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

KATHLYN A. RHODES,

Plaintiff,

2:09-cv-0489-MCE-KJN-PS

v.

PLACER COUNTY, et al.,

Defendants.

ORDER

Defendants' three motions for summary judgment were set to be heard on February 21, 2013. (Dkt. Nos. 170, 177, 178.)

During the hearing on February 21, 2013, however, defense attorney Renju Jacob informed the court on the record that he had been informed that plaintiff Kathlyn Rhodes ("plaintiff") had died on February 16, 2013.¹ (Minutes, Feb. 21, 2013, Dkt. No. 193.) The undersigned ordered Mr. Jacob to file a declaration and a statement noting plaintiff's death within fourteen days. (Id.)

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¹ This action proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1), and was reassigned by an order entered February 9, 2010. (Dkt. No. 36.)

1 On March 7, 2013, Mr. Jacob timely filed a Statement noting plaintiff's death (the
2 "Statement"). (Statement, Dkt. No. 194.) Mr. Jacob also filed his own declaration in support of
3 the Statement. (Declaration of Renju Jacob ("Jacob Decl."), Dkt. No. 194-1.) According to Mr.
4 Jacob, Placer County's Office of Vital Statistics and Sacramento County's Office of Vital
5 Statistics have confirmed plaintiff's death, and have confirmed that Plaintiff's death certificate is
6 available at Sacramento County's Office of Vital Statistics. (Id.)

7 No motion for substitution of the plaintiff has yet been made in this still-pending
8 case. Federal Rule of Civil Procedure 25(a) provides that:

9 If a party dies and the claim is not extinguished, the court
10 may order substitution of the proper party. A motion for
11 substitution may be made by any party or by the decedent's
12 successor or representative. If the motion is not made within
 90 days after service of a statement noting the death, the
 action by or against the decedent must be dismissed.

13 Fed. R. Civ. P. 25(a).

14 Here, Mr. Jacob's declaration explains that plaintiff's brother, Scott Rhodes, has
15 asked to be provided with "legal notices concerning this case" until someone is appointed as the
16 representative of plaintiff's estate. (Jacob Decl. at 2.) Mr. Rhodes' business address is: Scott M.
17 Rhodes, Esq., Rhodes, Dobbs & Stewart PLLC, Timber Brooke Professional Center, 921 N.W.
18 164th Street, Suite B, Edmond, Oklahoma 73013. (Id.) Further, according to Mr. Jacob's
19 declaration, Scott Rhodes has represented that plaintiff's family does not intend to proceed with
20 this lawsuit. (Id.) On March 7, 2013, Mr. Jacob served copies of the Statement and his
21 declaration upon plaintiff's address of record and upon Scott Rhodes at the above-stated address
22 via U.S. Mail. (Id. at 3 (Proofs of Service); Dkt. No. 194 at 3.)

23 Pursuant to Federal Rule of Civil Procedure 25(a), IT IS HEREBY ORDERED
24 that:

25 1. Plaintiff's successor or representative shall file a motion for substitution of
26 plaintiff within 90 days of service of this order. The motion for substitution must be served in


1 compliance with Federal Rule of Civil Procedure 25(a)(3). If no such motion is made within
2 these 90 days, the undersigned will issue proposed Findings and Recommendations
3 recommending that this action be dismissed. See Fed. R. Civ. P. 25(a) (“If the motion is not
4 made within 90 days after service of a statement noting the death, the action by or against the
5 decedent *must* be dismissed.”) (emphasis added).

6 2. The Clerk of The Court shall serve a copy of this order upon plaintiff’s
7 address of record, as well as upon plaintiff’s brother, Scott M. Rhodes, at the following address:

8 Scott M. Rhodes, Esq.
9 Rhodes, Dobbs & Stewart PLLC
10 Timber Brooke Professional Center
 921 N.W. 164th Street, Suite B
 Edmond, Oklahoma 73013

11 IT IS SO ORDERED.

12 DATED: March 11, 2013

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
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