

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES GREGORY CALLION,
Plaintiff,
v.
ANTIS ADAMS, et al.,
Defendants.

Case No. [14-cv-03716-HSG](#)

**ORDER DIRECTING PLAINTIFF TO
FILE MOTION FOR SUBSTITUTION
OR FACE DISMISSAL OF
DEFENDANT BIRDSONG; DENYING
REQUEST FOR EXTENSION OF TIME
AS MOOT**

Re: Dkt. No. 54

Plaintiff, a California prisoner currently incarcerated at R.J. Donovan Correctional Facility, filed this *pro se* civil rights action under 42 U.S.C. § 1983. On February 10, 2017, counsel for defendants Drs. Birdsong and Mack filed and served a notice of the death of Dr. Birdsong. Docket No. 54. Counsel for Drs. Birdsong and Mack do not represent Dr. Birdsong's estate.

"If a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a). Because it is not clear whether Plaintiff's claims could survive Defendant Birdsong's death if pursued against his successors or representatives, the Court will not dismiss the claims against Dr. Birdsong at this time. If Plaintiff wishes to substitute Defendant Birdsong's successors or representatives in this action, Plaintiff must locate Defendant Birdsong's successors or representatives and file a motion for substitution. *See id.* If no motion for substitution is filed within 90 days as required by Rule 25(a)(1), the claims against Defendant Birdsong will be dismissed by the Court.

Counsel for Drs. Birdsong and Mack have requested a 120-day extension to file their second summary judgment motion, which was due on February 13, 2017. Docket No. 54. Dr.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mack has filed his summary judgment motion. Docket No. 55. Accordingly, the request for an extension of time is DENIED as moot.

This order terminates Docket No. 54.

IT IS SO ORDERED.

Dated: 2/17/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge