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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

METROPOLITAN LIFE INSURANCE  
COMPANY,

Plaintiff,

v.

CONCEPCION FLORES MOLINA,

Defendant/Cross-Plaintiff,

v.

LUPE C. FLORES,

Defendant/Cross-Defendant.

Case No. 1:23-cv-01553-CDB

ORDER DENYING CROSS-DEFENDANT'S  
RENEWED MOTIONS FOR APPOINTMENT  
OF GUARDIAN AD LITEM AND COUNSEL

(Doc. 58)

ORDER FINDING CROSS-DEFENDANT  
INCOMPETENT TO PURSUE THIS ACTION  
PURSUANT TO FED. R. CIV. P. 17

ORDER STAYING PROCEEDINGS AND  
DIRECTING PERIODIC CASE  
MANAGEMENT REPORTS

**90-Day Deadline**

22 On January 17, 2025, the Court held a competency hearing as to Cross-Defendant Lupe C.  
23 Flores. Thereafter, the Court took the matter under submission. For the reasons set forth below,  
24 the Court finds Lupe Flores incompetent to pursue this action on her own behalf. The Court will  
25 order these proceedings stayed and direct Lupe Flores to file periodic case management reports.

26 **I. GOVERNING LAW**

27 The standard for determining competency is supplied by the law of the plaintiff's  
28 domicile. *See* Fed. R. Civ. P. 17(b)(1). Under California law, a party is incompetent "if he or she

1 lacks the capacity to understand the nature or consequences of the proceeding, or is unable to  
2 assist counsel in the preparation of the case.” *Golden Gate Way, LLC v. Stewart*, No. C 09–04458  
3 DMR, 2012 WL 4482053, \*2 (N.D. Cal. Sept. 28, 2012) (citing *In re Jessica G.*, 93 Cal. App. 4th  
4 1180, 1186 (2001)); *see* Cal. Civ. Proc. Code § 372 (“When ... a person who lacks legal capacity  
5 to make decisions ... is a party, that person shall appear either by a guardian or conservator of the  
6 estate or by a guardian ad litem[.]”). Typically, “a guardian will not be appointed for an adult  
7 unless the person gives consent or upon notice and a hearing.” *Jurgens v. Dubendorf*, No. 2:14-  
8 CV-2780-KJM-DAD, 2015 WL 6163464, at \*3 (E.D. Cal. Oct. 19, 2015); *accord Golden Gate*  
9 *Way*, 2012 WL 4482053, \*3 (relying on medical records and the Court’s observations of the party  
10 at a hearing to conclude he did not have the capacity to participate in the litigation in any  
11 meaningful fashion).

12 Under Rule 17(c), a district court must hold a competency hearing “when substantial  
13 evidence of incompetence is presented.” *Allen v. Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005);  
14 *see Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 203 (2d Cir. 2003) (explaining that  
15 “due process considerations attend an incompetency finding and the subsequent appointment of a  
16 guardian ad litem”); *Thomas v. Humfield*, 916 F.2d 1032, 1034 (5th Cir. 1990) (observing that the  
17 appointment of a guardian ad litem implicates due process concerns because it deprives a litigant  
18 of the right to control litigation and subjects them to possible stigmatization). The Ninth Circuit  
19 has not clearly stated what constitutes “substantial evidence” of incompetence warranting such a  
20 hearing. *See Hoang Minh Tran v. Gore*, No. 10cv464–GPC (DHB), 2013 WL 1625418, at \*3  
21 (S.D. Cal. April 15, 2013). However, the Ninth Circuit has indicated that sworn declarations from  
22 the allegedly incompetent litigant, sworn declarations or letters from treating psychiatrists or  
23 psychologists, and medical records may be considered in this regard. *See Allen*, 408 F.3d at 1152–  
24 54; *see also Hoang Minh Tran*, 2013 WL 1625418, at \*3. Such evidence must speak to the  
25 court’s concern as to whether the person in question is able to meaningfully take part in the  
26 proceedings. *See AT&T Mobility, LLC v. Yeager*, 143 F. Supp. 3d 1042, 1042 (E.D. Cal. 2015).  
27 Under California law, the standard of relevance for purposes of weighing incompetency is viewed  
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1 broadly and a trial judge must “clearly bring out the facts.” *In re Conservatorship of Pamela J.*,  
2 133 Cal. App. 4th 807, 827 (2005).

