

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 09/15/2022

MEMORANDUM ENDORSEMENT

DeLeon et al v. Dunaway et al,
7:22-cv-6039 (NSR)

The Court is in receipt of the attached letter from *pro se* Defendant Douglas Dunaway, dated September 12, 2022, seeking clarification on the extent of the Court's order staying the case until November 28, 2022. The Court is also in receipt of the attached letter from Plaintiffs, dated September 14, 2022, asking the Court to direct *pro se* Defendants Douglas Dunaway and Michael Dunaway to disclose the identity of the administrator, legal representative, or successor of the estate of deceased *pro se* Defendant Maria Louise Dunaway.

With respect to *pro se* Defendant Douglas Dunaway's letter, as stated in the Court's August 30, 2022 memorandum endorsement (ECF No. 24), the Court stayed this action until November 28, 2022, for the parties to file a motion under Federal Rule of Civil Procedure 25 to substitute recently deceased *pro se* Defendant Maria Louise Dunaway for the administrator, legal representative, or successor of her estate. That means that any deadlines pending as of August 30, 2022, including those for filing responsive pleadings, are stayed until November 28, 2022.

And with respect to Plaintiff's request, the Court first notes that the statement of death under Federal Rule of Civil Procedure 25 filed by *pro se* Defendant Douglas Dunaway on August 7, 2022 (ECF No. 19), does not identify the administrator, legal representative, or successor of the estate of his deceased wife and *pro se* Defendant Maria Louise Dunaway. "It is well settled that for a suggestion of death to be valid and invoke the 90 day limit, it must identify the successor or representative who may be substituted for the decedent." *Smith v. Planas*, 151 F.R.D. 547, 549 (S.D.N.Y. 1993) (collecting cases).

But as all defendants here are currently proceeding *pro se* and they are next of kin to one another (*i.e.*, father, mother, and son), the Court nonetheless maintains the stay and directs *pro se* Defendants Douglas Dunaway and Michael Dunaway to disclose the identity of the administrator, legal representative, or successor of the estate of *pro se* Defendant Maria Louise Dunaway, as soon as such identity becomes readily available and before November 28, 2022. *See, e.g., Al-Jundi v. Rockefeller*, 88 F.R.D. 244, 247 (W.D.N.Y. 1980) (noting that the disclosure of the identity of "the successors or representatives of the estate when such information was readily available to the person making the statement [of death] was necessary to make the statement effective under rule 25, for otherwise an opposing party could be put to an unfair burden of locating and serving the representatives before the ninety-day period expired.").

With that in mind, should the November 28, 2022 deadline expire, the Court will consider any motions for extension of such deadline that Plaintiff may file based on *pro se* Defendants' late disclosure of or failure to disclose the identity of the administrator, legal representative, or successor of *pro se* Defendant Maria Louise Dunaway's estate by the deadline. *See id.*

The Clerk of the Court is directed to terminate the motion on ECF No. 26, mail a copy of this memorandum endorsement to *pro se* Defendants Douglas and Michael Dunaway at their address on 4 Staub Court, Mamaroneck, NY 10543, and show service on the docket.

Dated: September 15, 2022
White Plains, NY

SO ORDERED:



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

Douglas Dunaway
4 Staub Court
Mamaroneck, New York 10543

September 12, 2022

U.S. District Court
United States District Court of New York (White Plains)
300 Quarropas Street
White Plains, New York
Attention: Honorable Judge Nelson Stephen Roman

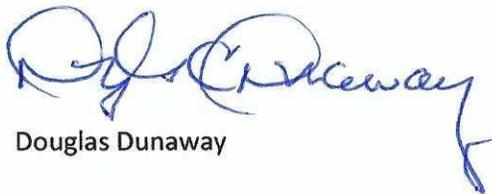
Subject: Document Numbered 24

Reference: Case Number 7:22-cv-06039-NSR

Dear Honorable Judge Roman,

I have read document numbered 24 that was filed on 8/30/22. I apologize for the error and thank the court for its referencing to your rules. I am writing to make sure that I understand that the case is stayed until November 28th, 2022, which means further defendant motion practice and/or answers are now due no later than November 28th, 2022. So that I am obeying the court and its order, please confirm that everything is stayed until November 28th, 2022.

Respectively yours,



Douglas Dunaway

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September 14, 2022

BY ECF & FAX

Hon. Nelson S. Román, U.S.D.J.
United States District Court
Southern District of New York
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: *DeLeon et al. v. Dunaway et al.* | Case No. 7:22-cv-06039-NSR

Dear Judge Román:

We represent the Plaintiffs in the above-referenced matter.

On August 27, 2022, defendant Douglas Dunaway filed a Rule 25 Statement noting the death of his wife, defendant Maria Louise Dunaway. [[ECF Doc. 19](#)]. As a result, on August 30, 2022, the Court stayed this action for 90 days, until November 28, 2022. [[ECF Doc. 24](#)].

Plaintiffs intend to move for an order, pursuant to Rule 25(a)(1), substituting the successor, administrator, or legal representative of Mrs. Dunaway's estate as the proper party as soon as possible (and no later than November 28, 2022), but to do so, we require disclosure of the identity of this individual.

Accordingly, we respectfully request that the Court issue an order directing Mr. Dunaway to identify to Plaintiffs the successor, administrator, or legal representative of Mrs. Dunaway's estate. Upon receipt of this information, Plaintiffs will promptly file a Rule 25(a)(1) motion.

We thank the Court for its time and consideration of this request.

Respectfully submitted,

LACHTMAN COHEN P.C.



Brian S. Cohen

cc: **BY FEDEX (Overnight Delivery)**
Douglas Dunaway
Michael Dunaway