

1 JEFFREY M. VUCINICH, ESQ. BAR#: 67906
 2 PATRICK R. CO, ESQ. BAR #: 200160
 3 CLAPP, MORONEY, BELLAGAMBA, VUCINICH,
 4 BEEMAN and SCHELEY
 5 A PROFESSIONAL CORPORATION
 6 1111 Bayhill Drive, Suite 300
 7 San Bruno, CA 94066
 8 (650) 989-5400 (650) 989-5499 FAX

9 Attorneys for Defendants
 10 CITY OF HAYWARD; SAM SANDER; and MIKE EDWARDS

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 DANIELLE POLLAR; SHALAWN
 14 POLLAR as Guardian Ad Litem for J.A., a
 15 minor,

16 Plaintiffs,

17 v.

18 COUNTY OF ALAMEDA; MARY
 19 TAKEUCHI; DALE BILLITER;
 20 MICHAEL YEE; CITY OF HAYWARD;
 21 SAM SANDER; MIKE EDWARDS; and
 22 DOES 1 through 20, inclusive,

23 Defendants.

CASE NO.: C08-04196 BZ

AMENDED STIPULATION and
~~proposed~~ ORDER DISMISSING SAM
SANDER

24 IT IS HEREBY STIPULATED by and between the parties to this action, through their
 25 designated counsel, that all of the claims in this action of plaintiffs DANIELLE POLLAR; and
 26 SHALAWN POLLAR as Guardian Ad Litem for J.A., a minor, against SAM SANDER are dismissed
 27 with prejudice pursuant to FRCP 41(a)(1), and with a waiver of costs by the dismissed defendant.

28 In addressing this Court's order dated December 23, 2009, in executing this stipulation, the
 parties are aware that under the California Code of Civil Procedure Section 372, a guardian ad litem
 may only "compromise" the interests of a minor "with the approval of the court." Such a compromise
 would include settlement. *See* Cal. Code Civil Procedure § 372. Despite this provision, however, a
 guardian ad litem is not required to secure court approval in seeking a dismissal. *See Zapanta v.*

1 *Universal Care, Inc.*, 107 Cal. App. 4th 1167, 1174-75 (2003). A dismissal is “certainly not the
2 equivalent” of a settlement. *Id.* at 1174. The *Zapanta* court recognized that Section 372 did not
3 expressly preclude dismissal of an action by a guardian ad litem. *Id.* at 1175. Here, the parties do not
4 enter into this stipulation as a compromise or settlement of the minor, J.A.’s interests. Rather, this
5 agreement is merely a stipulation to dismiss Defendant Sam Sander from this action with prejudice.

6 Furthermore, the parties are unaware of an equivalent to California Code of Civil Procedure
7 Section 372 within the Federal Rules of Civil Procedure. *See* FED. RULE CIV. PROC. § 17(c).
8 However, one district court has opined that a federal court’s authority to approve of a guardian ad
9 litem’s settlement on behalf of a minor is based upon state law. *Eagan by Keith v. Jackson*, 855 F.
10 Supp. 765, 775 (E.D. Pa. June 13, 1994). Thus, as far as the parties understand, California Code of
11 Civil Procedure Section 372, and corresponding state law precedent such as *Zapanta*, are controlling.
12 This Court should nevertheless feel free to direct the parties’ attention to authority that states
13 otherwise for further or more appropriate guidance.

14 For those reasons, the parties stipulate to dismiss Officer Sam Sander from this action, and
15 respectfully request that this Court order such dismissal.

16
17 DATED: January 4, 2010

LAW OFFICES OF ROBERT R. POWELL

18
19 By: _____ /S/

20 ROBERT R. POWELL
21 Attorney for Plaintiffs, Danielle Pollar and
22 Shalawn Pollar, as Guardian Ad Litem for J.A.,
a Minor

23 DATED: January 4, 2010

HAAPALA THOMPSON & ABERN LLP

24
25 By: _____ /S/

26 REBECCA C. WIDEN
27 Attorney for Defendants
COUNTY OF ALAMEDA, et al.

28 ///

1 DATED: January 4, 2010

CLAPP MORONEY BELLAGAMBA VUCINICH
BEEMAN and SCHELEY

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____ /s/

PATRICK R. CO
Attorney for Defendants
CITY OF HAYWARD; SAM SANDER;
and MIKE EDWARDS

ORDER

This stipulation having been considered by the Court, and good cause appearing,

IT IS HEREBY ORDERED.

Date: January 5, 2010



MAGISTRATE JUDGE BERNARD ZIMMERMAN