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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN HOSEA HARDIN,
Plaintiff,
v.
REGINALD GOWAN,
Defendant.

No. 2:14-cv-1796-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Defense counsel has filed a Notice of Suggestion of Death of Defendant Reginald Gowans. ECF No. 36.


Rule 25(a)(1) of the Federal Rules of Civil Procedure governs the substitution of parties after death, providing for substitution where the claim is not extinguished by the death of the party. Defense counsel has not satisfied the provision in Rule 25(a)(3) which requires not only the filing of a notice of suggestion of death with the court and service of the notice on plaintiff, but also service of the notice on the proper nonparty to be substituted in the place of the deceased.¹ *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994) (a statement noting the death

¹ Courts have held that executors, administrators or distributees of distributed estates are proper parties for substitution of a deceased party. *See Sequoia Prop. & Equip. Ltd. P'ship v. United States*, No. CV-F-97-5044, 2002 WL 32388132 at *2 (E.D. Cal. June 3 2002); *Sinito v. U.S. Dep't of Justice*, 176 F.3d 512, 516 (D.C. Cir. 1999).

1 must be served on “nonparty successors or representatives of the deceased . . . in the same manner
2 as required for service of the motion to substitute.”).

3 Accordingly, it is hereby ORDERED that within 90 days of the date of this order, defense
4 counsel shall endeavor to discover the identity of the proper nonparty for substitution and either:
5 (a) serve the notice of suggestion of death on that nonparty, along with re-service on plaintiff and
6 filing with the court or (b) file a declaration documenting the steps taken to discover the proper
7 nonparty’s identity and explaining why that nonparty’s identity could not be discovered.

8 DATED: December 1, 2015.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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