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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATRYNA WOLFF, et al.,
Plaintiffs,
v.
ELI LILLY AND COMPANY,
Defendant.

No. 2:14-cv-03004-KJM-EFB

ORDER

On December 13, 2018, the court ordered that, to determine the survival of this action and the potential substitution of a representative party, the parties must comply with Federal Rule of Civil Procedure 25 regarding the death of plaintiff Donald William Ruddell. ECF No. 71. Plaintiffs subsequently filed a suggestion of death on the record. *See* ECF No. 72. In its order at ECF No. 73, the court explained that this suggestion of death was insufficient to trigger the 90-day period provided by Rule 25(a)(1), because the party suggesting death must also “serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute.” *Id.* at 12 (quoting *Meyers v. Cty. of Los Angeles*, No. CV 10-05225 DMG AJW, 2011 WL 7164461, at *2 (C.D. Cal. Dec. 19, 2011), *report and recommendation adopted*, No. CV 10-5225 DMG AJW, 2012 WL 394857 (C.D. Cal. Feb. 6, 2012) (quoting *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994))).

1 On October 3, 2019, plaintiff’s counsel of record for plaintiff Donald William
2 Ruddell submitted a declaration explaining his multiple unsuccessful attempts to contact Ruddell
3 and his efforts to locate and serve Ruddell’s next of kin. ECF No. 75. In *Barlow*, the Ninth
4 Circuit expressly declined to address a scenario where the deceased party’s successors could not
5 be ascertained. See *McNeal v. Evert*, No. 2:05-CV-441-GEB-EFB, 2015 WL 1680496, at *2
6 (E.D. Cal. Apr. 14, 2015) (citing *Barlow*, 39 F.3d at 234). A deceased party’s counsel is
7 generally expected to know who would be the representative or successor for the deceased party.
8 See *Meyers*, 2011 WL 7164461, at *3 (citing *Yonofsky v. Wernick*, 362 F. Supp. 1005, 1011–12
9 (S.D.N.Y. 1973)). However, the court is satisfied by counsel’s representations that he is not
10 aware of any successor or next of kin, and has made a concerted effort to track down surviving
11 relatives of Ruddell, but to no avail. See ECF No. 75 ¶ 7 (describing counsel’s efforts to identify
12 relatives and unsuccessful attempts to contact those relatives).

13 In light of this declaration, the court finds Rule 25’s notice requirements have been
14 satisfied. See *McNeal*, 2015 WL 1680496, at *4 (“If defendants wish to start [Rule 25’s 90-day]
15 clock, they must either serve a suggestion of death on the proper party for substitution or file a
16 declaration with the court showing that the identity of such a party could not be ascertained.”).

17 Rule 25’s 90-day period begins after a party has satisfied this additional
18 requirement. *Barlow*, 39 F.3d at 233. The court considers the 90-day time period to have begun
19 October 3, 2019, the day plaintiff’s counsel filed the affidavit satisfying the notice requirement.
20 If the 90-day period expires without substitution by a nonparty successor or representative, the
21 court may then dismiss the matter under Rule 25(a). See, e.g., *Gruenberg v. Maricopa Cty.*
22 *Sheriff’s Office*, No. ^{CV} 06-0397-PHX-SMM (DKD), 2008 WL 2001253, at *2 (D. Ariz. May 7,
23 2008) (dismissing case where plaintiff died approximately ten months prior, more than six
24 months elapsed after notification of plaintiff’s death and no inquiry had been made by a potential
25 successor).

26 IT IS SO ORDERED.

27 DATED: October 10, 2019.

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UNITED STATES DISTRICT JUDGE