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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NANCY SCHWARTZ on behalf of
herself individually as the
mother of MICHAEL PARKER,
deceased; and NANCY SCHWARTZ as
representative and administrator
of MICHAEL PARKER's estate,

No. 2:10-cv-03048 MCE-GGH

Plaintiff,

ORDER

v.

LASSEN COUNTY ex rel. the LASSEN
COUNTY JAIL (DETENTION FACILITY)
et al.,

Defendants.

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Plaintiff Nancy Schwartz, on behalf of herself and her son,
decedent Michael Parker ("Plaintiff"), brings suit against Lassen
County Detention Facility, Steven W. Warren, Sheriff of Lassen
County, and others (collectively, "Defendants") for violations of
federal and state law relating to her son's in-custody death.

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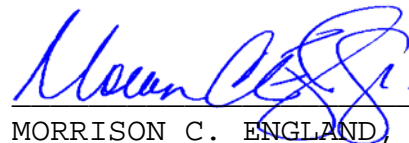
1 Defendants Lassen County and Steven W. Warren, Sheriff of Lassen
2 County have filed a Motion to Dismiss Plaintiff's First Amended
3 Complaint¹ for failure to state a claim for relief pursuant to
4 Federal Rule of Civil Procedure Rule 12(b)(6).

5 As a threshold matter, jurisdiction is not proper in the
6 instant case. Pursuant to California Code of Civil Procedure
7 § 377.32, any person "who seeks to commence an action or proceeding
8 . . . as the decedent's successor in interest" must execute an
9 affidavit declaring, among other things, that the "declarant is
10 authorized to act on behalf of the decedent's successor in
11 interest." Id. § 377.32(B). Plaintiff failed to file such an
12 affidavit, and she has not provided the Court with the decedent's
13 death certificate in compliance with the statute. Id. § 377.32(c).

14 Therefore, the First Amended Complaint is dismissed without
15 prejudice. Defendants' Motion to Dismiss (ECF No. 13) is denied as
16 moot. Plaintiff may file the appropriate documents in compliance
17 with California Code of Civil Procedure § 377.32 by April 8, 2011.
18 If no documents are filed by said date, the Clerk is ordered to
19 close the case without further notice to the parties.

20 IT IS SO ORDERED.

21 DATE: March 7, 2011

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23 MORRISON C. ENGLAND, JR.
24 UNITED STATES DISTRICT JUDGE

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28 ¹ It should be noted that Plaintiff, without leave of Court,
amended their original complaint.