

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TARA GARLICK, et al.,) Case No.: 1:13-cv-01051 - LJO - JLT
Plaintiff,)
v.) ORDER DIRECTING PLAINTIFFS TO FILE
COUNTY OF KERN, et al.,) SUPPLEMENTAL BRIEFING
Defendants.)
)

Plaintiffs seek to substitute Chris Silva as a successor in interest to Salvador Silva for Plaintiff Salvador Silva pursuant to Rule 25 of the Federal Rules of Civil Procedure and Ca. Code Civ. Proc. §337.32. (Doc. 106.) In support of their motion, Plaintiffs report that Chris Silva is the son of Salvador Silva and “[n]o other person has a superior right to commence the action or proceeding or to be substituted for Salvador Silva in this pending action or proceeding. (Doc. 106 at 4-5, citing Silva Decl. ¶ 5.) Under California’s Civil Code section 377.11, a “‘decedent’s successor in interest’ means the beneficiary of the decedent’s estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action.”

Notably, Merri Silva is the surviving spouse of Salvador Silva, and given she is the sole heir to the community property of the marriage and one of the heirs to Mr. Silva's separate property, seemingly, she has a superior right to prosecute the action that Mr. Silva's son. Further, from

1 reviewing the record it is not clear whether Judy Silva, the paternal aunt of the minor plaintiffs, has the
2 same or inferior interest as Chris Silva as a successor in interest.

3 In addition, Plaintiffs did not brief why they believe Chris Silva has a superior interest.
4 Consequently, the Court is unable to determine that Chris Silva is the proper party to be substituted for
5 Mr. Silva, as required by Rule 25 without further information.

6 Accordingly, **IT IS HEREBY ORDERED:** Plaintiffs **SHALL** provide supplemental briefing
7 within seven days of the date of service of this order explaining why Chris Silva has the superior right
8 to maintain this action and should be substituted for Mr. Silva.

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10 IT IS SO ORDERED.

11 Dated: June 25, 2015

12 /s/ Jennifer L. Thurston
13 UNITED STATES MAGISTRATE JUDGE

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