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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DANIEL BRUNO, individually and
on behalf of others similarly
situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES,
LLC; GENEVA FINANCIAL SERVICES,
INC.; MARK HASSAN; GENEVA
MOTORS, INC. d/b/a GENEVA
FINANCIAL SERVICES; ROBERT
MCGINLEY; KAMIES ELHOUTY; JOHN
MCGINLEY; ANDY MITCHELL; and
REBS SUPPLY, INC. d/b/a REBS
MARKETING, INC.;

Defendants.

No. 2:17-cv-00327 WBS EFB

ORDER ON MOTION TO SUBSTITUTE
A PROPER PARTY

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Presently before the court is plaintiff's Motion to
Substitute a Proper Party. (Docket No. 265.) Previously, Paul
Levine, former counsel for defendants John McGinley and Robert
McGinley, informed this court that defendant Robert McGinley
passed away on September 10, 2018. (Docket No. 233.) In

1 response to Mr. Levine's Motion to Withdraw as Attorney for John
2 and Robert McGinley (Docket No. 223), this court ordered counsel
3 "to [] contact John McGinley to procure any information about the
4 estate of Robert McGinley, including identification of any
5 representative of the estate, and inform plaintiff's attorney and
6 the court of such information." (Order Re: Mot. to Withdraw as
7 Counsel (Docket No. 235).) The court ultimately granted Mr.
8 Levine's motion after he informed the court that he did not
9 receive any response from John McGinley. (Order Re: Mot. to
10 Withdraw as Counsel (Docket No. 247).) Since then, apparently no
11 party has been able to ascertain the identity of the proper
12 successor or representative of Robert McGinley.

13 Plaintiff's proposed order asks this court to
14 substitute "[t]he executor of the Estate of Robert McGinley, or,
15 if no individual is acting as the executor, then the
16 administrator or distributee of the Estate" in place of Robert
17 McGinley. However, there is no indication whether Robert
18 McGinley had a will, chose to pass his assets via a trust, or
19 died intestate. The court will not issue such an order without
20 knowing the identity, or at least the legal description, of the
21 individual or entity who is the proper party for the purposes
22 Federal Rule of Civil Procedure 25(a)(1).¹ Plaintiff has a "duty
23 to make a reasonable inquiry regarding the representative of the
24 estate or an appropriate successor." See In re MGM Mirage Sec.
25 Litig., 282 F.R.D. 600, 603-04 (D. Nev. 2012).

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27 ¹ It very well could be the case that Robert McGinley
28 does not have an estate, which case plaintiff's request would be
meaningless, or at least premature.

1 IT IS THEREFORE ORDERED that plaintiff's Motion to
2 Substitute a Proper Party (Docket No. 265.) is DENIED WITHOUT
3 PREJUDICE. Plaintiff may refile his motion if and when he
4 ascertains the identity of the proper party for the purposes of
5 Rule 25. Because the court already extended fact discovery until
6 March 18, 2019 (Docket No. 268), plaintiff's request that the
7 court extend discovery for the limited purpose of allowing
8 plaintiff to discover the administrator, executor, or
9 distributee(s) of Robert McGinley's estate is DENIED AS MOOT.

10 Dated: January 8, 2019



11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
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