

1 successors or representatives. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). Thus, a party
2 may be served with the suggestion of death by service on his or her attorney in accordance with
3 Rule 5, while non-party successors or representatives of the deceased party must be served with
4 the suggestion of death pursuant to Rule 4 which sets forth the methods for the service of a
5 summons. Fed. R. Civ. P. 25(a)(3); *Barlow*, 39 F.3d at 232–34.

6 Rule 4 provides that a summons may be served either by “following state law for serving
7 a summons in an action brought in courts of general jurisdiction in the state where the district
8 court is located or where service is made,” or by doing any of the following: (1) “delivering a
9 copy of the summons and of the complaint to the individual personally”; (2) “leaving a copy of
10 each at the individual’s dwelling or usual place of abode with someone of suitable age and
11 discretion who resides there”; or (3) “delivering a copy of each to an agent authorized by
12 appointment or by law to receive service of process.” Fed. R. Civ. P. 4(e). In California, service
13 of a summons may be effected by personal delivery (California Civil Procedure Code (CCP)
14 § 415.10); by leaving a copy of the summons at an office or residence with an appropriate person
15 and mailing another copy to the same individual at the same address (CCP § 415.20); by mail
16 (CCP § 415.30); or by publication (CCP § 415.50). Failing these methods, a court may order that
17 a summons be served “in a manner which is reasonably calculated to give actual notice to the
18 party to be served.” CCP § 413.30.

19 Defendant is required to identify the individuals upon whom service of the notice of
20 Plaintiff’s death is required and to effectuate proper service on all of those individuals to
21 commence the ninety-day period in which Plaintiff’s successors may seek substitution. *See*
22 *Barlow*, 39 F.3d at 233. If Defendant is unable to effect personal service despite repeated
23 attempts, service may be completed via alternate means, as set forth above. If none of the means
24 of completing service specifically listed can be completed by Defendant, the Federal Rules of
25 Civil Procedure incorporate a California statute which permits the court to order service in any
26 manner reasonably calculated to give actual notice to the person being served. *See* Fed. R. Civ. P.
27 4(e); CCP § 413.30. Defendant may seek leave to effectuate service in such a manner if
28 Defendant can demonstrate the inability to complete service by one of the methods set forth in the

1 governing rules and state statutes identified above.

2 Accordingly, **IT IS HEREBY ORDERED**, that Defendant **SHALL** file a formal notice
3 of suggestion of Plaintiff's death with proof of service thereof on Plaintiff's nonparty successors
4 or representatives **within twenty-one (21) days** from the date of service of this order.

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6 IT IS SO ORDERED.

7 Dated: **December 4, 2017**

/s/ Sheila K. Oberto
8 UNITED STATES MAGISTRATE JUDGE

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