

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 ANDREW RAMIREZ,

12 Plaintiff,

13 v.

14 P.A. MIRANDA, et al.,

15 Defendants.  
16  
17

No. 2:13-cv-0600 KJN P

SUGGESTION OF DEATH ON THE  
RECORD AND ORDER

18 Plaintiff was a state prisoner proceeding in forma pauperis. On June 13, 2014, mail  
19 addressed to plaintiff was returned marked "deceased." On July 25, 2014, by special appearance,  
20 the Supervising Deputy Attorney General confirmed that plaintiff died on November 15, 2013,  
21 and identified plaintiff's next of kin as Andrew Ramirez, Jr., 4481 Heather Circle, Chino,  
22 California 91710.

23 Substitution of a party upon his or her death is governed by Rule 25 of the Federal Rules  
24 of Civil Procedure. Fed. R. Civ. P. 25. Rule 25(a)(1) provides:

25 If a party dies and the claim is not extinguished, the court may  
26 order substitution of the proper parties. A motion for substitution  
27 may be made by any party or by the decedent's successor or  
28 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.

1 Fed. R. Civ. P. 25(a)(1). Thus, if the death of a party is suggested on the record, the party who  
2 wishes to substitute for the deceased has ninety days to file a motion for substitution. Id. If the  
3 substituting party fails to file a motion for substitution within the required ninety days, the court  
4 must dismiss the action. Id. The Ninth Circuit has confirmed that the suggestion of death upon  
5 the record must be served on nonparties pursuant to Rule 4 of the Federal Rules of Civil  
6 Procedure. Barlow v. Ground, 39 F.3d 231, 233-34 (9th Cir. 1994).

7 By order filed June 5, 2014, plaintiff's complaint was dismissed, and plaintiff was granted  
8 thirty days in which to file an amended complaint.<sup>1</sup> Thus, at present, it is unclear whether any of  
9 plaintiff's claims survive his death. Given the state of this record, it is also unclear whether  
10 plaintiff's successor in interest, if any, could allege facts demonstrating a violation of plaintiff's  
11 constitutional rights.

12 Therefore, the court will provide plaintiff's next of kin with an opportunity to waive  
13 personal service of the instant order, Fed. R. Civ. P. 4(d), and file either a motion for substitution  
14 pursuant to Rule 25 of the Federal Rules of Civil Procedure, or a notice that he does not intend to  
15 pursue this action. Pursuant to Federal Rule of Civil Procedure 25, a motion for substitution of a  
16 proper party must be made no later than ninety days after the death is suggested upon the record,  
17 and must be accompanied by a notice of hearing. Fed. R. Civ. P. 25(a)(1), (3).

18 The undersigned directs the Clerk of the Court to serve this order on plaintiff's next of  
19 kin, along with a copy of the June 5, 2014 order (ECF No. 10), the July 25, 2014 response (ECF  
20 No. 14), and a postage paid return envelope.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's November 15, 2013 death is suggested on the record.
- 23 2. Within forty-five days from the date of this order, plaintiff's next of kin, Andrew  
24 Ramirez, Jr., is requested to complete and file the appended Notice.
- 25 3. The Clerk of the Court is directed to serve this order, a copy of the June 5, 2014 order  
26 (ECF No. 10), and the July 25, 2014 response (ECF No. 14), on plaintiff's next of kin, Andrew  
27

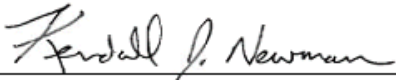
---

28 <sup>1</sup> No defendant has been served with process.

Ramirez, Jr., 4481 Heather Circle, Chino, California 91710, and include a postage paid return envelope addressed to the court.

Dated: July 30, 2014

rami0600.dea2

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW RAMIREZ,	No. 2:13-cv-0600 KJN P
Plaintiff,	
v.	<u>NOTICE</u>
P.A. MIRANDA, et al.,	
Defendants.	

Pursuant to the court’s July, 2014 order, Andrew Ramirez, Jr., responds as follows:

\_\_\_\_\_ I agree to waive personal service of the suggestion of death upon the record for my father, Andrew Ramirez, the plaintiff herein. Fed. R. Civ. P. 4(d).

\_\_\_\_\_ I am my father’s successor or representative, and I \_\_\_\_\_ intend to file a motion for substitution; or \_\_\_\_\_ do not intend to pursue this action

I declare under penalty of perjury that the above and foregoing is true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Andrew Ramirez, Jr.