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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JANE DOE, by and through her	)	
Guardian ad Litem, David Sisco;	)	2:13-cv-01145-GEB-CMK
DAVID SISCO; and KATHLEEN	)	
WILDER,	)	
	)	<u>ORDER</u>
Plaintiffs,	)	
	)	
v.	)	
	)	
WEED UNION ELEMENTARY SCHOOL	)	
DISTRICT, LEEANNA RIZZO, ALISA	)	
CUMMINGS, COUNTY OF SISKIYOU,	)	
and DEPUTY SHERIFF CARL HOUTMAN,	)	
	)	
Defendants.	)	
_____	)	

On June 7, 2013, Plaintiffs filed a Motion seeking "permission to file an Application for Appointment of Guardian ad Litem for Jane Doe under seal." (ECF No. 1.) However, the document Plaintiffs seek to have filed under seal was not provided to the undersigned judge as required by Local Rule 141(b).<sup>1</sup>

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<sup>1</sup> A purpose of this requirement is to enable the Court to review in camera precisely what the movant opines should be sealed. Here, nothing was submitted to chambers for in camera consideration in connection with the sealing request other than what has been filed on the public docket.

1 Review of the motion reveals that the plaintiff referenced as  
2 "Jane Doe" is a minor,<sup>2</sup> and that notwithstanding Plaintiffs' non-  
3 compliance with Local Rule 141(b), Plaintiffs' underlying Application  
4 for Appointment of Guardian ad Litem for the minor plaintiff is  
5 unnecessary under Federal Rule of Civil Procedure ("Rule") 17(c).

6 "To maintain a suit in a federal court, a child or mental  
7 incompetent must be represented by a competent adult." T.W. by Enk v.  
8 Brophy, 124 F.3d 893, 895 (7th Cir. 1997). Rule 17(c) governs the  
9 appearance of minors and incompetent persons in federal court. Rule  
10 17(c) (1) prescribes: "The following representatives may sue or defend on  
11 behalf of a minor or an incompetent person: (A) a general guardian; (B)  
12 a committee; (C) a conservator; or (D) a like fiduciary." Thus Rule  
13 17(c) (1) (A) permits a "general guardian" to sue in federal court on  
14 behalf of a minor, and "[a] parent is a guardian who may so sue." Cnty.  
15 for Equity v. Mich. High Sch. Athletic Ass'n, 26 F. Supp. 2d 1001, 1006  
16 (W.D. Mich. 1998). Similarly, Rule 17(c) (2) prescribes:

17 A minor or an incompetent person who does not have  
18 a duly appointed representative may sue by a next  
19 friend or by a guardian ad litem. The court must  
20 appoint a guardian ad litem—or issue another  
appropriate order—to protect a minor or incompetent  
person *who is unrepresented in an action.*

21 (emphasis added). The Ninth Circuit has interpreted Rule 17(c) (2) as  
22 follows:

23 \_\_\_\_\_  
24 <sup>2</sup> To the extent that this motion seeks sub silentio approval of  
25 the filing of the minor's case under a pseudonym, that portion of the  
26 motion has not been supported with applicable authority and argument and  
27 is therefore denied. Rule 17(a) prescribes that "[a]n action must be  
28 prosecuted in the name of the real party in interest." Further, Rule 5.2  
provides, in pertinent part: "Unless the court orders otherwise, in a[]  
. . . filing with the court that contains . . . the name of an  
individual known to be a minor, . . . the filing may include . . . the  
minor's initials . . . ."

1 Fed. R. Civ. P. 17(c) requires a court to take  
2 whatever measures it deems proper to protect an  
3 incompetent person during litigation. Although *the*  
4 *court has broad discretion and need not appoint a*  
5 *guardian ad litem if it determines the person is or*  
*can be otherwise adequately protected*, it is under  
a legal obligation to consider whether the person  
is adequately protected.

