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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS VALENZUELA RODRIGUEZ,

 Plaintiff,

 v.

HUBBARD, et al.,

 Defendants.

No. 1:10-cv-00858-DAD-SAB

ORDER DISMISSING SUIT WITH
PREJUDICE AND DIRECTING CLERK TO
CLOSE CASE

Plaintiff here was a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Defendants filed a statement of plaintiff’s death on May 4, 2016 and represented therein that “[a] copy of this notice was being served on C. Grenot, D. Rodriguez, and A. Garcia, in accordance with Rule 25(a)(3) of the Federal Rules of Civil Procedure.” (Doc. No. 159 at 2.) These individuals are plaintiff’s wife, brother, and daughter, respectively. (*Id.*) The assigned magistrate judge directed the defendants to file supporting evidence of service on August 15, 2016. (Doc. No. 160.) The defendants filed a declaration with supporting exhibits on August 23, 2016, showing Garcia was served but that neither Grenot nor D. Rodriguez had been served. (Doc. No. 161.) On September 9, 2016, this court noted such proof was insufficient given the representation that Grenot, D. Rodriguez, and Garcia had all been served, and directed defendants to supplement their previously filed notice with evidence of proper service upon both Grenot and D. Rodriguez. (Doc. No. 163.)

1 On September 29, 2016, defendants filed a declaration from their counsel, Deputy
2 Attorney General Joseph R. Wheeler. (Doc. No. 164.) Deputy Attorney General Wheeler
3 submitted proof Grenot was served on September 14, 2016. (*Id.* at 4.) However, Deputy
4 Attorney General Wheeler declared that service need not be effected on D. Rodriguez, because
5 Grenot is plaintiff's wife and would be the successor to his claims under California law. (*Id.* at
6 ¶ 3.)

7 "State law governs who receives a decedent's § 1983 claim." *Estate of Cornejo ex rel.*
8 *Solis v. City of Los Angeles*, 618 Fed. App'x 917, 919 (9th Cir. 2015)¹ (citing 42 U.S.C. § 1988
9 and *Robertson v. Wegmann*, 436 U.S. 584, 589 (1978)). Under California law, Rodriguez's claim
10 survives his death and "passes to [his] successor in interest." Cal. Civ. Proc. Code § 377.30; *see*
11 *also* Cal. Civ. Proc. Code § 377.11 (successor in interest is "the beneficiary of the decedent's
12 estate"). Under California law, if a person dies intestate,² the cause of action passes to "the sole
13 person or all of the persons" dictated under California intestacy law. Cal. Civ. Proc. Code
14 § 377.10(b). Under the rules of California's intestate succession, a surviving spouse receives all
15 community property and one-half of separate property. Cal. Prob. Code § 6401. The remaining
16 part of the estate passes first to decedent's children. Cal. Prob. Code § 6402. Only if the
17 decedent has no surviving children or parents does the estate pass to decedent's siblings. *Id.*

18 Here, Mr. Rodriguez had both a wife and a daughter, who were served with the required
19 notice on September 14, 2016 and May 7, 2016. (*See* Doc. Nos. 164 at 4; 161 at 4.) Mr.
20 Rodriguez's brother has not been served, but could not succeed to the cause of action in any event
21 under California law. Given that the death of Mr. Rodriguez has been suggested on the record,
22 the suggestion of death has been served on his nonparty successors, and more than ninety days

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26 ¹ Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule
27 36-3(b).

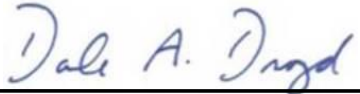
28 ² Nothing in the record indicates Mr. Rodriguez had a will.

1 has elapsed without a motion for substitution, the matter is hereby dismissed with prejudice. *See*
2 Fed. R. Civ. P. 25(a)(1); *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).

3 Accordingly, the Clerk of Court is directed to close this action.

4 IT IS SO ORDERED.

5 Dated: January 10, 2017

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UNITED STATES DISTRICT JUDGE

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