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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   JAMONT L. CALHOUN,   No. 2:12-cv-2856-GEB-EFB P

12   Plaintiff,

13   v.   FINDINGS AND RECOMMENDATIONS

14   M. GOMEZ, et al.,

15   Defendants.

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17   Plaintiff is a state prisoner proceeding without counsel in an action brought under 42

18   U.S.C. § 1983. On December 20, 2013, the United States Marshal returned service unexecuted as

19   to defendant Merriweather on the grounds that the defendant is deceased. ECF No. 24. Plaintiff

20   acknowledged receipt of this notice on January 21, 2014. ECF No. 27. He did not, however, file

21   a formal suggestion of death in accordance with Rule 25 of the Federal Rules of Civil Procedure,

22   which establishes the procedure to be followed if a party dies during the pendency of an action.

23   *See* Fed. R. Civ. P. 25; *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).

24   Accordingly, IT IS HEREBY RECOMMENDED that defendant Merriweather be

25   dismissed from this action. *See* Fed. R. Civ. P. 25(a)(1) (if motion for substitution "is not made

26   within 90 days after service of a statement noting the death, the action by or against the decedent

27   must be dismissed").

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1   These findings and recommendations are submitted to the United States District Judge

2   assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days

3   after being served with these findings and recommendations, any party may file written

4   objections with the court and serve a copy on all parties. Such a document should be captioned

5   "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

6   within the specified time may waive the right to appeal the District Court's order. *Turner v.*

7   *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

8   DATED: April 9, 2014.

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10   EDMUND F. BRENNAN
                       UNITED STATES MAGISTRATE JUDGE