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

DUANE LINDER,

 Plaintiff,

 v.

JAMES S. PUCELIK, et al.,

 Defendants.

No. 2:18-CV-2281-DJC-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 7, 2022, Mr. Snow, an inmate who had been assisting Plaintiff with his case, filed a document providing notice that Plaintiff Linder died on January 28, 2022. See ECF No. 65. On February 15, 2022, Defendants also filed a notice of Plaintiff’s death pursuant to Federal Rule of Civil Procedure 25(a)(1). See ECF No. 67. Defendants were unable to locate Plaintiff Linder’s next of kin but provided notice to the prison’s litigation coordinator. See id. On August 8, 2022, following expiration of the 90-day period provided in Rule 25(a)(1) to file a motion to substitute, and upon the lack of any such motion, Defendants filed a motion to dismiss. See ECF No. 71. On August 16, 2022, the Court recommended that motion be granted. See ECF No. 72.

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1 Mr. Snow filed objections to the findings and recommendations on behalf of
2 deceased Plaintiff Linder on September 2, 2022. See ECF No. 64. In the objections, Mr. Snow
3 provided the name and address of Plaintiff Linder's next of kin, his sister, Ms. Sanford. See id.
4 On September 20, 2022, Mr. Snow filed a request that the Clerk of the Court forward Plaintiff
5 Linder's legal materials to Ms. Sanford. See ECF No. 76. The Court granted Mr. Snow's
6 request. See ECF No. 77. Plaintiff Linder's legal materials were received by the Clerk of the
7 Court on December 19, 2022, ECF No. 79, December 21, 2022, ECF No. 80, and December 23,
8 2022, ECF No. 81. Thereafter, the Court directed the Clerk of the Court to forward these
9 materials to Ms. Sanford. See ECF No. 84. The Court also vacated the August 16, 2022, findings
10 and recommendations pending receipt by Ms. Sanford of Plaintiff Linder's legal materials and
11 filing of a motion to substitute. See id. Concurrently, the Court issued findings and
12 recommendations that Defendants' August 8, 2022, motion to dismiss be denied without
13 prejudice to renewal should no motion to substitute be filed. See ECF No. 85. On September 6,
14 2023, the District Judge adopted the findings and recommendations in full and denied
15 Defendants' motion to dismiss without prejudice. See ECF No. 86.

16 Under Rule 25(a)(1), the Court must dismiss an action where the plaintiff is
17 deceased and no motion for substitution has been filed within 90 days of the notice of suggestion
18 of the plaintiff's death. See Fed. R. Civ. P. 25(a)(1). In this case, the record reflects that Ms.
19 Sanford, as Plaintiff Linder's next of kin, was provided with Mr. Linder's legal materials. More
20 than 90 days have passed since Mr. Linder's legal materials were forward to Ms. Sanford by the
21 Clerk of the Court and since the District Judge denied Defendants' motion to dismiss without
22 prejudice. To date, no motion for substitution has been filed. Therefore, the Court will
23 recommend dismissal of this action pursuant to Rule 25(a)(1).

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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: December 18, 2023



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE