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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL GRESS,
Plaintiff,
v.
CHRISTOPHER SMITH, et al.,
Defendants.

No. 2:13-cv-0328 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding through counsel. Plaintiff and defendant Boru Nale have consented to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c). The remaining defendants have not responded to the order regarding consent. (ECF No. 26.) Accordingly, the clerk of court is directed to assign a district judge to this case.

On April 25, 2014, the court directed defendant Dr. Boru Nale to show cause why default should not be entered. On May 28, 2014, the order was returned by the post office as undeliverable. The California Department of Consumer Affairs website shows that Dr. Nale's license status is delinquent and provides a public mailing address that differs from the service of process address. Thus, the court directs the clerk of court to re-serve a copy of the order to show cause on Dr. Nale in Arizona, and grants Dr. Nale an additional fourteen days in which to respond.

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1 Finally, a suggestion of death upon the record pertaining to the death of defendant Eldon
2 Evans was filed on February 12, 2014. Pursuant to Federal Rule of Civil Procedure 25, a motion
3 for substitution of a proper party must be made no later than ninety days after the death is
4 suggested upon the record. That time period has now expired, and no motion for substitution has
5 been filed. Thus, the court recommends that defendant Evans be dismissed from this action.

6 In accordance with the above, IT IS HEREBY ORDERED that:


- 7 1. The Clerk of the Court is directed to assign a district judge to this case;
- 8 2. The Clerk of the Court is directed to re-serve a copy of the April 25, 2014 order to
9 show cause (ECF No. 35) on Dr. Boru Nale, 39796 S. Sengspiration Rd., Tucson, AZ 85739; and
- 10 3. Dr. Nale is granted thirty days from the date of this order to show cause why default
11 should not be entered.

12 IT IS RECOMMENDED that defendant Eldon Evans be dismissed from this action.

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

20 Dated: June 3, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE