

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

FREDERICK MARCELES COOLEY,
Plaintiff,
v.
CITY OF VALLEJO, et al.,
Defendants.

No. 2:14-cv-0240 DAD PS

ORDER

On April 8, 2015, plaintiff filed a motion in this action for leave to file a second amended complaint.¹ (Dkt. No. 64.) That motion was scheduled to be heard on the court’s May 22, 2015 calendar. However, on April 23, 2015, defendants filed a notice that plaintiff passed away on April 22, 2015. (Dkt. No. 68.)

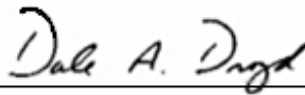
According to Federal Rule of Civil Procedure 25(a), when a party to the action passes away, a motion for substitution may be made by the decedent’s successor or representative within 90 days as long as the parties’ claim is not extinguished. FED. R. CIV. P. 25(a). Title 42 U.S.C. § 1983 does not address the survival of actions upon the death of either the plaintiff or defendant. Robertson v. Wegmann, 436 U.S. 584, 589 (1978). In areas such as this on which federal law is silent, 42 U.S.C. § 1988 directs federal courts to borrow the law of the forum state unless it is

¹ The parties have previously consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c)(1). (Dkt. No. 22.)

1 inconsistent with the purposes of the federal law. Id. In California, “a cause of action for or
2 against a person is not lost by reason of the person’s death.” CAL. CIV. PROC. CODE § 377.20.
3 Accordingly, plaintiff’s cause of action is not extinguished by his death and his successor or
4 representative has 90 days from the filing of defendants’ notice of death on the record to file a
5 motion for substitution. The failure to file a timely motion will result in the dismissal of this
6 action. FED. R. CIV. P. 25(a)(1).

7 Accordingly, IT IS HEREBY ORDERED that plaintiff’s April 8, 2015 motion for leave to
8 file a second amended complaint (Dkt. No. 64) is dropped from the court’s May 22, 2015
9 calendar without prejudice to the hearing being re-noticed in the event a motion for substitution is
10 timely filed by plaintiff’s successor or representative.

11 Dated: May 15, 2015

12 

13 _____
14 DALE A. DROZD
15 UNITED STATES MAGISTRATE JUDGE

16 DAD:6
17 Ddad1\orders.consent\cooley0240.nod.ord.docx
18
19
20
21
22
23
24
25
26
27
28