

FILED

OCT 10 2019

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHANE CAVANAUGH, an individual
and as personal representative and
successor in interest of the Estate of
RICHARD BOULANGER; the Estate of
RICHARD BOULANGER,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, a municipal
Corporation; SHERRIFF BILL GORE,
individually and in his official capacity as
Sherriff for the County of San Diego; and
DOES 1-50 inclusive,

Defendants.

Case No.: 3:18-cv-02557-BEN-LL

**ORDER GRANTING MOTION TO
APPOINT SHANE CAVANAUGH AS
SUCCESSOR-IN-INTEREST TO
THE ESTATE OF RICHARD
BOULANGER**

[Doc. No. 20]

The matter before the Court is Plaintiffs' Ex Parte Motion to Appoint Shane Cavanaugh as Successor in Interest to the Estate of Richard Boulanger.

I. BACKGROUND

On February 9, 2018, Plaintiffs Shane Cavanaugh, an individual and as personal representative and successor in interest of the Estate of Richard Boulanger, and the Estate of Richard Boulanger initiated this action by filing the Complaint against Defendants County of San Diego, and William Gore in the Superior Court of California, County of San Diego – Central Division. Plaintiffs' Complaint alleges six causes of action

1 including (1) Civil Right; (2) Deliberate Indifference to Decedents Medical Needs; (3)
2 Wrongful Death; (4) Loss of Familial Relationship; (5) Survival Action; (6) *Monell*
3 municipal liability civil rights action. On November 8, 2018, Defendants removed the
4 case to the Southern District Court. (Doc. No. 1.) The Plaintiff moved to remand the
5 case back to the state court in December 2018. On July 17, 2018, the court denied
6 Plaintiff's motion for remand.

7 On August 25, 2019, Plaintiffs filed an *Ex Parte* Motion to Appoint Plaintiff Shane
8 Cavanaugh as Successor-in-Interest to the Estate of Richard Boulanger by Shane
9 Cavanaugh. (Doc. No. 16.) On August 26, 2019, the Plaintiff's filed a Notice of
10 Withdrawal of Docket No. 16 by Shane Cavanaugh. (Doc. No. 19.)

11 On August 26, 2019, Plaintiffs filed an Ex Parte Motion to Appoint Plaintiff Shane
12 Cavanaugh as Successor-in-Interest to the Estate of Richard Boulanger by Shane
13 Cavanaugh. (Doc. No. 20.)

14 **II. RULING OF COURT**

15 In actions pursuant to 42 U.S.C. § 1983, "the survivors of an individual killed as a
16 result of an officer's excessive use of force may assert a Fourth Amendment claim on that
17 individual's behalf if the relevant state's law authorizes a survival action. The party
18 seeking to bring a survival action bears the burden of demonstrating that a particular
19 state's law authorizes a survival action and bears the burden of demonstrating that a
20 particular state's law authorizes a survival action and that the plaintiff meets that state's
21 requirements for bringing a survival action." *Moreland v. Law Vegas Metro. Police*
22 *Dep't*, 159 F.3d 365, 369 (9th Cir. 1998) (internal citations omitted). *See also* Fed. R.
23 Civ. P. 17(b) ("[C]apacity to sue or be sued shall be determined by the law of the state in
24 which the district court is held."). Under California law, "[a] cause of action that
25 survives the death of the person entitled to commence an action or proceeding passes to
26 the decedent's successor in interest, ... and an action may be commenced by the
27 decedent's personal representative or, if none, by the decedent's successor in interest."
28 Cal. Civ. Proc. § 377.30.

1 **A. Successor In Interest**

2 In California, the person who seeks to commence an action as the decedent's
3 successor in interest is required to execute and file an affidavit or declaration under
4 penalty of perjury, stating:

5 (1) the decedent's name. (2) The date and place of decedent's death. (3) "No
6 proceeding is now pending in California for the administration of the
7 decedent's estate." (4) If the decedent's estate was administered, a copy of
8 the final order showing the distribution of the decedent's cause of action to
9 the successor in interest. (5) Either of the following, as appropriate, with
10 facts in support thereof: (A) "The affiant or declarant is the decedent's
11 successor in interest ... and succeeds to the decedent's interest in the action
12 or proceeding." (B) "The affiant or declarant is authorized to act on behalf of
13 the decedent's successor in interest ... with respect to the decedent's interest
14 in the action or proceeding." (6) "No other person has a superior right to
commence the action or proceeding or to be substituted for the decedent in
the pending action or proceeding." (7) "The affiant or declarant affirms or
declares under penalty of perjury under the laws of the State of California
that the foregoing is true and correct."

15 Cal.Civ.Proc.Code § 377.32(a).

16 "Successor in interest" is defined as "the beneficiary of the decedent's estate or
17 other successor in interest who succeeds to a cause of action or to a particular item of the
18 property that is the subject of a cause of action." Cal. Civ. Proc. § 377.11.

19 "Beneficiary of the decedent's estate" means "[i]f the decedent died leaving a will,
20 the sole beneficiary or all of the beneficiaries who succeed to a cause of action, or to a
21 particular item of property that is the subject of a cause of action, under the decedent's
22 will," or "[i]f the decedent died without leaving a will, the sole person or all of the
23 persons who succeed to a cause of action, or to a particular item of property that is the
24 subject of a cause of action ..." Cal. Civ. Proc. § 377.10(a), (b).

25 Plaintiff Shane Cavanaugh's affidavit states:

26 I, SHANE CAVANAUGH, being duly sworn, hereby declare:

27 ...

28 2. The decedent is my father, Richard Boulanger.

- 1 3. My father Richard Boulanger died in the city and county of San Diego,
2 California on February 14, 2016. He was 51 years old.
- 3 4. A true and correct copy of Richard Boulanger's death certificate is attached
4 as Exhibit C.
- 5 5. My father has never been married. He did not leave behind any will. He did
6 not leave any testamentary instrument or other written document designating
7 any beneficiary or making any donative transfer of property. Richard
8 Boulanger died intestate.
- 9 6. Because my father Richard Boulanger did not leave behind any will or other
10 testamentary instrument, there is no probate proceeding pending in
11 California for the administration of his estate.
- 12 7. I am the decedent's successor in interest and succeed to the decedent's
13 interest in this action.
- 14 8. No other person has a superior right to commence the action or proceeding
15 or to be substituted for the decedent in the pending action or proceeding.
16 (Doc. No. 20-1, Exh. A).

17 Here, the Court finds that Shane Cavanaugh's filed declaration in support of the
18 Estate of Richard Boulanger *Ex Parte* Motion meets the requirements of section §
19 377.32(a). (Doc. No. 20-1, Exh. A ¶¶ 1-12.) Shane Cavanaugh has also filed a copy of
20 the Decedent's death certificate, as required by section § 377.32(c). (Doc. No. 20-2, Exh.
21 B.)

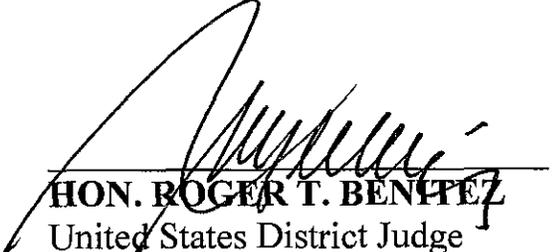
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1 **III. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the *Ex Parte* Application for Order Appointing
3 Shane Cavanaugh as Successor in Interest to the Estate of Richard Boulanger is
4 **GRANTED.**

5 **IT IS SO ORDERED.**

6 Dated: October 10, 2019

7 
8 **HON. ROGER T. BENITEZ**
9 United States District Judge

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