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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-EFB PS (TEMP)

ORDER

On April 23, 2015, defendants filed a statement of death of plaintiff Frederick Marceles Cooley.¹ ECF No. 68. Thereafter, the previously assigned magistrate judge heard arguments on June 26, 2015, on a motion for substitution filed by Frederick Marc Cooley, the father of plaintiff Frederick Marceles Cooley.² ECF No. 78. On November 24, 2015, the court issued an order denying the motion for substitution and granting a 60-day extension of time to allow a proper party to move for substitution. ECF No. 82. That 60-day period has expired and no party has moved for substitution.

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¹ Pending at the time of plaintiff’s death was plaintiff’s April 8, 2015 motion for leave to amend. ECF No. 64. In light of plaintiff’s death, and the failure of any party to properly substitute into this action, that motion will be denied.

² The parties have consented to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c)(1). ECF Nos. 10, 17, 22.

1 As stated in the court's November 24, 2015 order, Federal Rule of Civil Procedure 25(a)
2 provides that upon the death of a party to the action, a motion for substitution may be made by the
3 decedent's successor or representative within 90 days as long as the party's claim is not
4 extinguished. Fed. R. Civ. P. 25(a). Here, the 90-day period has long since passed and no party
5 has properly moved for substitution. "If no motion to substitute is made within 90 days after the
6 statement of death is filed, the action must be dismissed as to the deceased party." *Maxey v. Van*
7 *Dalen*, No. CV-F-05-1385 LJO TAG, 2007 WL 1215593, at *2 (E.D. Cal. Apr. 24, 2007) (citing
8 Fed. R. Civ. P. 25(a)).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's April 8, 2015 motion for leave to amend (ECF No. 64) is denied;
- 11 2. This action is dismissed without prejudice; and
- 12 3. The Clerk is directed to close the case.

13 DATED: March 30, 2016.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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