

**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

OPINION

Fletcher

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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 plaintiff's 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. In light 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 file 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

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