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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5

6 **TERRY L WEISS,**

7 Plaintiff,

8 vs.

9 **CITY OF SANTA ROSA POLICE**
10 **DEPARTMENT, ET AL.,**

11 Defendants.

CASE NO. 15-cv-01639-YGR

**MOTION DENYING MOTION FOR
CLARIFICATION, COURT GUIDANCE, AND
REQUEST FOR ATTORNEY**

Re: Dkt. No. 121

12
13 On September 7, 2017, plaintiff Terry Weiss filed a request styled as a “Motion for
14 Clarification, Court Guidance, Acknowledgment.” (Dkt. No. 121.) Specifically, plaintiff requests
15 clarification on her rights and the procedures related to an anticipated competency hearing and
16 whether she has a right to have counsel present due to her disabilities and her self-described
17 inability to communicate effectively. This motion was filed in response to defendants’
18 representation that they intend to file a motion to determine plaintiff’s competency to pursue this
19 litigation without a guardian ad litem, pursuant to Federal Rule of Civil Procedure 17. (*See* Dkt.
20 No. 117 at 5; *see also* Docket Nos. 106 and 114.)

21 The Court acknowledges and recognizes the significant time and effort plaintiff has given
22 to filing her motion and attempting to explain to the Court the difficulties and hardships she faces.
23 The Court understands that *pro se* litigants face significant challenges in pursuing their cases, even
24 more so where the *pro se* litigant, as plaintiff describes herself, has emotional and mental
25 impairments that inhibit her ability to communicate effectively. Nevertheless, the law does not
26 provide for the right to counsel in civil cases for *pro se* litigants. In certain circumstances, the
27 Court coordinates with the federal pro bono program to find attorneys to represent *pro se* litigants
28 in their civil cases, but the Court finds that the matter at hand is not appropriate for that referral at

1 this juncture. Plaintiff herself acknowledges that she has significant difficulties in communicating
2 effectively, which raises particular challenges in finding an attorney to provide her with voluntary
3 representation in this matter. Accordingly, the Court **DENIES** plaintiff’s request for appointment of
4 counsel. Typically, in cases such as these, defendants will bring motions for summary judgment,
5 which challenge the sufficiency of the evidence supporting the claims. If plaintiff defeats the
6 anticipated motion and the case is set for trial, the Court will reconsider the need for appointment
7 of counsel in that context.

8 The Court will, however, provide the following guidance and relief:¹

9 First, the Court reviews for plaintiff the claims and allegations still present in this action.
10 Plaintiff’s third amended complaint contains multiple allegations against the City of Santa Rosa
11 Police Department (the “SRPD”), Tom Schwedhelm in his official capacity, and several officers
12 (the “City Defendants”), and the Sonoma County Sherriff’s Office, and other county officials (the
13 “County Defendants”). With regard to the City Defendants, plaintiff’s claims pertain to an
14 incident on July 24, 2013, wherein she visited the police department purportedly to discuss a prior
15 incident with certain officers. During the course of this visit, plaintiff alleges that the officers
16 treated her rudely, then physically abused her and arrested her unlawfully, and then took her to
17 Sonoma County’s adult detention facility. (Dkt. No. 76, Third Amended Complaint (“TAC”) ¶¶
18 52–54.) Plaintiff’s claims against the County Defendants pertained to her detention at the
19 detention facility, including allegations that they refused to provide her with a blanket or medical
20 care. The Court previously dismissed plaintiff’s claims against the County Defendants with
21 prejudice. (Dkt. Nos. 72, 86.) Thus, only her claims against the City Defendants remain.
22 Specifically, only plaintiff’s claims related to her arrest at the Santa Rosa Police Department on
23 July 24, 2013, prior to her detainment at the detention facility, remain at issue in this litigation.²

24 _____
25 ¹ The Court reminds plaintiff that court staff is not authorized to provide her with legal
26 advice. Additionally, the federal pro bono legal help center has limited resources, and may not be
able to respond to all of plaintiff’s queries expeditiously.

27 ² Plaintiff has also raised issues related to a social security number, which she believes has
28 been incorrectly attached to her in certain records. However, it is not clear how this issue relates
to her surviving claims against the City Defendants. To the extent she claims that these identity
issues are hindering her ability to obtain discovery from defendants, plaintiff should raise those

1 Second, the Court provides the following explanation of the current dispute regarding
2 plaintiff’s competency to pursue this litigation. Defendants have moved this Court to make a
3 determination regarding plaintiff’s competency to pursue this litigation independently. (Dkt. No.
4 122.) Defendants’ basis for this motion is Federal Rule of Civil Procedure 17, which provides that
5 the court “must appoint a guardian ad litem—or issue another appropriate order—to protect a
6 minor or incompetent person who is unrepresented in an action.” Importantly, if the Court agrees
7 with defendants and finds that appointment of a guardian ad litem is necessary, the guardian
8 would be authorized to act on plaintiff’s behalf and *make all appropriate decisions* in the course
9 of this litigation. *United States v. 30.64 Acres of Land*, 795 F2d 796, 805 (9th Cir. 1986).
10 Additionally, the guardian “may make binding contracts for the retention of counsel and expert
11 witnesses *and may settle the claim* on behalf of his ward.” *Id.* (emphasis supplied.) Simply put,
12 the guardian ad litem would obtain complete control over this litigation, and make all necessary
13 decisions and communications with respect to plaintiff’s claims.

14 This Court has not yet made any decisions regarding plaintiff’s competency, or the need
15 for a guardian ad litem. The legal standard for determining competence in California is whether a
16 person “lacks the capacity to understand the nature or consequences of the proceeding, or is unable
17 to assist counsel in the preparation of the case.” *Shankar v. U.S. Dep’t of Homeland Sec’y*,
18 No. 13-CV-1490-NC, 2014 WL 523960, at *14 (N.D. Cal. Feb. 6, 2014) (quoting *Golden Gate*
19 *Way, LLC v. Stewart*, No. 09-CV-4458-DMR, 2012 WL 4482053, at *2 (N.D. Cal. Sept. 28,
20 2012). “A guardian ad litem may be appointed for an incompetent adult only (1) if he or she
21 consents to the appointment or (2) upon notice and hearing.” *Id.*

22 Against this backdrop, and because the Court understands the difficulty involved for
23 plaintiff in drafting papers for filing, the Court can, if plaintiff wishes, consider her motion for
24 clarification as her opposition to defendant’s motion, as it contains many of plaintiff’s arguments
25 why she should *not* be declared incompetent.

26
27 issues with defendants. Failing that, plaintiff should bring those issues to Magistrate Judge
28 Westmore’s attention, detailing specifically how the alleged mis-assigned social security number
is preventing her from obtaining proper discovery, if the Court finds that reopening discovery is
appropriate and necessary after issues of plaintiff’s competency have been resolved.

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The Court hereby **EXTENDS** plaintiff's deadline for filing her response to defendant's motion regarding her competency from September 27, 2017 to October 17, 2017. By October 17, 2017, plaintiff must file either (i) her opposition to defendants' motion or (ii) a statement indicating her intent to use her motion for clarification as her opposition. Defendants' reply will be due seven (7) days after plaintiff's filing. The Court **VACATES** the hearing on defendants' motion regarding plaintiff's competency, currently scheduled for October 24, 2017. After briefing is complete, the Court may reset a hearing date, if necessary.

This Order terminates Docket Number 121.

IT IS SO ORDERED.

Dated: September 29, 2017



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE