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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF RUBEN NUNEZ,  
by and through its successor-in-  
interest LYDIA NUNEZ, ALBERT  
NUNEZ, and LYDIA NUNEZ,  
Plaintiffs,  
v.  
COUNTY OF SAN DIEGO,  
WILLIAM GORE, et al.,  
Defendants.

Case No.: 16cv1412-BEN-MDD

**ORDER GRANTING PLAINTIFFS’  
EX PARTE MOTION FOR ORDER  
APPOINTING PLAINTIFF LYDIA  
NUNEZ AS SUCCESSOR-IN-  
INTEREST TO THE ESTATE OF  
RUBEN NUNEZ  
[ECF NO. 3]**

Before the Court is Plaintiffs’ Ex Parte Motion to Appoint Plaintiff  
Lydia Nunez as Successor in Interest to the Estate of Ruben Nunez. (ECF  
No. 3).

I. BACKGROUND

On June 8, 2016, Plaintiffs The Estate of Ruben Nunez by and through  
its successor-in-interest Lydia Nunez, Albert Nunez, and Lydia Nunez  
initiated this action by filing a Complaint against Defendants County of San

1 Diego, William Gore, Bruce Leicht, Alfred Joshua, Harry Oreol, Kayla Fisher,  
2 Marcy Moon, and Does 1 – 50. (ECF No. 1). Plaintiffs’ Complaint alleges  
3 eleven causes of action including: (1) deliberate indifference to serious  
4 medical needs; (2) wrongful death (42 U.S.C. § 1983); (3) right of association;  
5 (4) failure to properly train; (5) failure to properly supervise and discipline;  
6 (6) failure to properly investigate; (7) *Monell* municipal liability civil rights  
7 action; (8) wrongful death (CCP § 377.60); (9) negligence; (10) violation of 42  
8 U.S.C. § 12132; and (11) violation of 29 U.S.C. § 794(a). (ECF No. 1).

9 On June 10, 2016, Plaintiffs filed the Ex Parte Motion to Appoint Lydia  
10 Nunez as Successor in Interest to the Estate of Ruben Nunez. (ECF No. 3).  
11 No opposition has been filed.

## 12 II. PLAINTIFFS’ ARGUMENT IN SUPPORT OF MOTION

13 Plaintiff Lydia Nunez contends that because decedent’s estate was not  
14 administered, a final order showing the distribution is not required. Plaintiff  
15 Lydia Nunez also contends that, as set forth in the death certificate of  
16 decedent (ECF No. 4), decedent was unmarried at the time of his death and  
17 died without children. (ECF No. 3 at 3). Plaintiff Lydia Nunez contends that  
18 she has complied with all requirements of Cal. Civ. Proc. Code § 377.32 to  
19 commence a survival action as decedent’s successor in interest.

## 20 III. RULING OF COURT

21 In actions pursuant to 42 U.S.C. § 1983, “the survivors of an individual  
22 killed as a result of an officer’s excessive use of force may assert a Fourth  
23 Amendment claim on that individual’s behalf if the relevant state’s law  
24 authorizes a survival action. The party seeking to bring a survival action  
25 bears the burden of demonstrating that a particular state’s law authorizes a  
26 survival action and that the plaintiff meets that state’s requirements for

1 bringing a survival action.” *Moreland v. Las Vegas Metro. Police Dep’t*, 159  
2 F.3d 365, 369 (9th Cir. 1998) (internal citations omitted). *See also* Fed. R.  
3 Civ. P. 17(b) (“[C]apacity to sue or be sued shall be determined by the law of  
4 the state in which the district court is held.”). Under California law, “[a]  
5 cause of action that survives the death of the person entitled to commence an  
6 action or proceeding passes to the decedent’s successor in interest, ... and an  
7 action may be commenced by the decedent’s personal representative or, if  
8 none, by the decedent’s successor in interest.” Cal. Civ. Proc. Code § 377.30.