6 United States v. 30.64 Acres of Land, More or Less, Situated in  
7 Klickitat Cnty., State of Wash., 795 F.2d 796, 805 (9th Cir. 1986)  
8 (emphasis added). Further, other circuits have explicitly found that  
9 appointment of a guardian ad litem is not required when a minor is  
10 adequately represented by a parent. See Burke v. Smith, 252 F.3d 1260,  
11 1264 (11th Cir. 2001) ("In the present case, [the minor] was otherwise  
12 represented by her mother who brought this action on her behalf. Thus,  
13 Rule 17(c) did not require the court to appoint a guardian ad litem.");  
14 Matter of Chi., Rock Island & Pac. R.R. Co., 788 F.2d 1280, 1282 (7th  
15 Cir. 1986) ("If [a minor] is a party and represented, the appointment of  
16 a guardian is not required, provided the representation is adequate, as  
17 it would normally be if the party was being represented by a parent as  
18 'next friend' and there was no conflict of interest between the party  
19 and his representative." (citation omitted)); Croce v. Bromley Corp., 623  
20 F.2d 1084, 1093 (5th Cir. 1980) ("In the instant case the [minor] was  
21 'otherwise represented'; the child's legal guardian, his mother, brought  
22 this action on his behalf. Thus, there was no need for the court to  
23 appoint a guardian ad litem."); see also Brophy, 124 F.3d at 895  
24 (recognizing as a matter of practice that "it is usually [a minor's  
25 representative] who . . . take[s] the initiative in suing on the child's  
26 behalf").

27 Here, Plaintiffs attached as an exhibit to their motion a copy  
28 of the Complaint they assert they will file after decision is reached on

1 their motion.<sup>3</sup> (ECF No. 1-2.) Review of the Complaint reveals that the  
2 "natural parents" of the minor plaintiff will represent her in this  
3 action. (Compl. ¶ 3.) Further, nothing in the Complaint indicates the  
4 minor plaintiff's parents will not adequately protect her interests. Nor  
5 is there evidence of a conflict of interest between the minor plaintiff  
6 and her parents. Therefore, Plaintiffs have not shown a "need for the  
7 court to appoint a guardian ad litem" in this case. Croce, 623 F.2d at  
8 1093; see Matter of Chi., Rock Island & Pac. R.R. Co., 788 F.2d at 1282  
9 (recognizing that representation of a minor by a parent "would normally  
10 be adequate if . . . there [i]s no conflict of interest" between the  
11 minor and parent).

12 This decision is made notwithstanding Local Rule 202(a), which  
13 appears to require appointment of a guardian ad litem even when a minor  
14 is represented by her natural parent(s). See E.D. Cal. R. 102(d) ("[T]he  
15 Court in its discretion may make such orders . . . contrary to the  
16 provisions of the[] [Local] Rules as it may deem appropriate and in the  
17 interests of justice and case management . . . ."); E.D. Cal. R. 100(c)  
18 ("These Local Rules . . . shall be construed and administered  
19 consistently with and subordinately to . . . the Federal Rules of Civil  
20 Procedure . . . .").

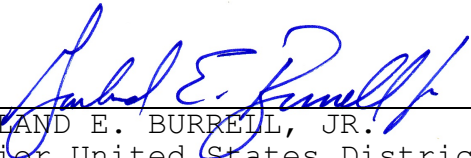
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26 <sup>3</sup> Rule 3 prescribes: "A civil action is commenced by filing a  
27 complaint with the court." It is unclear why this civil action has been  
28 commenced by the motion Plaintiffs filed. Further, Plaintiffs'  
Complaint, which is attached to Plaintiffs' motion, indicates that two  
exhibits are attached to the Complaint. See Compl. ¶ 1, ECF No. 1-2.  
However, no exhibits were attached as indicated.

1 For the stated reasons, Plaintiffs' motion (ECF No. 1) is  
2 denied.

3 Dated: June 12, 2013

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6 GARLAND E. BURRELL, JR.  
Senior United States District Judge

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