

United States District Court  
For the Northern District of California

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

PHYLLIS WEHLAGE, on behalf of herself  
and on behalf of others similarly  
situated,

Plaintiff,

v.

EMPRES HEALTHCARE, INC; EHC  
MANAGEMENT, LLC; EHC FINANCIAL  
SERVICES, LLC; EVERGREEN CALIFORNIA  
HEALTHCARE, LLC; EVERGREEN AT ARVIN,  
LLC; EVERGREEN AT BAKERSFIELD, LLC;  
EVERGREEN AT LAKEPORT, LLC; EVERGREEN  
AT HEARTWOOD, LLC; EVERGREEN AT  
SPRINGS ROAD, LLC; EVERGREEN AT  
TRACY, LLC; EVERGREEN AT OROVILLE,  
LLC; EVERGREEN AT PETALUMA, LLC; and  
EVERGREEN AT GRIDLEY (SNF), LLC;

Defendant.

No. C 10-05839 CW

ORDER GRANTING  
ADMINISTRATIVE  
MOTIONS FOR  
APPOINTMENT OF  
ISABEL S.  
SIMENTAL COLLIER  
AND MARILYN J.  
STARTS AS  
GUARDIANS AD  
LITEM  
(Docket No. 52 &  
53)

Pursuant to Federal Rule of Civil Procedure Rule 17(c),  
Plaintiffs move for the appointment of Marilyn J. Starts as  
guardian ad litem for Plaintiff Howard Richard Starts, Docket No.  
52, and the appointment of Isabel S. Simental-Collier, as guardian  
ad litem of Plaintiff Maria Hernandez, Docket No. 53. Defendants  
do not oppose the motion. Having considered the submissions, the  
Court GRANTS the motions.

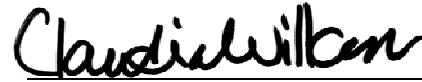
1 Under Rule 17(c)(2), "[a] minor or an incompetent person who  
2 does not have a duly appointed representative may sue by next  
3 friend or by a guardian ad litem." Fed. R. Civ. P. 17(c)(2). Rule  
4 17(c)(2) further states, "The court must appoint a guardian ad  
5 litem-or issue another appropriate order--to protect a minor or  
6 incompetent person who is unrepresented in an action." Fed. R.  
7 Civ. P. 17(c)(2). An application for appointment of a guardian ad  
8 litem is not guided by state law, but rather the protection of the  
9 individual's interests." Estate of Ricardo Escobedo v. City of  
10 Redwood City, 2006 U.S. Dist. LEXIS 12457, \*21-22 (N.D. Cal.); 6A  
11 Charles Alan Wright & Arthur R. Miller & Mary Kay Kane, Federal  
12 Practice and Procedure § 1571 at 511-12 (1991).

13 Here Plaintiffs Maria Hernandez and Howard Richard Starts are  
14 intended class representatives in this action. Plaintiffs' counsel  
15 represent that no previous petitions for appointment of a guardian  
16 ad litem for Maria Hernandez or Howard Richard Starts have been  
17 filed in this matter. In addition, counsel state that no conflict  
18 of interest exists between Marilyn Starts and her husband, Howard  
19 Richard Starts. Nor does a conflict exist between Isabel S.  
20 Simental-Collier and her grandmother Maria Hernandez. The  
21 supporting declarations make clear that both Plaintiffs Hernandez  
22 and Starts lack capacity due to impairments in their alertness and  
23 attention, their ability to process information and other factors  
24 necessary for both to fully appreciate the rights, duties and  
25 responsibilities created by their participation in this lawsuit.  
26 Marilyn Starts and Isabel Simental-Collier are willing to serve as  
27 guardians ad litem, and to visit their respective relative

1 regularly and are able to identify and address their needs.  
2 Accordingly, the Court finds that it is in the best interest of  
3 Plaintiffs to grant the motions, and, therefore, appoints Isabel  
4 Simental-Collier as guardian ad litem of Maria Hernandez, and  
5 Marilyn Starts as guardian ad litem for Howard Richard Starts.

6 IT IS SO ORDERED.

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9 Dated: 6/23/2011



CLAUDIA WILKEN  
United States District Judge