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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jane Long,

10 Plaintiff,

11 v.

12 Estate of Charles Walis Haeger, Oakland
13 County (Michigan) cause number 2020-
0000396732-DE,

14 Defendant.
15

No. CV-20-02211-PHX-DWL

ORDER

16 On November 17, 2020, Plaintiff Jane Long filed this action, naming as the sole
17 Defendant “The Estate of Charles Wallis Haeger, Oakland County (Michigan) cause
18 number 2020-0000396732-DE.” (Doc. 1 at 1.) The facts alleged are tragic. According
19 to the complaint, Charles Haeger shot and killed Plaintiff’s daughter, Danielle Breed,
20 with whom he had a romantic relationship, and then shot and killed himself. (*Id.* ¶¶ 2-6.)
21 After Mr. Haeger’s death, his estate was created in the State of Michigan. (*Id.* ¶ 7.)
22 Kelly Okopny is the personal representative of the estate. (*Id.*)

23 Plaintiff brings three claims, each of which arises under Arizona law (*id.* ¶¶ 21-
24 38), and asserts that this Court “is vested with jurisdiction under 28 U.S.C. §1331
25 because of diversity of citizenship and because the value of the claim is more than
26 \$75,000.00” (*id.* ¶ 18).

27 Under Arizona law, “[a]n estate is a collection of the decedent’s assets and
28 liabilities. As such, it has no capacity to bring or defend a lawsuit. Simply put, an estate

1 cannot 'act.' Rather, it can only sue and be sued through its personal representative, who
2 'acts' on behalf of the estate." *Ader v. Estate of Felger*, 375 P.3d 97, 104 (Ariz. Ct. App.
3 2016). Thus, it appears that the proper defendant in this action should be Kelly Okopny,
4 who should be sued in his or her capacity as the representative of Mr. Haeger's estate.
5 *See Norwood v. Ariz. Dep't of Child Safety*, 2020 WL 4003263, *2 n.1 (D. Ariz. 2020).

6 Plaintiff is directed to file an amended complaint naming the proper defendant to
7 this action.¹ Because this Court's subject-matter jurisdiction rests on the diversity of the
8 parties, the amended complaint must allege the personal representative's citizenship
9 (state of domicile) for diversity purposes. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
10 857 (9th Cir. 2001). The personal representative's citizenship can be pled on information
11 and belief. *Carolina Cas. Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082, 1087 (9th
12 Cir. 2014) (allowing plaintiff to plead jurisdictional allegations on information and belief
13 "where the facts supporting jurisdiction [were] not reasonably ascertainable by the
14 plaintiff").

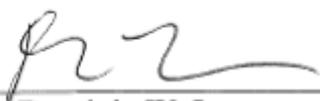
15 Accordingly,

16 **IT IS ORDERED** that by **December 9, 2020**, Plaintiff shall file an amended
17 complaint in accordance with this order.

18 **IT IS FURTHER ORDERED** that if Plaintiff fails to timely file her amended
19 complaint, the Clerk of the Court shall dismiss this case, without prejudice, for failure to
20 name a cognizable defendant.

21 **IT IS FURTHER ORDERED** that after Plaintiff files her amended complaint,
22 the Clerk of Court shall change the caption of this case to reflect the proper defendant.

23 Dated this 19th day of November, 2020.

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Dominic W. Lanza
United States District Judge

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28 ¹ This amended complaint pursuant to court order will not affect Plaintiff's right
under Rule 15(a)(1) to later amend once as a matter of course, if she chooses to do so.
See, e.g., Ramirez v. Cty. of San Bernardino, 806 F.3d 1002, 1006-09 (9th Cir. 2015).