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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LM, a minor, by and through his Guardian
ad Litem, GRISELDA MARTIN,

Plaintiff,

v.

KERN HIGH SCHOOL DISTRICT, and
DOES 1 to 100, Inclusive,

Defendants.

No. 1:17-cv-01123-DAD-JLT

ORDER GRANTING STIPULATION TO
WITHDRAW DEFENDANT’S MOTION TO
DISMISS

ORDER GRANTING PETITIONER’S
MOTION APPOINTING GUARDIAN AD
LITEM

(Doc. Nos. 3, 7, 10)

On October 9, 2017, the parties filed a stipulation withdrawing defendant’s motion to dismiss and requiring plaintiff to file and serve an amended complaint by October 13, 2017. (Doc. No. 10.) Griselda Martin has also separately filed a motion to be appointed as guardian ad litem for plaintiff LM. (Doc. No. 3.)

“District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011). Rule 17 provides that “[t]he 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.” Fed. R. Civ. P. 17(c)(2). California law defines any individual under the age of 18 as a minor. Cal. Fam. Code. § 6502. Local Rule 202(a) of this court states, in pertinent part:

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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 or incompetent person shall present . . . a motion for the appointment of a guardian ad litem by the Court, or . . . a showing satisfactory to the Court that no such appointment is necessary to ensure adequate representation of the minor or incompetent person. See Fed. R. Civ. P. 17(c).

The decision to appoint a guardian ad litem “must normally be left to the sound discretion of the trial court.” *United States v. 30.64 Acres of Land*, 795 F.2d 796, 804 (9th Cir. 1986). In considering whether to appoint a guardian for a minor, the court shall consider whether the minor and the guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1).

Ms. Martin moves the court for an order appointing her as guardian ad litem for her son, LM. (Doc. No. 3.) In a declaration signed under penalty of perjury, she states that LM is her natural born child and that she has legal custody over him. (*Id.* at 2.) Ms. Martin also declares she is fully competent and responsible to prosecute the action on her son’s behalf. (*Id.*) Good cause appearing, the court will grant the motion (Doc. No. 3) and appoint Griselda Martin as the guardian ad litem of LM, a minor and plaintiff in this action.

For the reasons set forth above:

1. Griselda Martin’s motion to be appointed guardian ad litem for plaintiff LM (Doc. No. 3) is granted;
2. In light of the parties’ stipulation, defendant’s motion to dismiss plaintiff’s complaint (Doc. No. 7) is withdrawn and the previously noticed hearing of October 17, 2017, is vacated; and
3. In light of the parties’ stipulation, plaintiff is directed to file and serve an amended complaint no later than October 13, 2017.

IT IS SO ORDERED.

Dated: October 11, 2017



UNITED STATES DISTRICT JUDGE