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

GERALDINE DARDEN,	)	Case No. 1:17-cv-00505-LJO-SAB (PC)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DISMISSING ACTION PURSUANT TO
	)	FEDERAL RULE OF CIVIL PROCEDURE 25(a)(1)
PHILIPPE MECHAEL, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff Geraldine Darden filed the instant action on April 11, 2017, pursuant to 42 U.S.C. § 1983.

On January 14, 2019, Defendants filed a notice of Plaintiff’s death. (ECF No. 40.)

Rule 25(a)(1) provides for the dismissal of Defendant Spaeder from this action if a motion for substitution is not made within ninety days after service of a statement noting Spaeder’s death. Fed. R. Civ. P. 25(a)(1). Two things are required of a party 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). In order for the ninety-day period for substitution to be triggered, a party must formally suggest the death of the party upon the record, Fed. R. Civ. P. 25(a)(1), and must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute, Fed. R.

1 Civ. P. 25(a)(3). Thus, a party may be served with the suggestion of death by service on his or her  
2 attorney, Fed. R. Civ. P. 5(b), while non-party successors or representatives of the deceased party must  
3 be served the suggestion of death in the manner provided by Rule 4 for the service of a summons.  
4 Fed. R. Civ. P. 25(a)(3); Barlow, 39 F.3d at 232-234. Rule 25 requires dismissal absent a motion for  
5 substitution within the ninety-day period only if the statement of death was properly served. Unicorn  
6 Tales, Inc., v. Bannerjee, 138 F.3d 467, 469-471 (2d Cir. 1998).

7 Here, Defendants filed a notice of Plaintiff's death on January 14, 2019, and served a copy on  
8 Plaintiff's next of kin, Doris Kelly. (ECF No. 40, 41, 42.) No motion for substitution has been filed,  
9 and the ninety-day time period has expired. Accordingly, this action is **HEREBY ORDERED**  
10 **DISMISSED** pursuant to Federal Rule of Civil Procedure 25(a)(1), and the Clerk of the Court shall  
11 enter judgment.

12 **IT IS SO ORDERED.**

13 Dated: **April 23, 2019**

**/s/ Lawrence J. O'Neill**  
14 UNITED STATES CHIEF DISTRICT JUDGE