

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN DOE, et al.,	:	
	:	
Plaintiffs,	:	
	:	14-cv-2953 (PAE)
- against -	:	
	:	
JOSEPH LIMA, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

PLAINTIFFS’ MOTION FOR SUBSTITUTION OF PARTY

Plaintiffs John Doe, Jane Doe, and M.S. (“Plaintiffs”) respectfully move, pursuant to Federal Rule of Civil Procedure 25(a) to substitute a party in interest in place of deceased Defendant Joseph Lima. In support of this motion, Plaintiffs state as follows:

1. On April 25, 2014, Plaintiffs brought claims under 42 U.S.C. § 1983 for violations of their constitutional rights by employees of the New York State Department of Corrections and Community Service (“DOCCS”), including Defendant Joseph Lima, a former Bureau Chief of the Manhattan VI Area Office. Defendant Lima was named as a defendant in both his personal and official capacities. First Amended Complaint at ¶¶ 14, 21 (Dkt. No. 100).
2. On August 31, 2017, this Court granted Plaintiffs’ motion for summary judgment as to liability against all defendants, including Defendant Lima. (Dkt. No. 283). On February 21, 2019, the Second Circuit affirmed the Court’s decision. (Dkt. No. 320). A trial for damages has not yet been scheduled.
3. On February 4, 2020, counsel for Defendant Lima filed a statement with the Court noticing Defendant Lima’s death. (Dkt. No. 367).

4. On May 5, 2020, the Court granted Plaintiffs' request for a two-week extension of the 90-day period to file the instant motion, to allow Plaintiffs time to coordinate with counsel for Defendant Lima regarding service of the motion.

5. Pursuant to Federal Rule of Civil Procedure 25(a), "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a). Under New York law, Section 1983 claims survive the death of a defendant. *See Barrett v. United States*, 651 F. Supp. 604, 606 (S.D.N.Y. 1986); *Crichlow v. Fischer*, 2015 WL 678725 at *4 (S.D.N.Y. Feb. 13, 2015); *Graham v. Henderson*, 224 F.R.D. 59, 63 (N.D.N.Y. 2004).

6. When a defendant who has been sued in an individual capacity in a Section 1983 action dies, "the proper party to substitute is the successor of the deceased or the representative of his estate." *Graham*, 224 F.R.D. at 64; accord *Young v. Patrice*, 832 F. Supp. 721, 724 (S.D.N.Y. 1993).

7. On May 11, 2020, counsel for Defendant Lima identified Pamela Lima as Defendant Lima's widow and represented to Plaintiffs that Ms. Lima authorized counsel to accept service on her behalf.

8. Upon information and belief, Pamela Lima is Defendant Lima's successor and/or the representative of his estate.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order pursuant to Federal Rule of Civil Procedure 25(a) substituting Pamela Lima as a party defendant in place of Defendant Lima.

Dated: New York, New York
May 18, 2020

Respectfully submitted,

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5/19/2020

Granted. The Court orders that Pamela Lima be substituted as a party defendant in place of defendant Joseph Lima.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge