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

DWIGHT MATTHEWS,
Plaintiff,
v.
K. DHILLION, et al.,
Defendants.

No. 2:16-CV-2343-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On February 12, 2019, defendants filed a notice of plaintiff's death pursuant to Federal Rule of Civil Procedure 25 (ECF No. 16). A review of the record reflects the notice was properly served under Rule 25(a)(3) (ECF No. 25, Exhibit 1).

Under Rule 25(a)(1), an action which is not extinguished must be dismissed upon the death of the plaintiff unless a motion for substitution is made within 90 days after service of a statement noting the death. In this case, a notice of plaintiff's death was properly served, more than 90 days since service have passed, and no motion for substitution has been filed. Therefore, this action must be dismissed.

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Based on the foregoing, the undersigned recommends that this action be dismissed pursuant to Federal Rule of Civil Procedure 25(a)(1).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: June 18, 2019


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE