

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SUSAN ROGOFF, as Personal
Representative and Successor-in-Interest of
Leonard Rogoff and His Estate,

Plaintiff - Appellee,

v.

TRANSAMERICA LIFE INSURANCE
COMPANY, an Iowa Corporation,

Defendant - Appellant,

and

DOES, 1 through 10, Inclusive,

Defendant.

No. 24-7732

D.C. No.

5:24-cv-01254-JGB-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted February 12, 2026
Pasadena, California

Before: WARDLAW, BADE, and H.A. THOMAS, Circuit Judges.
Concurrence by Judge WARDLAW.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Defendant-Appellant Transamerica Life Insurance Co. timely appeals the district court's order granting Plaintiff-Appellee's motion to remand. We have jurisdiction under 28 U.S.C. § 1291, and we vacate the district court's order.

Leonard Rogoff, the original plaintiff in this action, brought a complaint on behalf of himself and a class of similarly situated holders and beneficiaries of life insurance policies with Transamerica alleging violations of California's Unfair Competition Law. The complaint sought three distinct remedies: (1) restitution of lost policy benefits, wrongfully collected or inflated premiums, and the diminution in value of the insurance policies; (2) a mandatory injunction compelling Transamerica to treat the insurance policies as if they had never been terminated; and (3) a prohibitory injunction compelling Transamerica not to engage in the allegedly unlawful business practices going forward.

During the pendency of this appeal, Leonard Rogoff passed away, and his wife Susan Rogoff was substituted as his personal representative and successor-in-interest. Although this intervening event does not moot either this appeal or Plaintiff-Appellee's sole claim,¹ Mr. Rogoff's passing fundamentally alters the

¹ This appeal is not moot because we can still grant Transamerica the relief sought—vacatur or reversal of the order remanding the case back to state court. *See Garcia v. Lawn*, 805 F.2d 1400, 1402 (9th Cir. 1986). The case as a whole is not moot because requests for restitution “survive events that moot any claim for injunctive or declaratory relief, whether restitution be sought in money or in kind.” 13C *Wright & Miller's Federal Practice & Procedure* § 3533.3 (3d ed. 2025) (footnote omitted).

factual context undergirding the district court’s order and the issues here presented. Based on the parties’ representations at oral argument, it seems likely that the operative complaint will be materially amended, and another member of the proposed class may well be added as a named plaintiff.

In addition, Transamerica relies on *Ruiz v. Bradford Exch., Ltd.*, 153 F.4th 907, 915–18 (9th Cir. 2025), which was decided while this appeal was pending and after briefing closed, to argue that the district court erred in remanding the case for lack of equitable jurisdiction without giving it an opportunity to waive its adequate-remedy-at-law defense. Although Transamerica did not raise this argument in the district court, this intervening change in the law and the death of the lead plaintiff constitute extraordinary circumstances that warrant us exercising our discretion in excusing Transamerica’s forfeiture. *Cf. Wood v. Milyard*, 566 U.S. 463, 471–72 (2012) (explaining that, consistent with the party-presentation principle, federal courts may consider a forfeited defense “when extraordinary circumstances so warrant”).

In light of these developments, we decline to pass on the merits of the district court’s order. *Cf. Smiertka v. IRS*, 604 F.2d 698, 704 (D.C. Cir. 1979) (“[I]t is fruitless for this court to answer questions that may no longer be pertinent to the case, or to attempt to anticipate questions from an unknown state of present facts.”). To the extent that equitable jurisdiction remains an issue in this case,

Transamerica “should be given the opportunity to waive the adequate-remedy-at-law impediment.” *Ruiz*, 153 F.4th at 918. Accordingly, we vacate the district court’s order and remand so that “the case may [thus] proceed in federal court in the normal course.” *Id.*

VACATED AND REMANDED.

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WARDLAW, J., concurring in judgment:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I concur in the panel majority’s resolution of this case. I agree with the panel majority that the death of the sole named Plaintiff in this putative class action, Leonard Rogoff, “fundamentally alters the factual context undergirding the district court’s order.” Mr. Rogoff’s death is a significant intervening circumstance justifying vacatur and remand. This case is somewhat similar to *Johnson v. City of Grants Pass*, in which we remanded a case in part after the only class representative with standing to bring the remanded claim died and plaintiffs had not moved to substitute a class representative, identified a representative who could be substituted, or briefed the issue. 72 F.4th 868, 884–85 (9th Cir. 2023), *rev’d on other grounds City of Grants Pass, Or. v. Johnson*, 603 U.S. 520 (2024); *see Grants Pass*, 603 U.S. at 570 n.1 (Sotomayor, J., dissenting) (explaining that the remanded claim was not before the Supreme Court).

I would leave to the district court whether Transamerica has forfeited its opportunity to waive its adequate-remedy-at-law defense. Here, unlike the defendant in *Ruiz v. Bradford Exchange, Ltd.*, Transamerica never attempted to waive its adequate-remedy-at-law defense. 153 F.4th 907, 918 (9th Cir. 2025). In *Ruiz*, the defendant argued in briefing that “if the district court concluded that it had authority to remand to state court for lack of equitable jurisdiction, [the defendant] should be given the opportunity to waive the adequate-remedy-at-law

impediment,” and we vacated the district court’s order and remanded “so that [the defendant could] perfect its waiver, assuming [the defendant] still wishe[d] to do so.” *Id.* Here, there is no waiver to perfect. Thus, I would simply vacate the district court’s order and remand the case for the district court to consider whether remand to state court continues to be proper and whether Mr. Rogoff continues to be an adequate representative of the putative class in light of his death. I would leave to the district court the issue of whether Transamerica can waive its adequate-remedy-at-law defense at this stage of the litigation.