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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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7 DIANA RAUSE, surviving natural
mother of JOHNNY MENDOZA,
8 JR., deceased, individually and on
behalf of all wrongful death
9 beneficiaries; GABRIEL
RODRIGUEZ, a single man,

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Plaintiffs,

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v.

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PAPERCHINE, INC., a foreign
corporation; ABITIBI
CONSOLIDATED SALES
CORPORATION, a foreign
corporation; DOES I-X; BLACK
CORPORATIONS I-X; and WHITE
PARTNERSHIPS I-X,

Defendants.

No. CV-07-8076-PCT-SMM

ORDER

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On October 19, 2009, the Court held a status hearing in this case. At the status hearing, the Court was advised that Johnny Mendoza, Sr., the natural father of the decedent Johnny Mendoza, Jr., has a technical right to pursue a claim for the decedent's wrongful death pursuant to A.R.S. § 12-611, et. seq. However, the Court was also advised by Plaintiff's counsel that given Johnny Mendoza, Sr.'s involvement in his son's employment activities on the date of the subject accident, and the conflict of interest that it creates between Plaintiff's claims in this action and any claim advanced by Johnny Mendoza, Sr., Plaintiff's counsel is unable to represent Johnny Mendoza, Sr. or pursue any claim on his behalf.

1 Plaintiff's counsel reported that he had spoken to Johnny Mendoza, Sr. and that he had
2 expressed a desire not to bring a claim or otherwise participate in the present suit. Although
3 Plaintiff's counsel has sent multiple waivers to Johnny Mendoza, Sr. requesting that such
4 waivers be executed if he does not intend to pursue a claim, no waiver had been returned by
5 Johnny Mendoza, Sr. to date. Furthermore, Johnny Mendoza Sr. has not returned any of
6 counsel's telephone calls requesting an update of Johnny Mendoza Sr.'s intentions relative
7 to this case.

8 The parties are entitled to conduct discovery with respect to the opposing parties to
9 a lawsuit. As a result, any party intending to pursue a claim must submit to the jurisdiction
10 of this Court and comply with the Federal Rules of Civil Procedure.

11 Accordingly, the Court will order that if Johnny Mendoza, Sr. intends to pursue a
12 claim arising out of the wrongful death of Johnny Mendoza, Jr. in this action, he must notify
13 this Court and the parties to this action and appear either through a licensed attorney or in
14 *propria persona*, by no later than November 30, 2009. Should Johnny Mendoza Sr. fail to
15 notify the Court and the parties of his intentions and appear either through counsel or in *pro*
16 *per* by that date, the Court will issue an Order to Show Cause why any claim by Johnny
17 Mendoza, Sr. should not be dismissed with prejudice.

18 **IT IS HEREBY ORDERED** that no later than **November 30, 2009**, Johnny
19 Mendoza, Sr. shall appear through a licensed attorney or in *propria persona* and notify the
20 Court of his intention to pursue a claim in this case. Notice shall also be given by Johnny
21 Mendoza, Sr. to each of the parties in the present case.

22 **IT IS FURTHER ORDERED** that the Clerk of Court shall send a copy of this Order
23 to Johnny Mendoza, Sr. at the following two addresses:

24 Johnny Mendoza, Sr.
25 503 Richardson Street
26 Bald Knob, AR 72010

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Johnny Mendoza, Sr.
189 Cooks Landing Road
Many, LA 71449

DATED this 23rd day of October, 2009.



Stephen M. McNamee
United States District Judge