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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JANIE McTEAR,

Plaintiff,

CIV S-07-1589 MCE KJM

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

SUGGESTION OF DEATH UPON
THE RECORD AND ORDER

Defendant.

_____ /

Plaintiff, represented by counsel, filed a motion for summary judgment on August 27, 2008. The court’s review of the Social Security Death Database (Westlaw DEATH-ALL) indicates that plaintiff died on July 20, 2008. No motion for substitution by the decedent’s successor or representative has been filed.¹ See Fed. R. Civ. P. 25(a).

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff shall file a motion for substitution within ninety days from the date of this order. Failure to file said motion shall result in a recommendation that the action be dismissed.

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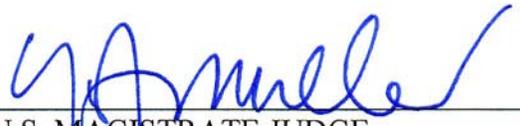
¹ It appears from the records before the court that plaintiff may have a successor in her husband, Edward McTear. Administrative Transcript (“AT”) 89.

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2. Within ten days from the date of this order, the parties shall file a letter brief on their respective positions as to whether plaintiff's claim is extinguished by death.

DATED: January 8, 2009.

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mctear.doa



U.S. MAGISTRATE JUDGE