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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTHUR T. BUSSIERE,
Plaintiff,
v.
TIGGS-BROWN,
Defendant.

No. 1:13-cv-01565-SKO (PC)
ORDER DISMISSING ACTION UNDER
FEDERAL RULE OF CIVIL PROCEDURE
25(a)(1)

Plaintiff, Arthur T. Bussiere, was a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On November 15, 2017, a docket entry was made reflecting that Plaintiff’s copy of the November 8, 2017 Order to Show Cause was returned as undeliverable with a note that Plaintiff is deceased. On January 4, 2018, Defendant PA Tiggs Brown filed a notice of Plaintiff’s death on the record. Fed. R. Civ. P. 25(a)(1). (Doc. 120.) On January 18, 2018, Defendant filed the certificate showing that Plaintiff’s non-party successors or representatives were served with the notice of death on December 22, 2017. (Doc. 122.) No motion for substitution has been made.

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). 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. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). Thus, a party may be served with the suggestion of death by service on his or her attorney as

1 provided for in Rule 5, while non-party successors or representatives of the deceased party must
2 be served the suggestion of death in the manner provided for in Rule 4 for the service of a
3 summons. Fed. R. Civ. P. 25(a)(3); *Barlow*, 39 F.3d at 232-34.

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

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9 IT IS SO ORDERED.

10 Dated: April 19, 2018

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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