

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

S.V., a minor, by and through her Guardian ad litem, CLAUDIA VALENCIA, Plaintiffs, v. DELANO UNION ELEMENTARY SCHOOL DISTRICT, et al., Defendants. ) Case No.: 1:17-cv-00780 LJO JLT ) ORDER GRANTING THE MOTION TO APPOINT CLAUDIA VALENCIA AS GUARDIAN AD LITEM FOR MINOR PLAINTIFF S.V. (Doc. 23) ) ORDER DISCHARGING ORDER TO SHOW CAUSE (Doc. 22) )

Claudia Valencia initiated this action on behalf of the minor child, S.V. (Doc. 1) She is the mother of S.V. and seeks to be appointed as the child's guardian ad litem.<sup>1</sup> (Doc. 23)

## I. Appointment of a Guardian Ad Litem

Pursuant to the Federal Rules of Civil Procedure, “[a] minor . . . who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.” Fed. R. Civ. P. 17(c)(2). In addition, a court “must appoint a guardian ad litem - or issue another appropriate order - to protect a minor or incompetent person who is unrepresented in an action.” *Id.* The capacity of an individual to sue is determined “by the law of the individual’s domicile.” Fed. R. Civ. P. 17(b).

Because S.V. resides in California (Doc. 23 at 2), the law of this state governs. Under California law, an individual under the age of eighteen is a minor, and a minor may bring suit as long

<sup>1</sup> Due to the filing of the current petition, the order to show cause (Doc. 22) is **DISCHARGED**.

1 as a guardian conducts the proceedings. Cal. Fam. Code §§ 6502, 6601. A guardian ad litem may be  
2 appointed to represent the minor's interests. Cal. Code Civ. P. § 372(a).

3 **II. Discussion and Analysis**

4 In determining whether to appoint a particular guardian ad litem, the court must consider  
5 whether the minor and the guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1). “When  
6 there is a potential conflict between a perceived parental responsibility and an obligation to assist the  
7 court in achieving a just and speedy determination of the action, a court has the right to select a  
8 guardian ad litem who is not a parent if that guardian would best protect the child’s interests.” *Williams*  
9 *v. Super. Ct.*, 147 Cal. App. 4th 36, 38 (Cal. Ct. App. 4th 2007) (internal quotation marks and citation  
10 omitted). “[I]f the parent has an actual or potential conflict of interest with his child, the parent has no  
11 right to control or influence the child's litigation.” *Id.* at 50.

12 S.V. is the thirteen-year-old child of Claudia Valencia (Doc. 23 at 2), and is a minor under  
13 California law. *See* Cal. Fam. Code § 6502. As a minor, S.V.’s ability to bring suit is contingent upon  
14 the appointment of a guardian ad litem. Upon review of the complaint, it does not appear Ms.  
15 Valencia has any adverse interests to those of the child. Accordingly, appointment of Ms. Valencia as  
16 guardian ad litem for her child is appropriate. *See Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir.  
17 2001) (“Generally, when a minor is represented by a parent who is a party to the lawsuit and who has  
18 the same interests as the child there is no inherent conflict of interest.”); *see also Anthem Life Ins. Co.*  
19 *v. Olguin*, 2007 U.S. Dist. LEXIS 37669, at \*7 (E.D. Cal. May 9, 2007) (observing that “[a] parent is  
20 generally appointed guardian ad litem”).

21 **III. Conclusion and Order**

22 The decision whether to appoint a guardian ad litem is “normally left to the sound discretion of  
23 the trial court.” *United States v. 30.64 Acres of Land, etc.*, 795 F.2d 796, 804 (9th Cir. 1986). Here, it  
24 does not appear Ms. Valencia has conflicting interests, and as such she may be appointed to represent  
25 the interests of her child. Therefore, the Court is acting within its discretion to grant her application to  
26 be appointed as the guardian ad litem. Thus, the Court **ORDERS**:

27 1. The motion for appointment of Claudia Valencia as guardian ad litem for S.V. (Doc.  
28 23) is **GRANTED**; and

2. Claudia Valencia is appointed to act as guardian ad litem for S.V., and is authorized to prosecute this action on the child's behalf.

## 4 | IT IS SO ORDERED.

Dated: September 26, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE