

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JANET MALAUULU, as representative
11 for the Estate of Johnny Malauulu,

12 Plaintiff,

13 vs.

14 WAL-MART STORES, INC., et al.,

15 Defendants.

CASE NO. 18cv2595-LAB (AGS)

**ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS, CONSTRUED AS A
MOTION FOR SUMMARY JUDGMENT
[Dkt. 11]**

16
17 This is a discrimination suit brought on behalf of the estate of Johnny Malauulu, a
18 former employee of Defendant Wal-Mart who was allegedly terminated because of his
19 disability. The motion currently before the Court, however, is not about the merits of
20 Johnny Malauulu's claims, but rather whether Janet Malauulu, Mr. Malauulu's sister-in-
21 law, has standing to pursue claims on behalf of the estate. The Court finds that she does
22 not, and therefore **GRANTS** Wal-Mart's Motion for Summary Judgment.¹

23 Federal Rule of Civil Procedure 17(a) requires that all actions "be prosecuted in
24 the name of the real party in interest." In cases where the plaintiff is acting in a
25

26 ¹ On June 19, 2019, the Court notified the parties that it intended to construe Wal-Mart's
27 Motion for Judgment on the Pleadings as a Motion for Summary Judgment. Dkt. 19. The
28 parties then submitted a joint statement of undisputed facts, Dkt. 21, and Ms. Malauulu
filed supplemental briefing. Dkt. 22.

1 representative capacity, whether he or she is the “real party in interest” is determined by
2 the law of the forum state. Fed. R. Civ. P. 17(b)(3). Under California law, claims of an
3 estate may only be pursued by the personal representative of the estate or, if there isn’t
4 one, the decedent’s successor-in-interest. See Cal. Civ. Proc. Code § 377.30.

5 The undisputed facts show that Ms. Malauulu is neither the personal
6 representative of Mr. Malauulu’s estate nor his successor-in-interest. As to the first point,
7 a personal representative is the “executor, administrator, . . . or a person who performs
8 substantially the same function under the law” Cal. Prob. Code § 58. This Court
9 has no power to appoint a representative; only California probate courts can issue letters
10 of administration appointing an individual as the estate’s personal representative. See
11 *Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore*, 162 Cal. App. 4th
12 1331, 1340 n.2 (2008) (“The ‘personal representative’ is the person or firm appointed by
13 the probate court to administer the probate of a decedent's estate.”). Letters of
14 administration may be issued by the probate court only after (1) a probate proceeding is
15 opened, (2) the proposed personal representative files an acknowledgment of receipt of
16 duties and liabilities of the office of the personal representative, and (3) a court has found
17 the requesting party meets the requirements of a personal representative. See Cal. Prob.
18 Code §§ 8000, 8402, 8404-05. Ms. Malauulu first petitioned the state probate court for
19 letters of administration on July 1, 2019, more than one year after this case was filed in
20 state court and more than three months after Wal-Mart filed the current motion. See Joint
21 Statement of Undisputed Facts (“SUF”), Dkt. 21, ¶¶ 14, 22. But it’s undisputed that she
22 was not the appointed personal representative at the time this action was commenced.
23 See Cal. Civ. Proc. Code § 377.30 (“[A]n action may be commenced by the decedent’s
24 personal representative”) (emphasis added). And it’s likewise undisputed that as of
25 this date no probate court has found that she meets the requirements to be a personal
26 representative. See SUF ¶ 21. Ms. Malauulu therefore lacks standing to pursue claims
27 on behalf of the estate as personal representative.

28

1 Nor does she have standing to sue as Mr. Malauulu's successor-in-interest.
2 Where a decedent dies intestate, as Mr. Malauulu did, title to the decedent's property
3 passes to his or her heirs, as prescribed by California's laws of succession. See Cal.
4 Prob. Code § 7000. Mr. Malauulu had two brothers and one sister, each of whom is still
5 alive. See SUF ¶¶ 7, 8. Mr. Malauulu's property—including his legal claims—would pass,
6 if at all, to his siblings, not to Ms. Malauulu. Cal. Prob. Code § 6402(c). As such, Ms.
7 Malauulu is not Mr. Malauulu's successor-in-interest. Since she is neither the personal
8 representative of the estate nor Mr. Malauulu's successor-in-interest, she has no standing
9 to pursue claims on behalf of the estate and is not the real party in interest.

10 Having determined that Ms. Malauulu is not the real party in interest to this dispute,
11 the Court turns to the proper remedy. While dismissal is typically warranted in cases
12 where the plaintiff is not the real party in interest, under Fed. R. Civ. P. 17(a)(3), "[t]he
13 court may not dismiss an action for failure to prosecute in the name of the real party in
14 interest until, after an objection, a reasonable time has been allowed for the real party in
15 interest to ratify, join, or be substituted into the action." The purpose of this rule is to
16 "prevent forfeiture of an action when determination of the right party to sue is difficult or
17 when an understandable mistake has been made." *U.S. for Use & Benefit of Wulff v.*
18 *CMA, Inc.*, 890 F.2d 1070, 1074 (9th Cir. 1989). The flip side of this rule is that in cases
19 where the proper party was easy to identify at the outset and there has been no
20 understandable mistake, the Court is not obligated to permit amendment and it should
21 instead dismiss the case. See, e.g., *Hassanati v. Int'l Lease Fin. Corp.*, 51 F. Supp. 3d
22 887, 906 (C.D. Cal. 2014) (dismissing case under Rule 17(a) where the putative plaintiff
23 "took no steps to remedy their lack of standing for more than two years after being
24 apprised of the deficiency by the court.").

25 In this case, there was neither difficulty in determining the real party in interest nor
26 an understandable mistake. As discussed above, Mr. Malauulu had three surviving
27 siblings, including Ms. Malauulu's own husband. Instead of naming one of these siblings
28 as plaintiff—a decision that even if ultimately legally incorrect would have been

1 understandable—Ms. Malauulu decided to name herself, someone with no legal
2 relationship to Mr. Malauulu whatsoever, as plaintiff. To be sure, Ms. Malauulu alleges
3 that she served as Mr. Malauulu’s “representative” during his employment with Wal-Mart,
4 assisted him with medical matters, and was listed as a “co-account holder on [his] bank
5 accounts.” Dkt. 22 at 5. But even accepting these allegations as true, it does not change
6 the fact that, absent her appointment as his personal representative, she had no legal
7 relationship to Mr. Malauulu after his death. At a minimum, she could have easily
8 identified another individual—Mr. Malauulu’s brother—who had a stronger legal claim to
9 represent the estate, which counsels against finding her mistake “understandable.”

10 Further, Ms. Malauulu’s decision to name herself as plaintiff here is particularly
11 problematic in light of the timing. The statutes of limitations on Mr. Malauulu’s FEHA and
12 wrongful termination claims were set to expire just days after Ms. Malauulu filed suit, and
13 the Ninth Circuit has specifically cautioned that Rule 17(a) does not protect parties who
14 attempt to use the rule to toll a statute of limitations. See *Wulff*, 890 F.2d at 1075 (“Rule
15 17(a) does not apply to a situation where a party with no cause of action files a lawsuit to
16 toll the statute of limitations and later obtains a cause of action through assignment. Rule
17 17(a) is the codification of the salutary principle that an action should not be forfeited
18 because of an honest mistake; it is not a provision to be distorted by parties to circumvent
19 the limitations period.”); see also *In re Engle Cases*, 767 F.3d 1082, 1113-14 (11th Cir.
20 2014) (“Rule 17 was not promulgated to allow lawyers to file placeholder actions . . . to
21 keep a limitations periods open while they investigate their claims and track down the
22 proper parties.”). Because it appears that Ms. Malauulu’s decision to file suit here was
23 motivated at least in part by a desire to toll the statute of limitations while she secured
24 legal standing to pursue these claims, the Court finds that dismissal is the appropriate
25 remedy.

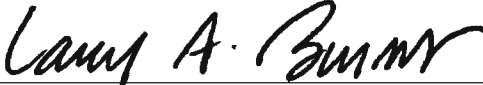
26 This conclusion is bolstered by the fact that Ms. Malauulu has been on notice of
27 her lack of standing since at least November 11, 2018, when Wal-Mart raised lack of
28 capacity as an affirmative defense in its answer. See Dkt. 4 at 8. Wal-Mart has continued

1 to raise the issue throughout the litigation, first during a December 10, 2018 Early Neutral
2 Evaluation, then during a March 1, 2019 meet and confer, and finally by filing the present
3 motion on March 13, 2019. See Dkts. 9, 11. But it wasn't until July 1, 2019, more than
4 three months after Wal-Mart filed its motion and shortly after the Court notified Ms.
5 Malauulu that it intended to construe Wal-Mart's motion as one for summary judgment,
6 that she finally initiated probate proceedings to have herself declared personal
7 representative of the estate. Roughly eight months have passed since Ms. Malauulu was
8 put on notice of this deficiency. This was certainly a "reasonable time" for her to remedy
9 the defect or to join the real party in interest. See Fed. R. Civ. P. 17(a)(3) (The court may
10 not dismiss an action "until, after an objection, a reasonable time has been allowed for
11 the real party in interest to ratify, join, or be substituted into the action."). Her neglect in
12 doing so warrants dismissal.

13 In short, Ms. Malauulu lacks standing to pursue these claims on behalf of Johnny
14 Malauulu's estate, and no good cause excuses her failure to name the real party in
15 interest as plaintiff. Construed as a Motion for Summary Judgment, Wal-Mart's motion is
16 **GRANTED**. Dkt. 11. This action is **DISMISSED WITH PREJUDICE**. The clerk is directed
17 to enter judgment in favor of Wal-Mart and close the file.

18 **IT IS SO ORDERED.**

19 Dated: July 12, 2019

20 
21 **HONORABLE LARRY ALAN BURNS**
22 Chief United States District Judge
23
24
25
26
27
28