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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 JULIUS ENGEL,
13 Plaintiff,

14 v.

15 R.J. REYNOLDS TOBACCO CO.,
16 PHILIP MORRIS USA, INC., and
DOES 1-10,

17 Defendants.
18

CIV. NO. 2:17-618 WBS GGH

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

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20 Plaintiff Julius Engel brought this action against R.J.
21 Reynolds Tobacco Co. and Philip Morris USA, Inc., for wrongful
22 death arising out of the death of his wife. The matter is now
23 before the court on defendant's Motion to dismiss for failure to
24 join a necessary party, failure to state a claim upon which
25 relief can be granted, and preemption. (Defs.' Mot. (Docket No.
26 7).)

27 I. Factual and Procedural Background

28 Plaintiff alleges that his wife, Mary Engel, died from

1 cardiovascular disease in August 2016. (Notice of Removal, Ex. 1
2 ("Compl.") at 3 (Docket No. 1-2).) Defendants' "tobacco and
3 nicotine products" allegedly caused her death. (Id. at 3, 6.)
4 Decedent is survived by plaintiff and their three adult children.
5 (Id. at 6.)

6 Plaintiff brought a wrongful death action against
7 defendants in Sacramento County Superior Court, alleging (1)
8 negligence, (2) intentional tort, (3) products liability, and (4)
9 breach of warranty. (Id. at 1, 3.) Defendants subsequently
10 removed the case to federal court on the basis of diversity
11 jurisdiction. (Docket No. 1.)

12 II. Discussion

13 Federal Rule of Civil Procedure 12(b)(7) permits a
14 party to move for dismissal due to the failure to join a
15 necessary party under Federal Rule of Civil Procedure 19. See
16 Fed. R. Civ. P. 12(b)(7); Paiute-Shoshone Indians of the Bishop
17 Cmty. v. City of Los Angeles, 637 F.3d 993, 1002 (9th Cir. 2011).
18 Rule 19 imposes a three-step inquiry: "(1) is the absent party
19 necessary . . . under Rule 19(a)? (2) If so, is it feasible to
20 order that the absent party to be joined? (3) If joinder is not
21 feasible, can the case proceed without the absent party, or is
22 the absent party indispensable such that the action must be
23 dismissed?" Salt River Project Agric. Improvement & Power Dist.
24 v. Lee, 672 F.3d 1176, 1179 (9th Cir. 2012). A party is
25 necessary if:

26 (1) in the party's absence, the court cannot
27 accord complete relief among existing
28 parties; (2) the absent party has an interest
in the action and resolving the action
without him may impair or impede his ability

1 to protect that interest; and (3) the absent
2 party has an interest in the action and
3 resolving the action in his absence may leave
an existing party subject to multiple or
inconsistent obligations.

4 Backer v. United States, Civ. No. 1:13-1552 AWI GSA, 2014 WL
5 4267500, at *2 (E.D. Cal. Aug. 29, 2014) (citing Fed. R. Civ. P.
6 19(a)(1)). If joinder of a necessary party is not feasible, a
7 plaintiff must nevertheless allege the name of the necessary
8 party and the reasons for not joining that person. Fed. R. Civ.
9 P. 19(c).

10 Under California law, wrongful death is a statutory
11 claim. Ruttenberg v. Ruttenberg, 53 Cal. App. 4th 801, 807 (2d
12 Dist. 1997). The decedent's "surviving spouse, domestic partner,
13 children, and issue of deceased children" may bring a wrongful
14 death cause of action. Cal. Civ. Proc. Code § 377.60. "While
15 each heir designated in section 377.60 has a personal and
16 separate wrongful death cause of action, the actions are deemed
17 joint, single and indivisible and must be joined together in one
18 suit." Corder v. Corder, 41 Cal. 4th 644, 652 (2007). Because
19 the actions are joint, single, and indivisible, federal courts
20 have held that absent heirs are necessary parties in wrongful
21 death cases. Backer, 2014 WL 4267500, at *3; see A.D. v. Cal.
22 Highway Patrol, No. C 07-5483 SI, 2009 WL 733872, at *4 (N.D.
23 Cal. Mar. 17, 2009); Estate of Burkhart v. United States, No. C
24 07-5467 PJH, 2008 WL 4067429, at *7 (N.D. Cal. Aug. 26, 2008).
25 Therefore, "[a]n heir who brings a wrongful death action has 'a
26 mandatory duty to join all known omitted heirs in the "single
27 action" for wrongful death.'" A.D., 2009 WL 733872, at *4
28

1 (quoting Ruttenberg, 53 Cal. App. 4th at 808).

2 Here, the decedent's alleged heirs for a wrongful death
3 cause of action are her surviving spouse and her "three grown
4 children." (Compl. at 6.) The only plaintiff in this action,
5 however, is the decedent's surviving spouse. Because the
6 decedent's three grown children are heirs under section 377.60,
7 they are necessary parties. See A.D., 2009 WL 733872, at *5.
8 Plaintiff argues that he is the only "first tier" heir because
9 all of the children are adults and therefore it is not necessary
10 to join decedent's adult children in this action. Plaintiff's
11 position, however, is unsupported by case law. See, e.g., Estate
12 of Burkhardt, 2008 WL 4067429, at *7 ("An heir who files a
13 wrongful death action is required to properly join all known
14 heirs in the action." (citing Cross v. Pac. Gas & Elec. Co., 60
15 Cal. 2d 690, 692-93 (1964))). Further, section 377.60, which
16 defines who are heirs for purposes of a wrongful death action,
17 does not define different "tiers" of heirs or state that adult
18 children are not heirs. Accordingly, the decedent's children are
19 necessary parties.

20 The court must next determine whether joinder of
21 decedent's children is feasible and, if not, whether they are
22 indispensable parties. See Salt River, 672 F.3d at 1179.
23 Plaintiff does not, however, allege why joinder of the necessary
24 parties is not feasible, as required by Rule 19(c). The court is
25 thus unable to determine whether joinder is feasible.

26 Because plaintiff has not indicated why joinder is not
27 feasible, the court will grant defendants' Motion to dismiss the
28 Complaint for failure to join a necessary party. See Bickoff v.

1 Wells Fargo Bank, N.A., No. 11-CV-02452 BEN (WVG), 2012 WL
2 3637381, at *3 (S.D. Cal. Aug. 20, 2012). In the First Amended
3 Complaint, plaintiff must either join all necessary parties or
4 indicate why it is not feasible to join the necessary parties
5 under Rule 19(c).

6 Because the court will grant defendants' Motion to
7 dismiss under Rule 12(b)(7), the court need not address
8 defendants' Motion to dismiss for failure to state a claim and
9 preemption. The parties also agree to strike Exhibit 1 to
10 defendants' Motion.

11 IT IS THEREFORE ORDERED that defendant's Motion to
12 dismiss for failure to join a necessary party be, and the same
13 hereby is, GRANTED.

14 IT IS FURTHER ORDERED that defendants' Motion to
15 dismiss for failure to state a claim and conflict preemption be,
16 and the same hereby is, DENIED AS MOOT.

17 IT IS FURTHER ORDERED that Exhibit 1 to defendants'
18 Motion to dismiss (Docket No. 7-2) be, and the same hereby is,
19 STRICKEN.

20 Plaintiff has twenty days from the date this Order is
21 signed to file a First Amended Complaint, if he can do so
22 consistent with this Order.

23 Dated: May 16, 2017



24 **WILLIAM B. SHUBB**
25 **UNITED STATES DISTRICT JUDGE**
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