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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD ARCHULETA,)	No. C 10-02367 JW (PR)
Plaintiff,)	ORDER TO FILE AND SERVE
vs.)	STATEMENT OF DEATH
INDERJIT GREWAL, et. al.,)	
Defendants.)	
_____)	

Plaintiff filed a pro se complaint under 42 U.S.C § 1983 alleging that medical personnel at the Correctional Training Facility (“CTF”) in Soledad, California, were deliberately indifferent to his serious medical needs. Doc #1. In an order dated October 8, 2010, the Court found that Plaintiff had stated a cognizable claim for deliberate indifference to his serious medical needs and ordered service of the complaint on defendants CTF staff physicians/surgeons Inderjit Grewal, Charles Lee, Quan Anh Dinh, Michael Sepulveda, and John Carlisle, MD.

On May 18, 2011, defendants Inderjit Grewal, Charles Lee, and Michael Sepulveda filed a motion for summary judgment. On September 23, 2011, these defendants filed a declaration stating that their motion for summary judgment had been returned to them with “REFUSED” and “Deceased” stamped on the envelope.

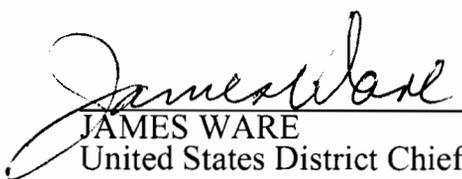
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When a party dies and the claim is not extinguished, the court may order substitution of the deceased party with the proper legal representative. Fed. R. Civ. P. 25(a); Hilao v. Estate of Marcos, 103 F.3d 762, 766 (9th Cir. 1996). Any party to the action or the deceased party's successors may file a "statement of fact of death" of the deceased party. The statement is served and filed in the same manner as a motion generally. Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994). However, service of the statement of death on non-party successors or representatives must be effected in the manner provided in the Federal Rule of Civil Procedure 4 for service of a summons. Id. at 233. This commences the running of the 90 day period for substitution motions set forth in Rule 25(a)(1). Id.

Because it is not clear whether Plaintiff's claims could survive his death if pursued by his successors or representatives, the Court will not dismiss this matter at this time. The Court orders defense counsel to file a statement of death pursuant to Fed. R. Civ. P. 25(a)(1), serve Plaintiff's representative or successor as set forth above and notify the Court of the name and address of the individual so notified. If no motion for substitution is filed within 90 days of service of the statement of death, this matter will be dismissed by the Court.

IT IS SO ORDERED.

DATED: October 6, 2011



JAMES WARE
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICHARD LUIS ARCHULETA,
Plaintiff,

Case Number: CV10-02367 JW

CERTIFICATE OF SERVICE

v.

INDERJIT GREWAL MD et al,
Defendant.

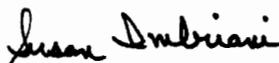
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Richard Luis Archuleta C-07247
California Medical Facility
D-154
P.O. Box 2500
Vacaville, CA 95696

Dated: October 7, 2011

Richard W. Wieking, Clerk



By: Susan Imbriani, Deputy Clerk