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

ROBER WILLIAM TUNSTALL, JR.,
Plaintiff,
v.
JOSEPH BICK, et al.,
Defendants.

No. 2:16-CV-2604-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, who was a prisoner proceeding pro se, brought this civil rights action pursuant to 42 U.S.C. § 1983.

On October 13, 2022, Defendants filed a formal notice of suggestion of Plaintiff’s death pursuant to Federal Rule of Civil Procedure 25. See ECF No. 161. Thereafter, the Court directed defense counsel to make efforts to provide Plaintiff’s next of kin notice and further directed defendant counsel to submit a status report. See ECF No. 162. On April 28, 2023, defense counsel filed a status report indicating that the notice was served on Plaintiff’s daughter, Sherry Tunstall, on February 17, 2023. See ECF No. 165. To date, no motion for substitution has been filed.

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1 Following service of a notice of suggestion of death, an action by a deceased
2 plaintiff must be dismissed if a motion to substitute is not filed within 90 days of service of the
3 notice. See Fed. R. Civ. P. 25(a)(1). In light of the foregoing, and because no motion to
4 substitute was made within 90 days of service of the notice of Plaintiff's death on February 17,
5 2023, this action must be dismissed. See id.

6 Based on the foregoing, the undersigned recommends as follows:

7 1. This action be DISMISSED pursuant to Federal Rule of Civil Procedure
8 25(a)(1).

9 2. Defendants' motion to revoke Plaintiff's in forma pauperis status, ECF No.
10 116, be DENIED as moot.

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

17
18 Dated: August 3, 2023



19 _____
20 DENNIS M. COTA
21 UNITED STATES MAGISTRATE JUDGE