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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,
Plaintiff,
v.
ROBERT W. FOX,
Defendant.

No. 2:16-cv-1818 JAM CKD P

FINDINGS AND RECOMMENDATIONS

On October 31, 2018, the court ordered the 16 plaintiffs identified in the operative amended complaint other than defendant Birrell to inform the court whether they wish to remain a plaintiff in this case. Those plaintiffs were informed that failure to respond to the court’s order would result in a recommendation that they be dismissed. Plaintiffs Alford, Bell, Jackson, Lewis, Gutschenritter, Parker and White did not respond to the court’s order.

With respect to plaintiff Jackson, the court’s October 31, 2018 order was returned by officials at the California Medical Facility with a notation that Jackson is deceased. The order was received by the court on November 16, 2018. Since no motion for substitution has been filed with respect to plaintiff Jackson, the court will recommend that defendant Jackson be dismissed pursuant to Rule 25(a) of the Federal Rules of Civil Procedure.

As for plaintiffs Gutschenritter and White, their copies of the October 31, 2018 order were returned to the court unserved. These plaintiffs were properly served as it is a plaintiff’s

1 responsibility to keep the court apprised of his current address at all times. Pursuant to Local
2 Rule 182(f), service of documents at the record address of the party is fully effective.

3 In accordance with the above, IT IS HEREBY RECOMMENDED that defendants Alford,
4 Bell, Jackson Lewis, Gutschenritter, Parker and White be dismissed from this action.

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

13 Dated: May 8, 2019

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16 CAROLYN K. DELANEY
17 UNITED STATES MAGISTRATE JUDGE

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