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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rick Alton Foley,

10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,

13 Defendants.

No. CV-13-01496-PHX-SMM (ESW)

ORDER

14
15 The Court has considered Defendant Chatt's Memorandum Re: Disability and
16 Guardian Ad Litem (Doc. 58) filed on November 5, 2014, and Plaintiff's Response to
17 Defendants' Memorandum for Mrs. Chatt (Doc. 61) filed on November 17, 2014.

18 Rule 17(c)(2) of the Federal Rules of Civil Procedure governs the request to
19 appoint Defendant Chatt's son, James Contreras, as her guardian *ad litem*. The purpose
20 of Rule 17(c) is to protect an incompetent person's interests in prosecuting or defending a
21 lawsuit. *Davis v. Walker*, 745 F.3d 1303, 1310 (9th Cir. 2014). A guardian *ad litem* is
22 authorized to act on behalf of his ward and may make all appropriate decisions in the
23 course of the specific litigation. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 805
24 (9th Cir. 1986). This includes (i) entering into binding contracts for the retention of
25 counsel and expert witnesses and (ii) settling the claim on behalf of his or her ward. *Id.*

26 After appointing a guardian *ad litem*, a district court "maintains a continuing
27 obligation to supervise the guardian *ad litem*'s work." *Neilson v. Colgate-Palmolive Co.*,
28 199 F.3d 642, 652 (2nd Cir. 1999) (italics added); *see also Dacanay v. Mendoza*, 573

1 F.2d 1075, 1079 (9th Cir. 1978) (“It is the court’s order approving the settlement that
2 vests the guardian *ad litem* with the legal power to enforce the agreement.”) (italics
3 added). The district court may remove the guardian *ad litem*. *Hull by Hull v. United*
4 *States*, 53 F.3d 1125, 1127 n. 1 (10th Cir. 1995) (noting that parties seeking to challenge
5 the decisions of a guardian *ad litem* have a remedy of applying to the court to have the
6 guardian *ad litem* removed or to have another guardian *ad litem* appointed) (italics
7 added).

8 The declaration of Defendant Chatt’s treating physician, Dr. Frey, states that
9 Defendant Chatt is “incapable of giving accurate and complete testimony in any lawsuit
10 as her medical condition has profoundly altered her mental state and memories to such
11 extent that she is totally disabled and unable to participate in the litigation process.”
12 (Doc. 50, Exhibit A at p. 2) The Court finds from this uncontroverted documentation that
13 Defendant Chatt is incompetent¹ and in need of a guardian *ad litem*.

14 **IT IS THEREFORE ORDERED** appointing Defendant Chatt’s son, James
15 Contreras, as her guardian *ad litem* for purposes of this lawsuit. Mr. Contreras shall serve
16 at no cost to Defendant Chatt.

17 **IT IS FURTHER ORDERED** that within **ten days** of this Order, James
18 Contreras must file a notice with the Court providing his current contact information,
19 including an email address.

20 Dated this 3rd day of December, 2014.

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22 
23 Eileen S. Willett
24 United States Magistrate Judge

25 _____
26 ¹ For an individual who is not acting in a representative capacity, the capacity to sue or be
27 sued is determined by the law of the individual’s domicile. Fed. R. Civ. P. 17(b). The
28 State of Arizona is Defendant Chatt’s domicile. (Docs. 50, 58). In Arizona, an
‘incompetent’ person is one who is unable to understand the nature and object of the
proceedings or to assist in the case as a result of a mental illness, defect, or disability.
Kelly R. v. Arizona Dept. of Econ. Sec., 137 P.3d 973, 978 (Ariz. Ct. App. 2006).