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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOSE ROE, and others,

 Plaintiffs,

 v.

THOMAS F. WHITE, and others,

 Defendants.

Case No. 03-cv-04035 CRB (NC)

**ORDER DENYING EX PARTE
APPLICATION AND STAYING
DISCOVERY**

Re: Dkt. Nos. 1188, 1192

Before the Court is an ex parte application for an order compelling production of discovery, as well as a request to stay discovery in this case pending a substitution of party. The Court DENIES the ex parte application, and GRANTS the request to stay.

On September 10, 2013, Defendant Thomas F. White died in Puerto Vallarta, Mexico. Dkt. No. 1192. On September 17, 2013, Geoffrey Rotwein, counsel for the deceased Defendant, filed an ex parte application for an order compelling production of pending discovery. Dkt. No. 1188. The guardian ad litem for Plaintiffs objected to the ex parte application, arguing that Mr. Rotwein did not have standing to continue to pursue the action after the death of his client. Dkt. No. 1191. On September 24, 2013, the Court received a letter from Mr. Rotwein indicating that he agreed with the guardian ad litem's

1 position, and that he did not have authority to file the ex parte application, nor to withdraw
2 it. Because “the deceased’s attorney is not a party to the litigation and his function as a
3 representative ceases upon the party’s death,” the Court DENIES the ex parte application.
4 *United States v. Seventy-One Firearms*, No. 04-cv-00402 LRH (RAM), 2006 WL 1983240,
5 at *2 (D. Nev. July 13, 2006).

6 Additionally, on September 30, 2013, Jack Eugene Teeters filed notice with the
7 Court advising of his belief that he is the proper executor of Defendant White’s estate, and
8 that once he is named executor he will file a substitution of party in this matter. Dkt. No.
9 1192. Mr. Teeters requests that the Court stay all pending discovery deadlines until the
10 substitution of party occurs. Upon the death of a defendant, Federal Rule of Civil
11 Procedure 25 counsels that “[a] motion for substitution may be made by any party or by the
12 decedent’s successor or representative. If the motion is not made within 90 days after
13 service of a statement noting the death, the action by or against the decedent must be
14 dismissed.” Fed. R. Civ. P. 25. In order to give interested parties an opportunity to submit
15 a motion for substitution, the Court GRANTS the request to temporarily stay discovery.
16 The discovery hearing set for October 23, 2013 is therefore vacated.

17 In the event that a substitution of party occurs, the parties are further ORDERED to
18 submit a joint case management conference statement 7 days after the substitution, and to
19 appear for a discovery case management conference before this Court within 14 days after
20 the substitution of party occurs.

21 IT IS SO ORDERED.

22 Date: October 1, 2013

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24 _____
25 Nathanael M. Cousins
26 United States Magistrate Judge
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