#### 9 A. Personal Representative

10 “[A] personal representative is by definition a court-appointed  
11 executor or administrator of an estate, not merely an heir, ... and ... a  
12 personal representative must be a person empowered by law to administer  
13 the decedent’s estate.” *Hassanati v. Int’l Lease Fin. Corp.*, 51 F.Supp3d 887,  
14 894 (C.D. Cal. Feb. 18, 2014). Plaintiff Lydia Nunez states that “[b]ecause  
15 Ruben Nunez did not leave any will or other testamentary instrument, there  
16 is no probate proceeding pending for the administration of his estate.” (ECF  
17 No. 3 at p. 3 citing Decl. Lydia Nunez at ¶ 6). Because Plaintiff has  
18 demonstrated there is no court-appointed executor or administrator of the  
19 estate, and her declaration states that no proceeding is pending for  
20 administration of the decedent’s estate, the Court finds the Plaintiff Lydia  
21 Nunez is not the decedent’s personal representative.

#### 22 B. Successor In Interest

23 Because Plaintiff Lydia Nunez is not decedent’s personal  
24 representative, she must establish that she is the successor in interest. *See*  
25 Cal. Civ. Proc. Code § 377.30 (“A cause of action that survives the death of  
26 the person entitled to commence an action or proceeding passes to the

1 decedent’s successor in interest, ... and an action may be commenced by the  
2 decedent’s personal representative or, if none, by the decedent’s successor in  
3 interest.); *see also Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090,  
4 1094, n.2 (9th Cir. 2006) (“Where there is no personal representative for the  
5 estate, the decedent’s ‘successor in interest’ satisfies the requirements of  
6 California law ...”).

7 In California, the person who seeks to commence an action as the  
8 decedent’s successor in interest is required to execute and file an affidavit or  
9 declaration under penalty of perjury, stating: “(1) the decedent’s name. (2)  
10 The date and place of decedent’s death. (3) ‘No proceeding is now pending in  
11 California for the administration of the decedent’s estate.’ (4) If the  
12 decedent’s estate was administered, a copy of the final order showing the  
13 distribution of the decedent’s cause of action to the successor in interest. (5)  
14 Either of the following, as appropriate, with facts in support thereof: (A) ‘The  
15 affiant or declarant is the decedent’s successor in interest ... and succeeds to  
16 the decedent’s interest in the action or proceeding.’ (B) ‘The affiant or  
17 declarant in the pending action or proceeding.’ ... (7) ‘The affiant or declarant  
18 affirms or declares under penalty of perjury under the laws of the State of  
19 California that the foregoing is true and correct.’” Cal. Civ. Proc. Code §  
20 377.32(a).

21 “Successor in interest” is defined as “the beneficiary of the decedent’s  
22 estate or other successor in interest who succeeds to a cause of action or to a  
23 particular item of the property that is the subject of a cause of action.” Cal.  
24 Civ. Proc. Code § 377.11.

25 “Beneficiary of the decedent’s estate” means “[i]f the decedent died  
26 leaving a will, the sole beneficiary or all of the beneficiaries who succeed to a

1 cause of action, or to a particular item or property that is the subject of a  
2 cause of action, under the decedent's will," or "[i]f the decedent died without  
3 leaving a will, the sole person or all of the persons who succeed to a cause of  
4 action, or to a particular item of property that is the subject of a cause of  
5 action...." Cal. Civ. Proc. Code § 377.10(a), (b).

6 Plaintiff Lydia Nunez's signed declaration pursuant to Cal. Civ.  
7 Proc. Code § 377.32(a) and a copy of the death certificate are sufficient under  
8 California law to demonstrate that she is the decedent's successor in interest  
9 and succeeds to the decedent's interest in this action. (ECF No. 3-1,  
10 Attachment 1); *see* Cal. Civ. Proc. Code § 377.32(a). The Court grants  
11 Plaintiff's application for order appointing Lydia Nunez as successor in  
12 interest to the estate of Ruben Nunez. *See* Cal. Civ. Proc. Code § 377.30 ("[a]  
13 cause of action that survives the death of the person entitled to commence an  
14 action or proceeding passes to the decedent's successor in interest, ... and an  
15 action may be commenced by the decedent's personal representative or, if  
16 none, by the decedent's successor interest.").

17 IV. CONCLUSION

18 IT IS HEREBY ORDERED that the Ex Parte Motion for Order  
19 Appointing Lydia Nunez as Successor in Interest to the Estate of Ruben  
20 Nunez is GRANTED.

21 Dated: July 14, 2016



22  
23 Hon. Mitchell D. Dembin  
24 United States Magistrate Judge  
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