

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Nathan Webster v. Fletcher, et al.

Webster v. Fletcher · No. No. 2:24-cv-1479 AC P · Decided September 23, 2025

SUMMARY

The court addresses a defendant's notice indicating that the plaintiff in a 42 U.S.C. § 1983 action had died. It vacates the pending motion to dismiss and directs the defendant to file a formal notice of death and serve it on the plaintiff's representative or successor in accordance with Federal Rule of Civil Procedure 25 and Ninth Circuit precedent. The court indicates that a motion to dismiss may be filed after the substitution period expires.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 NATHAN WEBSTER, No. 2:24-cv-1479 AC P 12 Plaintiff, 13 v. ORDER
14 FLETCHER, et al., 15 Defendants. 16 17 On August 8, 2025, defendant filed a motion to
dismiss. ECF No. 21. Defendant has now 18 filed a “Notice of Plaintiff’s Status” indicating that
according to s Shasta County Sheriff’s Office 19 press release, plaintiff died on September 14,
2025.

ECF No. 26. 20 Federal Rule of Civil Procedure provides a process applicable after a party to a
civil action 21 has died. Of relevance here, it provides that “[i]f a party dies and the claim is not
extinguished, 22 the court may order substitution of a proper party.” Fed. R. Civ. P. 25(a). If the
decedent’s 23 successor or representative does not file a motion for substitution “within 90 days
after service of 24 a statement noting the death, the action by or against the decedent must be
dismissed.” Id. Under 25 California law—which federal courts apply in determining survival of a
claim under 42 U.S.C. 26 § 1983—a cause of action against a person is generally not extinguished
by that person’s death.

27 Cal. Civ. Proc. Code § 377.20(a); see Robertson v. Wegmann, 436 U.S. 584, 590 (1978). 28 ///
1 The Ninth Circuit has explained that Rule 25 requires two affirmative steps to trigger the 2 || 90-
day period: 3 First, a party must formally suggest the death of the party upon the record.

Second, the suggesting party must serve other parties and 4 nonparty successors or representatives
of the deceased with a suggestion of death in the same manner as required for service of the 5
motion to substitute.

Thus, a party may be served the suggestion of death by service on his or her attorney, while nonparty successors or 6 representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a 7 summons. 8 | Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994) (internal citations omitted); see Fed. R. Civ.

9 || P. 25. Under Barlow, defendants have some obligation to identify plaintiffs representative or 10 || successor and to serve the notice of death on that party. 11 Considering the “Notice of Plaintiff’s Status,” defendant’s motion to dismiss will be 12 || vacated. Defendants will be ordered to provide the court with a formal notice of plaintiffs death 13 || and to serve that notice on plaintiff’s representative or successor.

After the period for 14 || substitution, defendant may file a motion to dismiss pursuant to Rule 25(a). 15 Accordingly, IT IS HEREBY ORDERED that: 16 1. Inlight of the “Notice of Plaintiff’s Status” (ECF No. 26), defendant’s motion to 17 || dismiss (ECF No. 21) is vacated. 18 2. Within fourteen days of the date of this order, defendant shall fill with the court a 19 | formal notice of plaintiff’s death.

20 3. Within thirty days of the date of this order, defendant shall serve a formal notice of 21 || plaintiff’s death on plaintiff’s representative or successor in interest and file a certificate of 22 || service with the court. 23 || DATED: September 23, 2025 ~ 24 ☐☐ ———e——r ALLISON CLAIRE 25 UNITED STATES MAGISTRATE JUDGE 26 27 28