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

MIGUEL ANGEL MORALES,

Plaintiff,

v.

GOVERNOR EDMUND G. BROWN, JR., et  
al.,

Defendants.

Case No. 1:14-cv-01717-LJO-SAB

ORDER REQUIRING DEFENDANTS TO  
FILE PROVE OF SERVICE OF  
SUGGESTION OF DEATH OF PLAINTIFF

(ECF No. 55)

FIVE-DAY DEADLINE

Miguel Angel Morales (“Plaintiff”) filed this action on November 1, 2014. (ECF No. 1.) The matter was stayed until the resolution of the appeals in the related cases of Smith, et al. v. Schwarzenegger, et al., appeal no. 15-17155, Hines v. Youssef, appeal no. 15-16145, and Jackson, et al. v. Brown, et al., appeal no. 15-17076. (ECF No. 51.) On February 1, 2019, the Ninth Circuit issued an order affirming the district court decision in Smith, et al. v. Schwarzenegger, et al., appeal no. 15-17155, and Hines v. Youssef, appeal no. 15-16145, and affirming in part and reversing in part in Jackson, et al. v. Brown, et al., appeal no. 15-17076. The stay of this matter was lifted on April 5, 2019. (ECF No. 53.) On April 26, 2019, Defendants Hedgpeth and Schwarzenegger filed a motion to dismiss and a statement noting the death of Plaintiff. (ECF No. 54, 55.)

Rule 25(a)(1) provides for the dismissal of a party or an action if a motion for substitution is not made within ninety days after service of a statement noting the party’s death. Fed. R. Civ.

1 P. 25(a)(1). In order for the ninety-day period for substitution to be triggered, a party must  
2 formally suggest the death of the party upon the record, Fed. R. Civ. P. 25(a)(1), and must serve  
3 other parties and nonparty successors or representatives of the deceased with a suggestion of  
4 death in the same manner as required for service of the motion to substitute, Fed. R. Civ. P.  
5 25(a)(3). Thus, a party may be served with the suggestion of death by service on his or her  
6 attorney, Fed. R. Civ. P. 5(b), while non-party successors or representatives of the deceased party  
7 must be served the suggestion of death in the manner provided by Rule 4 for the service of a  
8 summons. Fed. R. Civ. P. 25(a)(3); Barlow v. Ground, 39 F.3d 231, 232-34 (9th Cir. 1994).  
9 Rule 25 requires dismissal absent a motion for substitution within the ninety-day period only if  
10 the statement of death was properly served. Unicorn Tales, Inc., v. Bannerjee, 138 F.3d 467,  
11 469-471 (2d Cir. 1998).

12 While Plaintiff's attorney has been served the suggestion of death, Defendants have not  
13 filed a proof of service for the non-party successors or representatives of Plaintiff. Accordingly,  
14 IT IS HEREBY ORDERED that, within **five (5) days** of the entry of this order, Defendants shall  
15 file proof that the non-party successors or representatives of Plaintiff have been served with the  
16 suggestion of death.

17  
18 IT IS SO ORDERED.

19 Dated: July 15, 2019

  
UNITED STATES MAGISTRATE JUDGE