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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 RACHEL AKEY, an individual, N.D., a
12 minor, RYAN CORNACCHIOLI, an
13 individual, and LINDA CLAYTON, an
individual,

No. 2:14-CV-02402 KJM-KJN

ORDER

15 Plaintiffs

17 v.
18 PLACER COUNTY, CALIFORNIA, a
19 county government, SCOTT MYERS, in
20 his official capacity and as an individual,
GLORIA SUTTON in her official capacity
and as an individual, and DOES 1-10,

22 Defendants.

1 – to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P.
2 17(c).

3 With reference to Rule 17, this court’s Local Rules provide: “Upon
4 commencement of an action or upon initial appearance in defense of an action by or on behalf of
5 a minor or incompetent person, the attorney representing the minor or incompetent person shall
6 present (1) appropriate evidence of the appointment of a representative for the minor or
7 incompetent person under state law or (2) a motion for the appointment of a guardian ad litem by
8 the Court.” L.R. 202(a).

9 Plaintiffs allege several constitutional and state law claims related to actions
10 involving the custody of N.D., his mother (plaintiff Akey), stepfather (plaintiff Cornacchioli),
11 grandmother (plaintiff Clayton), and father Cameron Dupree (not a party in this action).
12 Plaintiffs seek punitive, treble, and general damages plus attorneys’ fees. *See* Compl. at 67, ECF
13 No. 1. N.D. is four years old (Compl. ¶ 1), not represented by separate counsel, and cannot
14 represent his own interests in this action.

15 A parent is generally appointed guardian ad litem. *Anthem Life Ins. Co. v. Olguin*,
16 No. 1:06-CV-01165, 2007 WL 1390672, at *2-3 (E.D. Cal. May 9, 2007); *see also Fontalvo ex*
17 *rel. Fontalvo v. Sikorsky Aircraft Corp.*, No. 13CV0331-GPC-KSC, 2014 WL 5092742, at *2
18 (S.D. Cal. Oct. 9, 2014) (citing *Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001)). However,
19 courts should not appoint parents as guardians ad litem when there is a conflict between the
20 interests of the minor children and those of the parents. *M.S. v. Wermers*, 557 F.2d 170, 174 (8th
21 Cir. 1977); *cf. Phelan v. Brentwood Union Sch. Dist.*, No. C 12-00465 LB, 2012 WL 909294, at
22 *1 (N.D. Cal. 2012) (no apparent conflict of interest based on father and son’s Fourth and
23 Fourteenth Amendment claims against son’s school and teacher from injuries son suffered at
24 school).

25 On the record before it, the court does not find a conflict between the interests of
26 Akey and N.D. such that Akey is an unsuitable guardian ad litem. The adult plaintiffs, in stating
27 their causes of action against defendants for violations of California state law and deprivation of
28 constitutional rights, do not assert arguments contrary to the minor’s interests. The court

1 ultimately will consider the parties' motions independently; with the court's protection, the
2 involvement of counsel, and Akey's appointment as guardian ad litem, the minor's interests in
3 this case will be adequately protected.

4 The court GRANTS plaintiff's motion to appoint Rachel Akey as guardian ad
5 litem for minor N.D.

6 IT IS SO ORDERED.
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8 DATED: December 30, 2014.

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11 UNITED STATES DISTRICT JUDGE

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