3 “A[n] incompetent person who does not have a duly appointed representative may sue by  
4 a next friend or by guardian ad litem. The court must appoint a guardian ad litem—or issue  
5 another appropriate order—to protect a minor or incompetent person who is unrepresented in an  
6 action.” Fed. R. Civ. P. 17(c)(2). Within its obligation of assessing competency, a district court  
7 has broad discretion to determine the suitability of appointing a guardian ad litem. *See United*  
8 *States v. 30.64 Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986). Thus, “[if] the court determines  
9 that a pro se litigant is incompetent, the court generally should appoint a guardian ad litem under  
10 Rule 17(c).” *Davis v. Walker*, 745 F.3d 1303, 1310 (9th Cir. 2014). “If another order would  
11 sufficiently protect the incompetent person’s interests in the litigation in lieu of a guardian, the  
12 court may enter such an order.” *Id.*

13 “[N]otwithstanding the incompetency of a party, the guardian may make binding contracts  
14 for the retention of counsel and expert witnesses and may settle the claim on behalf of his ward.”  
15 *30.64 Acres of Land*, 795 F.2d at 805. However, a guardian ad litem who is not an attorney must  
16 be represented by counsel in order to litigate a case on another’s behalf. *See Johns v. Cnty. of San*  
17 *Diego*, 114 F.3d 874, 877 (9th Cir. 1997); *Stoner v. Santa Clara Cnty. Office of Educ.*, 502 F.3d  
18 1116, 1127 (9th Cir. 2007) (explaining the right to proceed pro se is personal to the litigant).

## 19 **II. DISCUSSION**

### 20 **a. Cross-Defendant Lupe Flores’ Filings and Declarations**

21 On March 25, 2024, Lupe Flores filed a motion for appointment of guardian ad litem.  
22 (Doc. 31). The motion attached a letter, dated January 15, 2024, from physician Peter Thomas  
23 Leistikow in Winston Salem, North Carolina, explaining that Lupe Flores was seen on December  
24 22, 2023, in regards to memory changes from a “possible neurocognitive disorder. She is pending  
25 additional testing and workup.” *Id.* at 5. On April 19, 2024, the Court denied the motion without  
26 prejudice on three grounds: (1) the motion failed to provide substantial evidence of incompetence;  
27 (2) the motion failed to show efforts to confer with Cross-Plaintiff Concepcion Molina and  
28 indicate in the application whether Concepcion Molina concurs or objects to the proposed

1 appointment; and (3) the motion failed to identify potential candidates willing to be appointed as  
2 guardian ad litem and include their sworn attestations that they did not have conflicts of interest,  
3 as required by Local Rule 202. *See* (Doc. 33).

4 On July 8, 2024, Lupe Flores filed a renewed motion for appointment of guardian ad  
5 litem. (Doc. 39). The motion attached progress notes from Dr. Leistikow, dated June 27, 2024,  
6 representing that a neuropsychological assessment done on Lupe Flores on June 10, 2024, showed  
7 “moderate deficits across multiple cognitive domains,” including learning, retrieval, speed  
8 processing, and language, consistent with “mild vascular neurocognitive disorder.” *Id.* at 4. Dr.  
9 Leistikow provides that he suggested they pursue formal legal representation in the instant action,  
10 but Lupe Flores stated it was not financially possible at the time. *Id.* at 4. On July 19, 2024, Lupe  
11 Flores filed a supplement to her motion stating that she has moderate vascular dementia and  
12 dyslexia. (Doc. 45). It is signed by both Lupe Flores and Dawn Harris. *Id.* at 1. A durable power  
13 of attorney, consisting of 21 pages, attached to the supplemental filing represents that Dawn  
14 Harris is Lupe Flores’ attorney-in-fact. *Id.* at 2-22. It is stamped and signed by notary public Julie  
15 R. Whatley. *Id.* at 22. On August 1, 2024, the Court denied the motion without prejudice on the  
16 grounds that points (2) and (3) above still had not been remedied. (Doc. 46). The Court directed  
17 that its order be served on Dawn Harris. *Id.* at 4.

