

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Wilbert Kitson Andrew Turner,

Plaintiff,

ORDER OF DISMISSAL

-against-

18 Civ. 3370 (AEK)

Dr. Raul Ulloa, et al.,

Defendants.

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THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

On September 17, 2021, Defendants filed a “Suggestion of Death Upon the Record Pursuant to Rule 25(a)(1),” noting the death of *pro se* Plaintiff Wilbert Kitson Andrew Turner during the pendency of this action, and stating that the suggestion of death was “based upon the Suggestion of Death and Order of Dismissal filed and entered in the United States District Court for the Southern District of New York in *Wilbert K.A. Turner v. Agent George Gjelijaj, et al.*, Case No. 1:18-cv-01973-LTS-GWG.” ECF Nos. 113 & 114.¹ On September 20, 2021, the Court issued an Order setting a December 27, 2021 deadline for an authorized representative of Plaintiff to move to substitute the proper party and setting a January 10, 2022 deadline for Defendants to file a letter motion to dismiss for failure to timely file a motion to substitute in the event that no action was taken by December 27, 2021. ECF No. 115. The September 20 Order also directed Defendants to serve copies of that Order on Plaintiff at the address set forth in the Order and on Plaintiff’s daughter, at the email address used by the parties for service of various

¹ ECF Nos. 113 and 114 are virtually identical, except that at ECF No. 113, counsel attached a copy of this Court’s order at ECF No. 112 to the suggestion of death.

documents on Ms. Turner in the *Gjelaj* matter. Defendants promptly effected such service. *See* ECF No. 116.

Rule 25(a)(1) of the Federal Rules of Civil Procedure provides that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. *If the 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.*

(emphasis added). More than 90 days have passed since the service of a statement noting Plaintiff's death, and no motion for substitution has been made. Defendants filed and served a letter motion to dismiss pursuant to Rule 25(a) on January 10, 2022. ECF No. 118 (refiled at ECF No. 119). No opposition to the letter motion has been filed, nor has the Court received any other communication related to this action.

Accordingly, this action is hereby DISMISSED pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure.

Defendants must serve a copy of this Order upon Plaintiff's daughter at her email address, and must file proof of such service with the Court.

The Clerk of the Court is respectfully directed to serve a copy of this Order upon the *pro se* Plaintiff at his address of record on the docket.

The Clerk of the Court is further respectfully directed to terminate all motions and close this case.

Dated: January 25, 2022
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge