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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

Plaintiff,

v.

JAY C. MCILRATH, in his individual
and representative capacity as
Trustee—The Mcilrath Family 2002
Trust,

Defendant.

No. 2:15-cv-00180-MCE-DB

ORDER

Through the present action, Plaintiff Scott Johnson seeks damages and injunctive relief against Defendant Jay C. Mcilrath as Trustee of The Mcilrath Family 2002 Trust for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101–12213, and California’s Unruh Civil Rights Act (“Unruh Act”), Cal. Civ. Code § 51. Plaintiff claims he encountered various physical barriers at Defendant’s store in Stockton, California. Plaintiff has moved for summary judgment, ECF No. 29,¹ in response to which Defendant argues that the Defendant trustee, Jay C. Mcilrath, has passed away such that entering judgment would be improper, and, in any event, the proper real party in interest who should be named as Defendant is the Mcilrath Family Limited

¹ Having determined that oral argument would not be of material assistance, the Court ordered the Motion submitted on the briefs pursuant to Local Rule 230(g).

1 Partnership, ECF No. 31.

2 Given the foregoing, this Court issued an Order to Show Cause (“OSC”) directing
3 Plaintiff to show cause in writing why this action should not be dismissed for failure to
4 name or substitute the proper party. ECF No. 36. Plaintiff timely responded to the OSC,
5 albeit in less than helpful fashion, referring the Court back to his original Motion. ECF
6 No. 38. In addition, however, Plaintiff filed a Motion for Leave to File a First Amended
7 Complaint, asking to substitute in the proper party. ECF No. 39.

8 Based on the record before it, it is unclear to the Court who owns the subject
9 property (i.e., the trust or the limited partnership). What is clear, however, is that Mr.
10 Mcilrath is not a proper Defendant. Accordingly, the OSC is hereby DISCHARGED, and
11 Plaintiff’s Motion for Summary Judgment (ECF No. 29) is DENIED. That said, Plaintiff’s
12 Motion for Leave to Amend (ECF No. 39) is also flawed for failure to address Federal
13 Rule of Civil Procedure 16(b), and is DENIED as well.

14 Finally, the Court notes for the parties that resolving the issue of who owns the
15 property underlying the claims in this action should not require a great deal of judicial
16 intervention and is something that it expects to be clear by the time any further
17 substantive motions are filed.² In the meantime, not later than twenty (20) days following
18 the date this Order is electronically filed, Defendant’s counsel is directed to file a notice
19 complying with Federal Rule of Civil Procedure 25. Within thirty (30) days of the filing of
20 that Notice, Plaintiff is directed to file, in conformity with Rule 16, a renewed motion to
21 amend the existing complaint.³

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25 ² The Court need not assign responsibility to either side for the mess now before it as there
26 appears to be ample blame to go around. Indeed, Defendant admitted ownership of the property in the
27 Answer, ECF No. 4, but now argues a different entity should have been named. Moreover, all of the
28 parties knew Mr. Mcilrath had passed away, but Defendant chose not to file an official notice of death, and
Plaintiff went ahead and sought summary judgment as against a deceased party, anyway. Going forward,
the Court expects a higher level of professionalism than has been exhibited to this point.


³ A stipulation allowing Plaintiff to amend would be preferable.

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Failure to timely comply with these directives will result in the imposition of sanctions, up to and including terminating sanctions (e.g, dismissing the action or striking Defendant's answer) upon no further notice to the parties.

IT IS SO ORDERED.

Dated: June 25, 2019


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE