

1
2
3
4
5
6
7
8
9

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLES BOLDING, et al,)
)
 Plaintiff,)
)
 v.)
)
 NAV-LVH, LLC,)
)
 Defendant.)
)
 _____)

Case No. 2:16-cv-00617-RFB-CWH

ORDER

10 Presently before the Court is Plaintiff Tony Varay’s motion to substitute (ECF No. 46) filed
11 on June 27, 2017. Defendant filed a response (ECF No. 51) on July 21, 2017, and Plaintiff filed a
12 reply (ECF No. 54) on August 8, 2017.

13 Plaintiff moves to substitute Robert Varay in place of Toni Varay, who is deceased. Plaintiff
14 represents that Robert Varay is Toni Varay’s son and sole legal heir, so he should be allowed to
15 continue on in this case as Toni Varay’s legal representative. Defendant opposes the substitution,
16 arguing that Mr. Varay has not established that he is entitled to serve as Toni Varay’s legal
17 representative under Nevada law. Defendant further argues that regardless of substitution, Toni
18 Varay’s claims for penal or punitive damages were extinguished upon her death.

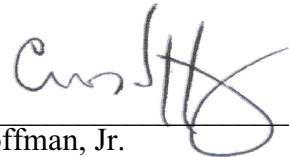
19 Defendant’s argument against substitution relies on *Mahoney v. Fahey*, 200 F.2d 918, 920
20 (9th Cir. 1952). The Court does not agree with Defendant’s assertion that *Mahoney* requires denial
21 of the motion with prejudice. However, the case does suggest that a new party may not substitute for
22 a deceased party without establishing that the new party is the proper legal representative of the
23 deceased. It is a matter of Nevada law whether or not Robert Varay is Toni Varay’s proper legal
24 representative, but the parties briefings thus far have not provided a clear answer to that question.
25 The Court requires further briefing on this issue.

26 As for Defendant’s argument that Plaintiff’s penal or punitive damages were extinguished
27 upon her death, the Court need not make that determination at this point. The operative complaint
28 (ECF No. 39) seeks compensatory as well as penal or punitive damages, and Defendant does not

1 argue that the claim for compensatory damages was extinguished upon Toni Varay's death.
2 Therefore, for purposes of Fed. R. Civ. Proc. 25(a), Plaintiff's claim is not extinguished.

3 IT IS THEREFORE ORDERED that Plaintiff may file a supplemental brief in support of his
4 motion to substitute (ECF No. 51) no later than August 24, 2017. Defendant may file a supplement
5 within seven days of Plaintiff's supplement. Any supplemental briefs for this motion shall be limited
6 to the issue of whether under Nevada law, Robert Varay may serve as Toni Varay's legal
7 representative in this case, and if so, whether this Court has authority to approve such an
8 appointment.

9 DATED: August 10, 2017



10
11
12 C.W. Hoffman, Jr.
United States Magistrate Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28