18 On August 26, 2024, Lupe Flores filed a second renewed motion for appointment of  
19 guardian ad litem and motion for appointment of counsel. (Doc. 48). This motion was signed by  
20 both Lupe Flores and Dawn Harris. *Id.* at 1. The motion attached a one-page undated and  
21 unsigned letter from Victoria R. Shada. It did not establish Dr. Shada’s status as a healthcare  
22 professional, lacking any title for her, nor her relationship to Lupe Flores. The letter stated that  
23 Lupe Flores has “logopenic primary progressive aphasia,” a type of dementia that affects  
24 language abilities and makes it “incredibly difficult, and ultimately impossible, for someone to  
25 articulate his or herself clearly and accurately ... She has had this condition for a minimum of  
26 three years, if not longer.” *Id.* at 2. Also attached to the motion was a two-page pamphlet  
27 published by the Judicial Council of California regarding accommodations under the Americans  
28 With Disabilities Act for court activities, programs, and services. *Id.* at 3-4. The Court denied the

1 motion without prejudice on the grounds that Lupe Flores had again failed to remedy the  
2 deficiencies of the prior motion, namely points (2) and (3) above. In that same order, the Court set  
3 a mandatory status conference for October 23, 2024, invited Dawn Harris to appear, invited the  
4 parties to confer and notify the Court of any conflicts of availability to attend the conference, and  
5 directed service of the order on Dawn Harris. (Doc. 49).

6 In advance of the noticed hearing, on October 10, 2024, Lupe Flores filed a third renewed  
7 motion for appointment of guardian ad litem and a renewed motion to appoint counsel. (Doc. 50).  
8 Like her prior motion, this third motion was signed by both Lupe Flores and Dawn Harris. The  
9 motion attached a one-page undated letter from Victoria R. Shada, substantially similar to the one  
10 attached to the previous motion (*see supra*). *Id.* at 3. In the motion, neither Lupe Flores nor Dawn  
11 Harris represented they were unable to attend the mandatory status conference scheduled for  
12 October 23, 2024. On October 23, 2024, Concepcion Molina and her counsel Eric Leroy appeared  
13 for the conference. Neither Lupe Flores nor Dawn Harris, nor any representative acting on their  
14 behalf, appeared for the status conference. (Doc. 51).

15 Following her failure to appear at the mandatory status conference, the Court ordered  
16 Lupe Flores to show cause in writing why she should not be sanctioned. (Doc. 52). Lupe Flores  
17 filed her response to the order to show cause on November 6, 2024, signed by both her and Dawn  
18 Harris. (Doc. 54). In her response, she stated that she cannot speak in front of other people  
19 because of anxiety and that her daughter (presumably her power of attorney, Dawn Harris) was  
20 on honeymoon and out of state. She stated that, due to her medical diagnosis, she did not know  
21 what the video link was and what to do. She also sought leave for additional time to file medical  
22 documentation from her neurologist. *Id.* at 1-2. The response attaches a one-page undated letter  
23 from Victoria R. Shada, substantially identical to the prior such letters, only with what appear to  
24 be highlights on text naming the medical condition and its effects. *Id.* at 3. The response also  
25 attaches a document from the Social Security Administration, titled “Program Operations Manual  
26 System,” with contains information relating to “primary progressive aphasia.” *Id.* at 4-15.

