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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RONALD TIMBERLAND,  
Plaintiff,  
vs.  
G. MASCARENAS, et al.,  
Defendants.

No. 1:16-cv-00922-NONE-GSA-PC  
ORDER DISMISSING ACTION PURSUANT TO  
RULE 25(a)(1)  
(Doc. No. 81.)

Plaintiff Ronald Timberland is a state prisoner proceeding *pro se* with this civil rights action seeking relief under 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on June 27, 2016. (Doc. No. 1.) This case now proceeds with plaintiff’s second amended complaint, filed on June 20, 2018, against defendant G. Mascarenas for failure to protect plaintiff, in violation of the Eighth Amendment. (Doc. No. 26.)

On March 1, 2021, defense counsel (“Counsel”) filed a “Notice of Suggestion of Death of Plaintiff,” which states that Counsel was informed that plaintiff died on December 19, 2020. (Doc. No. 81.) Counsel also states that a copy of the notice was served on plaintiff’s father, Ramon Timberland, in the manner identified by Federal Rule of Civil Procedure 4. The attached proof of service indicates that plaintiff’s father was personally served on February 26, 2021. (Doc. No. 81-1).

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

6 The party filing the notice of death (or “suggestion of death”) “must serve other parties  
7 and nonparty successors or representatives of the deceased with a suggestion of death in the  
8 same manner as required for service of the motion to substitute. Fed. R. Civ. P. 25(a)(1).  
9 Thus, a party may be served the suggestion of death by service on his or her attorney, Fed. R.  
10 Civ. P. 5(b), while non-party successors or representatives of the deceased party must be served  
11 the suggestion of death in the manner provided by Rule 4 for the service of a summons.”  
12 *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). “[T]he 90 day period provided by Rule  
13 25(a)(1) will not be triggered against [the decedent’s] estate until the appropriate representative  
14 of the estate is served a suggestion of death in the manner provided by Federal Rule of Civil  
15 Procedure 4.” (*Id.* at 233–34).

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

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20 IT IS SO ORDERED.

21 Dated: July 19, 2021

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24 UNITED STATES DISTRICT JUDGE  
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