. No. 38 at 1), service of the Notice upon the record of this action commences the 90-day period for decedent's successor or representative to file a motion for substitution. See Fed. R. Civ. P. 25(a)(1). [¶] Plaintiff's successor and/or representative is hereby informed that any motion for substitution must be filed with this court on or before June 26, 2012. If no motion for substitution is filed on or before June 26, 2012, this action will be dismissed.

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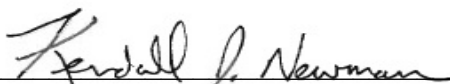
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1           The ninety-day period within which to file a motion for substitution has expired,  
2 and no motion for substitution has been filed; nor has any other communication been made to the  
3 court by plaintiff's successor or representative.

4           Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.  
5 Fed. R. Civ. P. 41(b).

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

15 DATED: June 27, 2012

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20 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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