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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 CHARLES CROMER,

8 Plaintiff,

9 v.

10 M. TREVINO, et al.,

11 Defendants.  
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Case No. 1:15-cv-01810-LJO-EPG (PC)

ORDER DISMISSING ACTION  
PURSUANT TO RULE 25(A)(1)

(ECF No. 36)

13 On December 7, 2017, defense counsel (“Counsel”) filed an “Amended Notice of Death  
14 of Plaintiff Charles Cromer,” which states that Counsel was informed that Plaintiff died on  
15 September 29, 2017. (ECF No. 36). Counsel also states that a copy of the notice and a copy of  
16 Plaintiff’s amended complaint was served on Plaintiff’s spouse in the manner identified by  
17 Federal Rule of Civil Procedure 4. A proof of service is attached. (ECF No. 36, p. 3).  
18 According to the proof of service, Plaintiff’s spouse was personally served on December 3,  
19 2017.

20 “If a party dies and the claim is not thereby extinguished, the court may order  
21 substitution of the proper parties. A motion for substitution may be made by any party or by  
22 the decedent's successor or representative. If the motion is not made within 90 days after  
23 service of a statement noting the death, the action by or against the decedent must be  
24 dismissed.” Fed. R. Civ. P. 25(a)(1).

25 The party filing the notice of death (or “suggestion of death”) “must serve other parties  
26 and nonparty successors or representatives of the deceased with a suggestion of death in the  
27 same manner as required for service of the motion to substitute. Fed. R. Civ. P. 25(a)(1).  
28 Thus, a party may be served the suggestion of death by service on his or her attorney, Fed. R.

1 Civ. P. 5(b), while non-party successors or representatives of the deceased party must be served  
2 the suggestion of death in the manner provided by Rule 4 for the service of a summons.”  
3 Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994). “[T]he 90 day period provided by Rule  
4 25(a)(1) will not be triggered against [the decedent’s] estate until the appropriate representative  
5 of the estate is served a suggestion of death in the manner provided by Federal Rule of Civil  
6 Procedure 4.” (Id. at 233-34).

7 The notice of death was appropriately filed and served more than ninety days ago, and  
8 no motion for substitution has been made. Accordingly, IT IS ORDERED that this action is  
9 DISMISSED pursuant to Federal Rule of Civil Procedure 25(a)(1).

10 IT IS SO ORDERED.

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12 Dated: March 12, 2018

13 /s/ Lawrence J. O’Neill  
14 UNITED STATES CHIEF DISTRICT JUDGE  
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