

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERRANCE EVANS,

Plaintiff,

v.

FCA USA LLC, a Delaware Limited
Liability Company,

Defendant.

No. 2:16-cv-01094-TLN-AC

ORDER

This matter is before the Court on Plaintiff Terrance Evans's Motion for Substitution of Lisa Evans as Plaintiff. (ECF No. 16.) Lisa Evans seeks to substitute in as Plaintiff because Plaintiff Terrance Evans passed away on September 9, 2016. (ECF No. 16 at 2; Ex. A, ECF No. 16-3.) Federal Rule of Civil Procedure 25 permits the substitution of a proper party if a party dies and their claim is not extinguished. Fed. R. Civ. P. 25. A court should liberally grant substitution of a party plaintiff where the person would adequately represent the decedent's interests. *In re Baycol Prods. Litig.*, 616 F.3d 778, 789 (8th Cir. 2010). In reviewing a motion to substitute the court must consider whether: (1) the motion is timely; (2) the claims pled are extinguished; and (3) the person being substituted is a proper party. *Veliz v. Cintas Corp.*, No. C 03-1180 RS, 2008 WL 2811171, at *1 (N.D. Cal. July 17, 2008).

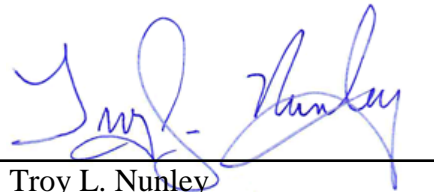
Lisa Evans filed a substitution of party on March 20, 2018. (ECF No. 16.) Plaintiff

1 Terrance Evans died over a year and a half before the filing of a substitution of party. (EX. A at
2 2.) Plaintiff's motion offers no explanation for this delay and there is no reasonable excuse the
3 Court can find for Plaintiff's failure to substitute the party at an earlier date. Thus, the Court in
4 good faith cannot say that the motion is timely. However, Plaintiff's case is saved by the sole fact
5 that Defendant FCA USA does not oppose this motion. (ECF No. 20.) The Court will not deny
6 an unopposed motion, but it will warn Plaintiff and Counsel that delays like this are unacceptable
7 and should be avoided in the future.

8 The Court finds that Lisa Evans is a proper party to substitute and Plaintiff Terrance
9 Evans's claims did not extinguish upon his death. *See* Cal. Code Civ. P. §§ 377.20, 377.31.
10 Accordingly, Plaintiff's motion to substitute in Lisa Evans as Plaintiff (ECF No. 16) is hereby
11 GRANTED. The parties shall file an updated Joint Status Report within thirty (30) days of the
12 date of this Order proposing dates to schedule this matter.

13 IT IS SO ORDERED.

14 Dated: May 7, 2018

15
16
17 

18 Troy L. Nunley
19 United States District Judge
20
21
22
23
24
25
26
27
28