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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND D. JACKSON,  
  
Plaintiff,  
  
v.  
  
SINGH, et al.,  
  
Defendants.

No. 2:14-cv-2809-TLN-EFB P

ORDER

This is an action brought by a state prisoner proceeding without counsel asserting claims under 42 U.S.C. § 1983. Upon screening pursuant to 28 U.S.C. § 1915A, the court determined that the complaint stated the following potentially cognizable claims (1) Eighth Amendment claims against defendants Osman, Bick, and Spencer for allegedly denying plaintiff proper housing and medical care (ECF No. 1, ¶¶ 51, 53, 57, 59, 125); (2) a first Amendment retaliation claim against defendant Singh for allegedly retaining plaintiff in administrative segregation (*id.* ¶¶ 48, 55, 63); and (3) a First Amendment retaliation claim against defendant Aguilera for allegedly forcing plaintiff to withdraw his medical appeals or risk losing single-cell status (*id.* ¶ 71). ECF No. 10 at 2. On October 23, 2018, counsel for defendants filed a notice of plaintiff's death, stating that plaintiff had died on October 22, 2018, during the pendency of this action. ECF No. 52.

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1 Rule 25 of the Federal Rules of Civil Procedure provides the mechanics for moving  
2 forward after a party to civil litigation has died. As is relevant here, that rule provides:

3 (1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is  
4 not extinguished, the court may order substitution of the proper party. A motion  
5 for substitution may be made by any party or by the decedent’s successor or  
6 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.

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8 (3) *Service.* A motion to substitute, together with a notice of hearing, must be  
9 served on the parties as provided in Rule 5 and on nonparties as provided in Rule  
10 4. A statement noting death must be served in the same manner. Service may be  
made in any judicial district.

11 Fed. R. Civ. P. 25(a). In *Robertson v. Wegmann*, 436 U.S. 584 (1978), the Supreme Court held  
12 that the law of the forum state is “the principle reference point in determining survival of civil  
13 rights actions” under section 1983. *Id.* at 590; *see also Moor v. Alameda County*, 411 U.S. 693,  
14 703 n.14 (1973) (noting that pursuant to 42 U.S.C. § 1988, state survivorship statutes may allow  
15 the survival of actions brought under § 1983). Under California law, a cause of action against a  
16 person is generally not lost by reason of the person’s death. Cal. Civ. Proc. Code § 377.20(a).  
17 The decedent’s personal representative or, if there is none, the decedent’s successor in interest  
18 may continue to litigate the action. *Id.* § 377.31.

19 Here, defendants have not served the notice on plaintiff’s successor or representative.  
20 Accordingly, defendants’ notice of plaintiff’s death does not comply with Rule 25(a) and has not  
21 started the 90-day clock under that rule.

22 The Ninth Circuit has held that Rule 25(a) requires two affirmative steps to trigger the 90-  
23 day period:

24 First, a party must formally suggest the death of the party upon the record.  
25 Second, the suggesting party must serve other parties and nonparty successors or  
26 representatives of the deceased with a suggestion of death in the same manner as  
27 required for service of the motion to substitute. Thus, a party may be served the  
suggestion of death by service on his or her attorney, while nonparty successors or  
representatives of the deceased party must be served the suggestion of death in the  
manner provided by Rule 4 for the service of a summons.

28 *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994) (internal citations omitted). Under *Barlow*,

1 defendants have some obligation to identify plaintiff's representative or successor and serve the  
2 notice of death on that party. Defendants have not done so, nor have they provided the court with  
3 any information indicating that such an individual could not be located. *See Gruenberg v.*  
4 *Maricopa County Sheriff's Office*, No. CV 06-0397-PHX-SMM (DKD), 2008 U.S. Dist. LEXIS  
5 40342 (D. Az. May 7, 2008) (dismissing action without prejudice after plaintiff died and  
6 defendants could not locate a successor).

7 Accordingly, it is hereby ORDERED that, within 30 days of the date of this order,  
8 defendants shall:

- 9 1. File a formal notice of plaintiff's death with the court and serve that notice on  
10 plaintiff's personal representative or successor in interest; or
- 11 2. Inform the court of the steps defendants have taken to locate plaintiff's personal  
12 representative or successor in interest and explain why such person could not be  
13 located.

14 DATED: January 18, 2019.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE