

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  
EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

DANIEL BRUNO, individually and  
on behalf of others similarly  
situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES,  
LLC; GENEVA FINANCIAL SERVICES,  
INC.; MARK HASSAN; GENEVA  
MOTORS, INC. d/b/a GENEVA  
FINANCIAL SERVICES; ROBERT  
MCGINLEY; KAMIES ELHOUTY; JOHN  
MCGINLEY; ANDY MITCHELL; and  
REBS SUPPLY, INC. d/b/a REBS  
MARKETING, INC.;

Defendants.

No. 2:17-cv-00327 WBS EFB

ORDER RE: MOTION TO DISMISS  
PURSUANT TO RULE 25 AND  
MOTION TO CLOSE CASE

----oo0oo----

Before the court is plaintiff's Motion to Dismiss  
Defendant Pursuant to Rule 25 and Motion to Close Case. (Docket  
No. 321.) Previously, Paul Levine, former counsel for defendants  
John McGinley and Robert McGinley, informed this court that  
defendant Robert McGinley passed away on September 10, 2018.

1 (Docket No. 233.) Since then, apparently no party has been able  
2 to ascertain the identity of the proper successor or  
3 representative of Robert McGinley, and plaintiff now requests  
4 that the court dismiss Robert McGinley and close the case.

5 Under Federal Rule of Civil Procedure 25, if a party  
6 dies, the court may order substitution of the proper party.  
7 However, if a motion by a party or the decedent's successor or  
8 representative "is not made within 90 days after service of a  
9 statement noting the death, the action by or against the decedent  
10 must be dismissed." Fed. R. Civ. P. 25(a)(1). Here, the court  
11 denied plaintiff's request to substitute "[t]he executor of the  
12 Estate of Robert McGinley, or, if no individual is acting as the  
13 executor, then the administrator or distributee of the Estate" in  
14 place of Robert McGinley, because no such person had been  
15 identified. (Docket No. 278.) The court also gave leave to  
16 plaintiff to "refile his motion if and when he ascertains the  
17 identity of the proper party for the purposes of Rule 25." (Id.)  
18 More than eight months has passed since the court granted such  
19 leave, and plaintiff has not sought to refile his motion to  
20 substitute.

21 In light of the foregoing, as well as the lack of any  
22 opposition from any party or anyone seeking to represent Robert  
23 McGinley, the court will grant plaintiff's motion to dismiss  
24 Robert McGinley. Further, given that all of plaintiff's claims  
25 against all parties have now been resolved, the court will order  
26 final judgment and close this case.

27 IT IS THEREFORE ORDERED that plaintiff's Motion to  
28 Dismiss Defendant Pursuant to Rule 25 and Motion to Close Case

1 (Docket No. 321) be, and the same hereby is, GRANTED.  
2 Plaintiff's claims against Robert McGinley are hereby DISMISSED.  
3 The Clerk of Court shall enter final judgment as to all parties  
4 and close this case.

5 Dated: September 25, 2019



6 **WILLIAM B. SHUBB**  
7 **UNITED STATES DISTRICT JUDGE**  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28