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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

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| <p>A.V.,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p>PANAMA-BUENA VISTA UNION SCHOOL DISTRICT,</p> <p style="padding-left: 100px;">Defendant.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Case No.: 1:15-cv-00246 - --- - JLT</p> <p><b>ORDER GRANTING PLAINTIFF’S MOTION TO PROCEED IN FORMA PAUPERIS</b></p> <p><b>ORDER TO PLAINTIFF TO SHOW CAUSE WHY THE ACTION SHOULD NOT BE DISMISSED</b></p> |
|--|---|---|

Plaintiff A.V. initiated this action by filing a complaint and motion to proceed *in forma pauperis*. (Docs. 1-2.) The Court may authorize the commencement of an action without prepayment of fees “but a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court has reviewed the motion and finds Plaintiff satisfies the requirements of 28 U.S.C. § 1915(a).

Importantly, however, Plaintiff is a child. The capacity of a litigant is determined by “the law of the state where the court is located.” Fed. R. Civ. P. 17(b). Under California law, a child “shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by the judge in each case.” Cal. Code of Civ. P. § 372. Consequently, a child cannot maintain an action on his own, but may appear as a litigant if represented by a guardian ad litem. Fed. R. Civ. P. 17(c). The Local Rules instruct:

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Upon commencement of an action or upon initial appearance in defense of an action by or on behalf of a minor . . . the attorney representing the minor...shall present (1) appropriate evidence of a representative for the minor or incompetent person under state law or (2) a motion for the appointment of a guardian ad litem by the Court.

Local Rule 202(a). Here, although Concepcion Varela is identified as Plaintiff's guardian ad litem in the caption of the complaint, it is unclear whether she was previously appointed as his guardian ad litem. Further, no motion has been filed with the court for the appointment of a guardian. Thus, it appears Plaintiff lacks the capacity to prosecute this action.

Based upon for the foregoing, IT IS HEREBY ORDERED:

1. Plaintiff's motion to proceed *in forma pauperis* is **GRANTED**; and
2. Plaintiff **SHALL** show cause within twenty-one days why the action should not be dismissed for a lack of capacity to sue or, in the alternative, to file a petition for the appointment of a guardian ad litem.

IT IS SO ORDERED.

Dated: February 24, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE