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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)

FINDINGS AND RECOMMENDATIONS

The original plaintiff in this pro se action is deceased. (See ECF No. 18.) Following a June 6, 2018 status conference at which the late plaintiff's successor/representative was identified by family members as Howard James Redmond Bey of Lewisville, Texas, the undersigned ordered defendant to file a suggestion of death upon the record and serve it on Mr. Bey at his Texas address. (ECF Nos. 21-25.) The docket reflects that Mr. Bey was served by mail on June 11, 2018. (ECF No. 25.)

As set forth in a May 14, 2018 order and discussed at the status conference, 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). (See ECF No. 18.) The suggestion of death, in order to be valid and to invoke the ninety-day limit for filing of a motion for substitution, should identify the successor or representative who may be substituted for decedent. Smith v. Planas, 151 F.R.D. 547 (S.D. N.Y. 1993). Once the ninety-day clock starts, a motion for substitution may be filed by the appointed

1 executor or administrator of plaintiff's estate. See Estate of Garcia-Vasquez v. County of San  
2 Diego, 2008 WL 4183913 \*6 (S.D.Cal. 2008) (“[a] decedent’s estate is no more than a collection  
3 of assets and liabilities, and requires a real party in interest, such as a duly appointed executor or  
4 administrator of the estate, for purposes of pursuing litigation.”). In this case, the ninety-day  
5 clock has run and plaintiff’s successor-in-interest has not filed a motion for substitution.

6 IT IS HEREBY RECOMMENDED that this action be dismissed pursuant to  
7 Federal Rule of Civil Procedure 25(a)(1) and this case closed.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
10 days after being served with these findings and recommendations, any party may file written  
11 objections with the court and serve a copy on all parties. Such a document should be captioned  
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
13 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
14 objections. The parties are advised that failure to file objections within the specified time may  
15 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
16 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

17 Dated: September 25, 2018

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20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE

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