

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOBBIE BAUMAN, et al.,

Plaintiffs,

v.

1:04-cv-6347JRG DLB

WYETH LLC, et al.,

Defendants.

ORDER

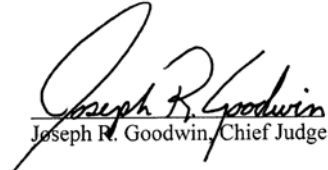
Pending is the defendants' notice of motion and motion to dismiss pursuant to Federal Rule of Civil Procedure 25 (a)(1) [Docket 59]. No response was filed. The motion was noticed for a hearing on February 27, 2012 at 10:00 a.m.; however, the court will rule on the motion based on the record and the briefs on file. Oral argument will not be heard.

On April 27, 2011, the defendants filed a Statement Noting the Death of Plaintiff Bobbie Baumann and began serving Ms. Baumann's relatives [Docket 29]. At the time of her death Ms. Baumann was the only plaintiff in this action. According to plaintiff's counsel, Mr. William Matthew Baumann, Ms. Baumann's eldest son, was named as executor in Ms. Baumann's will. He was served the Statement Noting Death via first-class mail, postage paid, return receipt required by the defendants in August 2011. Mr. Baumann signed the return receipt on August 26, 2011.

Given that Mr. Baumann did not move to substitute within 90 days after service of a statement noting the death pursuant to Federal Rule of Civil Procedure 25 (a)(1) the defendant's motion to dismiss is **GRANTED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 16, 2012


Joseph R. Goodwin, Chief Judge