

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH E. STEWART,
Plaintiff,
v.
CITY & COUNTY OF SANTA CLARA, et
al.,
Defendants.

Case No. [16-cv-03979-JST](#)

ORDER OF DISMISSAL

Plaintiff filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. On January 3, 2017, the Court dismissed the complaint with leave to amend to address the identified deficiencies. Dkt. No. 14.

On February 13, 2017, an amended complaint was filed on behalf of Plaintiff; Plaintiff's minor son, Kenneth Stewart II; and Plaintiff's ex-wife, Beatriz Stewart. Dkt. No. 15. The amended complaint stated that Plaintiff passed away on January 27, 2017, id. at 1, and is signed by Beatriz Stewart, id. at 3. The Court struck the amended complaint because it was filed by a non-party to this action. Dkt. No. 16. In this same order, the Court advised Beatriz Stewart and Kenneth E. Stewart II that if they were Plaintiff's personal representatives or successors-in-interest, they must file a notice of death of Plaintiff with the Court and a motion to substitute for Plaintiff pursuant to Rule 25 of the Federal Rules of Civil Procedure before the action could proceed. Id. at 2. The Court served this order via U.S. Mail on Plaintiff at his address of record, and also served a copy on Beatriz Stewart at the address she provided in the amended complaint. Dkt. No. 16-1. On April 12, 2017, mail sent to the Plaintiff by the Court was returned as undeliverable with a notation that the Plaintiff passed away on January 28, 2017. Dkt. No. 17.

Since the filing of the amended complaint, there have been no pleadings filed in this case.

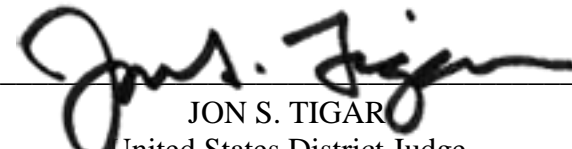
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Neither Beatriz Stewart nor Kenneth Stewart II have communicated with the Court.

Pursuant to Rule 3-11 of the Local Rules of the Northern District of California, the Court may, without prejudice, dismiss a complaint when mail directed to the pro se party by the Court has been returned to the Court as not deliverable; and the Court fails to receive within 60 days of this return a written communication from the pro se party indicating a current address. N.D. Cal. L.R. 3-11. More than sixty days have passed since the mail addressed to Plaintiff was returned as undeliverable. The Court has not received a notice from Plaintiff of a new address. The Court has not received a notice of death of Plaintiff or a motion to substitute for Plaintiff. Accordingly, the instant action is DISMISSED without prejudice pursuant to Rule 3-11 of the Northern District Local Rules.

IT IS SO ORDERED.

Dated: July 7, 2017



JON S. TIGAR
United States District Judge