

LJU LAW FIRM

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U.S. DISTRICT COURT
DISTRICT OF NEVADA

10 FRANK MACIAS,
11
12 Plaintiff,
13 vs.
14 STATE OF NEVADA, et al.,
15 Defendants.

CASE NO.: 3:19-cv-00310-ART-CSD

17 ORDER GRANTING
18 **RENEWED MOTION TO SUBSTITUTE PARTY**

19 COMES NOW, Plaintiff, FRANK MACIAS, by and through his counsel of record, JAMES
20 D. URRUTIA, ESQ, of LJU LAW FIRM, and renews his motion for an Order from the Court,
21 pursuant to N.R.C.P. Rule 25(a)(1), allowing substitution of the deceased Defendant, GREGORY
22 MARTIN for his estate.

23 As to his individual capacity, Plaintiff has identified a successor and serves same with this
24 motion. Defendant, although unable to stipulate, informed Plaintiff that it would not oppose this
25 motion. *See* Email, "In doing so, I would not oppose such a motion to substitute Gregory Martin's
26 estate in his personal capacity.", attached hereto as **Exhibit 1**. Therefore, the Motion should be
27 considered unopposed and should be granted. According to Local Rule IA 6-2, Plaintiff provides
28 an Order for signature at the end of this motion.

1 This Motion is made and based upon the pleadings and papers on file herein, the Points and
2 Authorities attached hereto, and oral argument of counsel at the time this Motion is heard.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Relevant Facts and Procedural History**

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6 1. On March 22, 2023, Defendants provided notice to the Court that, pursuant to Rule
7 25(a)(1) of the Federal Rules of Civil Procedure, Defendant, Gregory Martin, passed away on or
8 about November 12, 2022. (ECF No. 79.)

9 2. Plaintiff moved to substitute party on May 26, 2023. (ECF No. 80.)

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11 3. In an Order entered on July 12, 2023, the Court directed the AG's Office to
12 undertake effort to ascertain whether there is an estate for defendant Martin. [ECF No. 83].

13
14 4. On August 11, 2023, the AG's office filed a Declaration concerning its efforts to
15 comply with Order ECF 83. (ECF No. 86). In the Declaration the AG, stated: "I have not discovered
16 a representative of the estate or a successor to the estate, as it appears no interested person has opened
17 a probate estate pursuant to NRS 136.070." (ECF No. 86, pg 2, paragraph)

18 5. Counsel for Plaintiff was appointed as Pro Bono Counsel on January 24, 2024.

19
20 6. Through the end of 2023 and throughout 2024, Counsel for Plaintiff has discussed
21 the matter various times with Counsel for Defendant. See Declaration of James D. Urrutia, attached
22 hereto as **Exhibit 2**.

23
24 7. On July 12, 2024, after a telephone conference with the AG's office over Defendant
25 Gregory Martin's Estate and Special Administrator, Plaintiff was able to locate a similar matter
26 *Brass v. Daniels*, 2:21-CV-00074-RFB-MDC (D. Nev. July 2, 2024), in which the AG's office was
27 able to successful locate the Defendant's Estate.

28 8. Shortly thereafter Plaintiff forwarded a draft Stipulation to substitute Mary Lefler as
the Special Administrator for the Estate of Gregory Martin, deceased for Defendant Gregory Martin.

9. On August 9, 2024, for the first time, Defendant informed Plaintiff that it would not
stipulate to a substitution, but that Plaintiff would have to file a motion. Counsel for Defendant did
state that he would not oppose the Motion. (**Exhibit 1**)

1 **II. Standard of Review**

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3 The Ninth Circuit Court of Appeals will review the decision to allow substitution under Fed.
4 R. Civ. P. 25 for an abuse of discretion. *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d
5 943, 949 (9th Cir. 2020) (citing *In re Bernal*, 207 F.3d 595, 598 (9th Cir. 2000); and *Charles v.*
6 *Burton*, 169 F.3d 1322, 1327 n.6 (11th Cir. 1999)).
7

8
9 **III. Legal Argument**

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11 **A. The Court Should Permit Substitution of Defendant Martin for His Estate**

12 FRCP 25(a) permits substitution of the estate of a party after the death of that party. The
13 claim against Martin is not extinguished by his death. Generally, the law of the forum state
14 determines whether a Section 1983 action survives or is extinguished upon the death of a party. *See*
15 42 U.S.C. § 1988(a); see also *Robertson v. Wegmann*, 436 U.S. 584, 588-89 (1978). Nevada law
16 provides: “Except as otherwise provided in this section, no cause of action is lost by reason of the
17 death of any person, but may be maintained by or against the person's executor or administrator.”
18 NRS 41.100(1). “In an action against an executor or administrator, any damages may be awarded
19 which would have been recovered against the decedent if the decedent had lived, except damages
20 awardable under NRS 42.005 or 42.010 or other damages imposed primarily for the sake of example
21 or to punish the defendant.” NRS 41.100(2). Here, recently discovered by Plaintiff is a special
22 administrator for the estate of Defendant Martin. Plaintiff thus moves the court to substitute
23 Defendant Martin, deceased, for Mary Lefler as the Special Administrator for the Estate of Gregory
24 Martin. The new caption of this case is attached hereto as **Exhibit 3**.
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CONCLUSION

Plaintiff's respectfully request that the Court order the substitution of Mary Lefler as the Special Administrator for the Estate of Gregory Martin, deceased. As a result, the caption in this matter should be amended as described in Exhibit 3.


Dated this 14th day of August, 2024.

LJU LAW FIRM

/s/ James D. Urrutia
JAMES D. URRUTIA, ESQ.
LJU LAW FIRM
7575 Vegas Drive, Suite 100
Las Vegas, NV 89128
Counsel for Plaintiff, FRANK MACIAS

IT IS ORDERED that Mary Lefler, as the Special Administrator for the Estate of Gregory Martin, is substituted in place of Defendant Gregory Martin.

IT IS FURTHER ORDERED that the Estate of Gregory Martin shall be served within sixty (60) days of this Order.



CRAIG S. DENNEY
UNITED STATES MAGISTRATE JUDGE

DATED: August 29, 2024

EXHIBIT 3

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DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK MACIAS,

Plaintiff,

vs.

**MARY LEFLER as the Special
Administrator for the Estate of Gregory
Martin, deceased, CORY ROWLEY;
GLORIA CARPENTER,**

Defendants.

CASE NO.: 3:19-cv-00310-ART-CSD