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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JACKSON NATIONAL LIFE INSURANCE
COMPANY,

Plaintiff,

v.

BI BI LIM, *et al.*,

Defendants.

CASE NO. 1:23-CV-00442-CDB

ORDER NOTIFYING PARTIES OF 90-DAY
PERIOD WITHIN WHICH TO FILE MOTION FOR
SUBSTITUTION FOLLOWING FILING AND
SERVICE OF NOTICE OF SUGGESTION OF
DEATH

(Doc. 58)

ORDER DIRECTING PLAINTIFF TO EFFECT
SERVICE

On June 16, 2023, counsel for Plaintiff Jackson National Life Insurance Company (“Plaintiff”) filed a suggestion of death upon the record as to Defendant Winston Lim (“Decedent”) “in accordance with Fed. R. Civ. P. 25(a)(1).” (Doc. 17).¹ Plaintiff attached an obituary noting that Decedent passed away on April 23, 2023. (Doc. 17-1). The Court found the record was unclear whether Plaintiff’s June 16, 2023, filing was served on the parties and non-parties in accordance with the applicable rules such that Rule 25(a)(1)’s 90-day period for substitution would be triggered. (Doc. 46). The Court ordered the parties to file any notice of suggestion of Defendant Winston Lim’s death with the proper service of notice. *Id.* at 2.

¹ On September 28, 2023, the parties consented to the jurisdiction of the United States Magistrate Judge and the action has been reassigned to Magistrate Judge Christopher D. Baker for all purposes pursuant to 28 U.S.C. § 636(c)(1). (Docs. 25, 28-30).

1 On May 8, 2024, Plaintiff filed a renewed notice of suggestion of death as to Defendant Winston
2 Lim. (Doc. 58). Plaintiff attached a copy of Decedent's obituary and a letter of authority appointing
3 Defendant Celestine Lim as a personal representative for the Estate of Winston Lim. *Id.*

4 **Motion for Substitution**

5 Federal Rule of Civil Procedure 25(a)(1) provides for the dismissal of Defendant Winston Lim
6 from this action if a motion for substitution is not made within 90 days after service of a statement
7 noting Defendant Winston Lim's death. Fed. R. Civ. P. 25(a)(1). In order to commence the running of
8 the 90-day period within which to effect substitution, a party must (1) formally suggest the death of the
9 party on the record, and (2) serve the suggestion of death on the other parties and the nonparty
10 successors or representatives of the deceased. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).
11 Service upon other parties and nonparty successors or representatives of the deceased must occur in the
12 same manner as required for service of the motion to substitute. Fed. R. Civ. P. 25(a)(3). Thus, a party
13 may be served with the suggestion of death by service on his or her attorney, Fed. R. Civ. P. 5(b), while
14 non-party successors or representatives of the deceased party must be served the suggestion of death in
15 the manner provided by Rule 4 for the service of a summons. Fed. R. Civ. P. 25(a)(3); *Barlow*, 39 F.3d
16 at 232–34

17 Rule 25 requires dismissal absent a motion for substitution within the 90-day period only if the
18 statement of death was properly served. *Unicorn Tales, Inc., v. Bannerjee*, 138 F.3d 467, 469–71 (2d
19 Cir. 1998).

20 The record demonstrates a notice of suggestion of death has been filed and said notice properly
21 has been served on the other parties' and on counsel authorized to accept service on behalf of the
22 estate's reported personal representative. (Doc. 58); *see* Fed. R. Civ. P. 4(e)(2)(C). Therefore, any
23 motion for substitution must be filed within 90 days from the filing and service of Plaintiff's May 8,
24 2024, suggestion of death.

25 Accordingly, IT IS HEREBY ORDERED:

- 26 1. The parties are NOTIFIED that the 90-day period for substitution of Defendant Winston Lim
27 pursuant to Rule 25(a)(1) has commenced by Plaintiff's filing and service of a notice of
28 suggestion of death (Doc. 58);

- 1 2. Any motion for substitution of Defendant Winston Lim SHALL be filed and served on all parties
2 and the non-party successors or representatives of Defendant Winston Lim, on or before August
3 6, 2024;
- 4 3. Plaintiff SHALL promptly serve a copy of this order on Leland Schmidt of Leland T. Schmidt &
5 Associates, P.C., as counsel authorized to accept service on behalf of the estate, and file proof of
6 service thereafter; and
- 7 **4. If no motion for substitution of Defendant Winston Lim is timely filed, Defendant Winston**
8 **Lim will be dismissed from this action pursuant to Federal Rule of Civil Procedure**
9 **25(a)(1).**

10 IT IS SO ORDERED.

11 Dated: May 10, 2024

12 
13 _____
14 UNITED STATES MAGISTRATE JUDGE