

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

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARIA G. MORENO,)	Case No.: 1:12-cv-0556 JLT CDB
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS' MOTION
)	TO DISMISS
v.)	
)	(Doc. 120)
CASTLEROCK FARMING AND)	
TRANSPORT, INC., et al.,)	
)	
Defendants.)	

Defendants Albert L. Good and Castlerock Farming & Transport, Inc., filed a statement reporting the death of Plaintiff Florencia Gutierrez on March 2, 2023, indicated they were informed Ms. Gutierrez was “unavailable to be deposed because she is deceased.” (Doc. 105 at 2.) Defendants now seek dismissal of Ms. Gutierrez as a plaintiff pursuant to Rule 25(a) of the Federal Rules of Civil Procedure. (Doc. 120; *see also* Doc. 121.) Plaintiffs did not oppose the motion.¹

Pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, the action may continue if a claim is not extinguished. “A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). If the requirements of Rule 25(a)(1) are met, “[t]he substituted party steps into the same position as [the]

¹ Plaintiffs requested an extension of time to oppose the motion, and the Court granted the request. (Docs. 125, 126.) To date, Plaintiffs have not filed either an opposition or statement of non-opposition to the requested dismissal.

1 original party.” *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996).

2 As noted above, the “Statement Noting Death of Plaintiff Florencia Gutierrez” was filed on
3 March 2, 2023. (Doc. 105.) Because the Statement was filed on the record, and the plaintiffs’
4 representatives received electronic service of the record, the 90-day period began to run. *See*
5 *Summerfield v. Fackrell*, 2012 WL 113281, at *2 (E.D. Cal. Jan. 11, 2012) (before the 90-day period
6 begins to run, the suggestion of death must be filed on the record and served to the other parties); *see*
7 *also Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). Although Plaintiffs were granted an
8 extension of time to file a motion for substitution (Doc. 130), they failed to do so. Consequently, the
9 claims of Florencia Gutierrez must be dismissed. *See* Fed. R. Civ. P. 25(a)(1). Based upon the
10 foregoing, the Court **ORDERS**:

- 11 1. Defendants’ motion to dismiss (Doc. 120) is **GRANTED**.
- 12 2. Florencia Gutierrez is **TERMINATED** as a plaintiff in this action.
- 13 3. The claims for Florencia Gutierrez are **DISMISSED** with prejudice.

14
15 IT IS SO ORDERED.

16 Dated: February 8, 2024


UNITED STATES DISTRICT JUDGE