27 On November 25, 2024, Lupe Flores filed a fourth renewed motion for appointment of  
28 guardian ad litem and a second renewed motion for appointment of counsel. (Doc. 55). This

1 motion, too, was signed by both Lupe Flores and Dawn Harris. The motion attached a letter from  
2 physician assistant Abbie Connoy Eaton, detailing a condition of logopenic primary progressive  
3 aphasia and discussing an abnormal cognitive test score by Lupe Flores, as well as identifying the  
4 impacts her diagnosis may have on her ability to speak, comprehend, and retrieve words. The  
5 letter states Lupe Flores “has had this condition for a minimum of three years, if not longer, and it  
6 will continue to get worse over time ... she is not able to represent herself in court.” *Id.* at 55.

7 On December 12, 2024, the Court denied Lupe Flores’ fourth renewed motion for  
8 appointment of guardian ad litem and second renewed motion for appointment of counsel for  
9 reasons substantially similar to prior denials. Additionally, the Court set a mandatory hearing to  
10 determine Lupe Flores’ competency, directing Lupe Flores to make available Dawn Harris, her  
11 treating neurologist or another medical provider who can testify regarding her diagnosis, and any  
12 other individual she chooses to nominate as guardian ad item, if not Dawn Harris. In advance of  
13 the hearing, the Court directed Lupe Flores to file a motion for appointment of guardian ad litem  
14 that complies with the Local Rules of the Court. (Doc. 56).

15 On January 16, 2025, Lupe Flores filed her fifth renewed motion for appointment of  
16 guardian ad litem and third renewed motion for appointment of counsel. (Doc. 58). Substantially  
17 similar to prior motions, it is signed by both Lupe Flores and Dawn Harris. It attaches a letter  
18 from Victoria R. Shada, representing her as a physician with a specialty in geriatrics, and  
19 provides that Lupe Flores has been under Dr. Shada’s care since August 2024, that she “has a  
20 diagnosis of dementia due to primary progressive aphasia” that has “progressed to the stage  
21 where *she can no longer understand even simple questions nor one-step instructions,*” and that it  
22 is Dr. Shada’s professional opinion that Lupe Flores cannot make “*informed and independent*  
23 *medical, legal and financial decisions.*” *Id.* at 3 (emphasis added).

24 The letter is marked as “[e]lectronically signed” on December 13, 2024. *Id.* Also attached  
25 to the motion is a form from the Central District of California requesting accommodations for  
26 trial participants with disabilities (form G-122). The form is signed by both Lupe Flores and  
27 Dawn Harris and seeks appointment of a guardian ad litem. *Id.* at 6. Additionally, the motion  
28 attaches a scanned printout of an email from dawnharris347@gmail.com to “access\_coordinator,”

1 appearing to attach the aforementioned Central District form and Dawn Harris’ power of attorney;  
2 hand-written on the document are the words “Sent 9 Jan 25.” *Id.* at 7. Lastly, the motion attaches  
3 the same two-page pamphlet published by the Judicial Council of California regarding  
4 accommodations under the Americans with Disabilities Act as was attached to Lupe Flores’  
5 second renewed motion. *Id.* at 8-9.

6 **b. Competency Hearing**

7 On January 17, 2025, the Court held the aforementioned competency hearing. (Doc. 59).  
8 Lupe Flores and Dawn Harris appeared by videoconference from North Carolina. Concepcion  
9 Molina appeared by telephone and her counsel Eric Leroy appeared by videoconference. The  
10 Court directed its inquiries to Lupe Flores’ and sought additional information from her  
11 concerning her medical diagnosis and symptoms and affects, particularly in regards to her ability  
12 to represent herself in this action. The Court also examined Dawn Harris regarding her  
13 willingness and ability to serve as guardian ad litem. Ms. Harris informed the Court that she  
14 would not serve as guardian ad litem for Lupe Flores for various personal reasons, which are  
15 preserved on the record.

16 Finally, the Court sought input from Concepcion Molina and her counsel. The Court  
17 informed the parties that the matter was submitted, with an order to follow.

