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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TOMMIE L. MYLES,
Plaintiff,

v.

BANK OF AMERICA, INCORPORATED,
Defendant.

Case No. [16-cv-01143-DMR](#)

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

I. RELEVANT FACTS AND PROCEDURAL HISTORY

On March 8, 2016, Plaintiff Tommie L. Myles (“Myles”) filed the instant action against Defendant Bank of America, Incorporated (“Defendant”), alleging various civil RICO claims. See Compl. [Docket No. 1]. Defendant thereafter filed a motion to dismiss the complaint. [Docket No. 11].

On August 4, 2016, the court referred Myles to the Federal Pro Bono Project for assistance in seeking appointment of a pro bono attorney who could provide limited-scope representation for mediation. The court stayed the action pending potential appointment of an attorney. See Order Referring Plaintiff Tommie L. Myles to Federal Pro Bono Project and Staying Proceedings Pending Appointment of Counsel [Docket No. 25].

Myles passed away on November, 6, 2016. See Statement Noting Party’s Death [Docket No. 24]. However, the Statement Noting Myles’ Death was not served on all parties and the court until January 19, 2017. *Id.*

Meanwhile, on January 3, 2017, the court granted Defendant’s motion to dismiss, but granted Myles leave to amend to file an amended complaint. See Order Granting Motion to Dismiss [Docket No. 26]. The court also lifted the stay because the Federal Pro Bono Project was unable to secure pro bono representation for Myles. [Docket No. 26].

United States District Court
Northern District of California

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In light of Myles’ death, on March 8, 2017, the court notified all parties that any motion for party substitution had to be filed by no later than April 19, 2017 in accordance with Federal Rule of Civil Procedure 25(a)(1), or else the action would be dismissed. See Order Regarding Statement of Death [Docket No. 29]; see also Fed. R. Civ. P. 25(a)(1). The order was served on Achebe Myles, Myles’ next-of-kin, via U.S. Mail. See Proof of Service [Docket No. 29-1].

No motion for substitution has been filed.

II. DISCUSSION

Under Federal Rule of Civil Procedure 25(a)(1), “[i]f a 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.” Fed. R. Civ. P. 25(a)(1).

Since no motion for substitution has been filed, and no extension for the time in which to file a motion for substitution has been sought, the court dismisses the action for failure to prosecute.

IT IS SO ORDERED.

Dated: April 26, 2017

