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7 Attorneys for Plaintiff  
 Metropolitan Life Insurance Company

8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA  
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11 Metropolitan Life Insurance Company,  
 12 Plaintiff,  
 13 v.  
 14 Michael Burton, M.B., and Kira Davis  
 15 Defendants.

CASE NO. 1:08-CV-01719-AWI-SMS

**PETITION FOR APPOINTMENT OF  
 GUARDIAN AD LITEM PURSUANT TO  
 F.R.C.P. 17(C) FOR MINOR DEFENDANT;  
 DECLARATION OF RUTH E. BASTA;  
 AND DECLARATION OF KATHLEEN M.  
 HURLY**

16  
 17 At the request of defendants, plaintiff METROPOLITAN LIFE INSURANCE  
 18 COMPANY (“MetLife”) presents this Petition to appoint Ruth E. Basta (“Basta”) Guardian ad  
 19 Litem for minor M.B. (“M.B.”) on the following grounds:

20 1. MetLife filed the above-referenced Complaint in Interpleader against Michael  
 21 Burton, Sr., M.B., and Kira Davis, for the purpose of resolving their competing claims for life  
 22 insurance benefits payable under the terms of the Davita Inc. Health and Welfare Plan (the “Plan  
 23 Benefits”) as a consequence of the death of Rhonda Burton (Mr. Burton, Sr.’s former wife and  
 24 M.B.’s and Ms. Davis’ mother.)

25 2. M.B., a minor who is ten (10) years of age (date of birth January 7, 1999) does not  
 26 have the capacity to act of his own behalf in defending and settling this action. (See Declaration  
 27 of Ruth E. Basta (“Basta Decl.”) at para. 1-2.)

28 3. Ruth E. Basta is M.B.’s grandmother. Ms. Basta is a competent and responsible

1 person who is willing to act as Guardian ad Litem for her grandson for purposes of resolving this  
2 Interpleader action (see Basta Decl. at ¶¶ 3 & 4); and

3 4. No prior application for the appointment of a Guardian ad Litem has been made  
4 and no guardian has yet been appointed to act on behalf of M.B. in this action; and

5 5. Plaintiffs have no interest in the Plan Benefits, except to ascertain that they are  
6 paid in accordance with the terms of the Plan and ERISA.

7 6. Defendants, none of whom is represented by counsel and none of whom have  
8 appeared yet in this action, told plaintiff's counsel that they would like to settle this action and  
9 have agreed to distribution of the Plan Benefits. Michael Burton, Sr. was properly paid  
10 \$34,666.66 (33%) of the Plan Benefits on or about December 5, 2005. Benefits in the amount of  
11 \$69,333.39, plus any applicable interest, remain payable as a consequence of the death of the  
12 decedent (Remaining Plan Benefits). Defendants informed plaintiff's counsel that they have  
13 agreed to distribution of the Remaining Plan Benefits as follows: 1/2 of the Remaining Plan  
14 benefits to M.B. and 1/2 of the Remaining Plan benefits to Kira Davis. When informed that a  
15 minor should be represented by a Guardian ad Litem, for purposes of compromising a minor's  
16 claim, defendants requested MetLife's assistance in presenting this petition, seeking to name Ms.  
17 Basta as M.B. Guardian ad Litem for purposes of the action ("Hurly Decl.") at ¶¶ 3-5); and

18 7. Plaintiffs take no position on whether this Court should appoint Ms Basta or  
19 another person as M.B.'s Guardian ad Litem but only present this Petition at defendants' request  
20 to potentially facilitate settlement without unnecessary litigation. (See Declaration of Kathleen M.  
21 Hurly ("Hurly Decl.") at ¶ 5).

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1           Wherefore, at defendants' request MetLife presents this Petition for Ms. Basta,  
2 grandmother of defendant M.B., who has consented to act as guardian and who is qualified to do  
3 so, be appointed Guardian ad Litem of M.B. so that she may appear and defend this suit and/or to  
4 enter into a release and settlement on M.B.'s behalf.

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6 DATED: March\_30, 2009                      SEDGWICK, DETERT, MORAN & ARNOLD LLP

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By: /s/ Kathleen M. Hurly  
Rebecca A. Hull  
Kathleen M. Hurly  
Attorneys for Plaintiff  
Metropolitan Life Insurance Company

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**DECLARATION OF RUTH E. BASTA**

I, Ruth E. Basta, hereby declare as follows:

1. I am the grandmother of minor Michael Burton, Jr. (M.B.), a defendant in this action. The matters here are stated based on my personal knowledge and, if called upon to do so, I could and would testify competently to them.

2. M.B. is a minor who is ten (10) years of age whose date of birth is January 7, 1999.

3. I am familiar with the dispute giving rise to this litigation.

4. I consent to act as my grandson's Guardian ad Litem for purposes of this lawsuit. I understand that in that role, I am to represent his interests, not my own. I further understand that, if appointed Guardian ad Litem, I will have authority to enter into a settlement and release of claims on his behalf and that such release will be fully binding on him.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 15th day of March 2009 at Vacaville, California.

/s/ Ruth E. Basta (original signature on file)  
Ruth E. Basta

1 **DECLARATION OF KATHLEEN M. HURLY**

2 I, Kathleen M. Hurly, declare:

3 1. I am an attorney admitted to practice before all the courts of the State of California  
4 and am a partner in the law firm of Sedgwick, Detert, Moran & Arnold, attorneys of record for  
5 Metropolitan Life Insurance Company. I have personal knowledge of the facts set forth in this  
6 declaration, except those facts specifically asserted on information and belief. If called as a  
7 witness, I could and would testify as set forth herein.

8 2. I am informed and believe that M.B. is a minor who is ten (10) years of age whose  
9 date of birth is January 7, 1999.

10 3. I have been told by M.B.'s father that Mr. Burton and his family have agreed to split  
11 the Plan Benefits among them, 1/3 each. Mr. Burton, Sr. has already been paid his 1/3 of the total  
12 plan benefits. I am told the remaining plan benefits will be split equally between the decedent's  
13 children.

14 4. Mr. Burton told me that defendants did not want to litigate this action and wanted to  
15 settle it instead of appearing. When I explained the need for a Guardian ad Litem to settle any  
16 claim of the minor defendant M.B., Mr. Burton asked me to present this Petition to the Court for  
17 this Court's consideration of M.B.'s grandmother as Guardian ad Litem.

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1 5. Plaintiff takes no position on whether Ms. Basta should be appointed Guardian ad  
2 Litem but only present this Petition at defendants' request to potentially facilitate settlement  
3 without unnecessary litigation.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is  
5 true and correct. Executed this 30th day of March 2009 at San Francisco, California.

6 /s/ Kathleen M. Hurly  
7 Kathleen M. Hurly

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10 ORDER

11 The petition for an order appointing Ruth E. Basta as Guardian ad Litem for petitioner is  
12 GRANTED.

13 IT IS SO ORDERED.

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15 Dated: 4/10/2009

16 /s/ Sandra M. Snyder  
17 SANDRA M. SNDYER  
18 UNITED STATES MAGISTRATE JUDGE