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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HAKEIM EL BEY,  
Plaintiff,  
v.  
ACCREDITED HOME LENDERS INC.,  
et al,  
Defendants.

No. 2:17-cv-02237 KJM CKD (PS)

ORDER

On April 30, 2018, the undersigned issued findings and a recommendation that this action be dismissed due to plaintiff’s failure to timely oppose defendant’s motion to dismiss. (ECF No. 16.) On May 9, 2018, Howard Bey filed objections to the findings and recommendations, asserting that he was the executor of plaintiff’s estate and seeking a 120-day continuance to determine how best to proceed with the lawsuit on behalf of plaintiff’s heirs. (ECF No. 17.)

As it appears plaintiff is recently deceased, and good cause appearing, the undersigned will vacate the April 30, 2018 findings and recommendations.

Rule 25(a)(1) of the Federal Rules of Civil Procedure provides for the dismissal of an action if a motion for substitution is not made within ninety days after service of a statement noting plaintiff’s death. Fed. R. Civ. P. 25(a)(1). As the remaining party, defendant will be directed to serve the suggestion of death upon the record pursuant to Federal Rule of Civil Procedure 25(a)(1). The suggestion of death, in order to be valid and to invoke the ninety day


1 limit for filing of a motion for substitution, should, if possible, identify the successor or  
2 representative who may be substituted for decedent. Smith v. Planas, 151 F.R.D. 547 (S.D. N.Y.  
3 1993).

4 Once the ninety-day clock starts, a motion for substitution may be filed by the appointed  
5 executor or administrator of plaintiff's estate. See Estate of Garcia-Vasquez v. County of San  
6 Diego, 2008 WL 4183913 \*6 (S.D.Cal. 2008) (“[a] decedent’s estate is no more than a collection  
7 of assets and liabilities, and requires a real party in interest, such as a duly appointed executor or  
8 administrator of the estate, for purposes of pursuing litigation.”).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The April 30, 2018 findings and recommendations are hereby VACATED; and
- 11 2. Defendant Wells Fargo Bank shall serve the suggestion of death upon the record  
12 pursuant to Federal Rule of Civil Procedure 25(a)(1) within twenty-one days of this order and  
13 shall file a certificate of service with the court.

14 Dated: May 14, 2018

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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