18 **c. Analysis**

19 The Court has considered the declarations of Lupe Flores, the medical letters proffered,  
20 and the testimony elicited from her and Dawn Harris during the competency hearing and  
21 concludes that the showing supports a finding of incompetency. Lupe Flores’ diagnosis of  
22 logopenic primary progressive aphasia is a mental impairment that significantly limits her  
23 communication skills and, as represented by her medical providers in the proffered letters,  
24 adversely impacts her ability to understand and make informed decisions. As such, Lupe Flores’  
25 showing is sufficient to establish that she is unable to assist in the preparation of her case. *See*  
26 *Robbins v. Mscripts, LLC*, No. 23-CV-01381-LB, 2023 WL 4205773, at \*3 (N.D. Cal. June 27,  
27 2023) (“Here, a preponderance of the evidence supports finding the plaintiff incompetent. Ms.  
28 Robbins’ declarations show that the plaintiff ‘was diagnosed with brain disease and dementia,’

1 which ‘creates a mental impairment which significantly limits any decision making.’ This shows  
2 that he is unable to assist counsel in the preparation of this case.”); *DeMaria v. Yolo Cnty.*  
3 *Sheriff’s Off.*, No. 2:23-CV-01798-KJM-KJN, 2023 WL 7092232, at \*2 (E.D. Cal. Oct. 26, 2023)  
4 (finding incompetency where co-plaintiff “submitted a declaration stating her husband is  
5 incompetent due to dementia ... describ[ing] a lack of memory and illogical anxiety,” where  
6 counsel submitted a declaration stating he “has witnessed [husband’s] health, memory and  
7 cognitive abilities decline,” and physician submitted letter confirming “dementia and cognitive  
8 difficulties”) (internal citations omitted); *Byrd on behalf of Byrd v. United States*, No. 1:20-CV-  
9 03090-LMM, 2021 WL 5033826, at \*5 (N.D. Ga. July 19, 2021) (finding plaintiff incompetent  
10 where physician’s letter represented that plaintiff “continues to experience aphasia, memory  
11 deficits, and impaired comprehension” and that the aphasia “affects all language modalities with  
12 severely impaired comprehension” and that plaintiff “lacks sufficient ability to comprehend and  
13 communicate responsible decisions concerning his person”).

14           The Court has inquired with the Pro Bono Coordinator for the Eastern District of  
15 California regarding this action – particularly as to availability of individuals for appointment of  
16 guardian ad litem or counsel, including as to pro bono attorneys, law school programs, bar  
17 associations, or other relevant organizations. Additionally, the Court has contacted the Ninth  
18 Circuit Pro Bono Program Coordinator, the North Carolina Pro Bono Resource Center, a  
19 statewide legal aid organization within North Carolina, a law school clinical program within the  
20 state, as well as state and county-level government services. To date, the Court has been unable to  
21 locate any individuals willing serve to as guardian ad litem or as counsel.

22           For the foregoing reasons, the Court will stay the action and require periodic case  
23 management reports. Upon locating any individual willing and able to serve as guardian ad litem  
24 or counsel, the Court will appoint them. Lupe Flores may renew her motion for appointment of  
25 guardian ad litem at any time if she identifies an individual willing to serve as such.

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**III. CONCLUSION AND ORDER**

Accordingly, the Court HEREBY ORDERS that:

- 1. This action is STAYED;
- 2. Cross-Defendant Lupe Flores SHALL RE-FILE a motion for appointment of guardian ad litem upon her identification of a suitable individual willing to serve as guardian ad litem, with any such application complying with Local Rule 202 and this Court’s prior orders denying her earlier applications; and
- 3. Cross-Defendant Lupe Flores is DIRECTED to file a status report **every 90 days** from the date of service of this order addressing the status of her medical condition and diagnoses, her search for a guardian ad litem, and any other relevant matters.

IT IS SO ORDERED.

Dated: March 10, 2025

  
UNITED STATES MAGISTRATE JUDGE