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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 GRACIELA RAMIREZ,  
8 Individually, as Successor in  
9 Interest of Decedent ALMA  
10 VIDRIO, and as Personal  
11 Representative of the ESTATE  
12 OF ALMA VIDRIO,

13 Plaintiff,

14 v.

15 BNSF RAILWAY COMPANY, and  
16 AGUSTIN VIDRIO,

17 Defendant.  
18

No. 2:13-cv-00968-GEB-DAD

**ORDER CONTINUING STATUS  
(PRETRIAL SCHEDULING) CONFERENCE**

19 Plaintiff was required to respond to an Order filed  
20 August 14, 2013, by either "fil[ing] proof of service" for  
21 Defendant Agustin Vidrio or "a sufficient explanation why service  
22 was not effected [on this Defendant] within [Federal Rule of  
23 Civil Procedure] 4(m)'s prescribed service period." (Order 1:23-  
24 2:3, ECF No. 15.) This filing was due no later than September 13,  
25 2013. (Id.)

26 Plaintiff responded in a September 12, 2013 filing,  
27 stating in relevant part:

28 Plaintiff sued Agustin Vidrio as a nominal  
defendant because a wrongful death cause of  
action belongs to all of the decedent's heirs  
and heirs are, therefore, "necessary"  
parties. Any heir who chooses not to be a  
plaintiff may be joined as a defendant so  
that all heirs are before the court.

1           Ruttenberg v. Ruttenberg, 53 Cal. App. 4th  
2           801, 808. "An heir named as a defendant in a  
3           wrongful death action is, in reality, a  
          plaintiff." Id.

4           Plaintiff last had contact with Agustin  
5           Vidiro when Decedent Alma Vidrio was about  
6           five months old (in or around 1992). Prior to  
7           filing the Complaint in this matter,  
8           Plaintiff attempted to find and make contact  
9           with Agustin Vidrio. Plaintiff's daughter and  
10          Decedent's sister, Diane Guzman, made contact  
11          with his known relative, Andres Vidrio,  
12          regarding the whereabouts of Agustin Vidrio.  
13          Andres Vidrio was unable to provide Ms.  
          Guzman with an address as to where Agustin  
          Vidrio could be found. Andres Vidrio informed  
          her that Agustin Vidrio was living in the  
          Country of Mexico, but Andres was not able to  
          provide an address or city. Andres Vidrio did  
          inform Ms. Guzman that a family member had  
          contacted Agustin Vidrio to let him know that  
          Alma had died, but Agustin Vidrio never  
          contacted Plaintiff or her family regarding  
          this matter.


14          Since the filing of the complaint, in an  
15          attempt to serve the complaint, Plaintiff and  
16          Ms. Guzman has made additional attempts to  
17          contact Andres Vidrio to see if he had been  
18          in contact with Agustin and whether any other  
19          family members had information as to where  
20          Agustin Vidrio was living, but the phone  
21          number that she previously had is no longer  
22          active. Plaintiffs' counsel contacted an  
          investigator in an attempt to locate Agustin  
          Vidrio. The investigator performed online and  
          database research, and found that Agustin  
          Vidrio's last-known address was 308 East  
          Edgeware Road, Los Angeles, CA 90026 in  
          December 1991. There is no other history of  
          him living in the United States since that  
          time.

23          In summary, Plaintiff has made multiple  
24          attempts to contact Agustin Vidrio, but has  
          been unable to locate him.

25          (Pl.'s Resp. Re: Service of Def. Agustin Vidrio 1:24-2:20, ECF  
26          No. 16.) However, Plaintiff does not indicate in his response, or  
27          a subsequently filed Joint Status Report (ECF No. 17), how this  
28          action should proceed without Defendant Vidrio's participation.

Therefore, the Status Conference scheduled for October 28, 2013, is rescheduled to commence at 9:00 a.m. on November 25, 2013. A further joint status report shall be filed no later than fourteen (14) days prior to the Status Conference, in which the parties shall address how this matter should proceed without Defendant Vidrio's participation.

Dated: October 22, 2013

  
GARLAND E. BURRELL, JR.  
Senior United States District Judge