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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TYRONE JONES,

Plaintiff,

v.

PLEASANT VALLEY
STATE PRISON, et al.,

Defendants.

CASE NO. 1:01-cv-05287-AWI-SMS PC

ORDER DISMISSING ACTION WITH
PREJUDICE PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 25(A)(1), AND
DIRECTING CLERK OF COURT TO ENTER
JUDGMENT

(Doc. 155)

_____/

Plaintiff Tyrone Jones was a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On August 23, 2010, Defendants Huang, Loo, McVicar, Neubarth, and Ortiz filed a notice of Plaintiff’s death on the record. Fed. R. Civ. P. 25(a)(1). (Doc. 153.) On August 24, 2010, the Court issued an order notifying the parties that the ninety-day period was not triggered by the notice, because there was no declaration of service or other proof reflecting that there was proper service of the notice on Plaintiff’s successor or representative as provided by Rule 4 of the Federal Rules of Civil Procedure.¹ Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994). (Doc. 154.) Defendants filed a proper notice on October 13, 2010. (Doc. 155.)

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¹ Rule 25(a)(1) provides for the dismissal of this 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). Two things are required of a party for the running of the ninety-day period to commence: a party must 1) formally suggest the death of the party on the record, and 2) serve the suggestion of death on the other parties and nonparty successors or representatives. .

1 Accordingly, because Plaintiff death was suggested upon the record more than ninety days
2 ago, and no motion for substitution was made, this action is HEREBY ORDERED DISMISSED,
3 with prejudice, pursuant to Federal Rule of Civil Procedure 25(a)(1). The Clerk of the Court shall
4 enter judgment.

5
6 IT IS SO ORDERED.

7 Dated: February 8, 2011


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9 CHIEF UNITED STATES DISTRICT JUDGE