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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALEXIS YANCY and JAYDEN
YANCY, by and through their
Guardian Ad Litem, KATHERINE
HAWK,

Plaintiffs,

v.

STATE OF CALIFORNIA;
CALIFORNIA HIGHWAY PATROL;
CITY OF IMPERIAL; CITY OF
IMPERIAL POLICE DEPARTMENT,
COUNTY OF IMPERIAL; and
IMPERIAL COUNTY SHERIFF'S
OFFICE,

Defendants.

Civil No. 15cv580 JM (JLB)

**ORDER GRANTING EX
PARTE APPLICATION FOR
APPOINTMENT OF
GUARDIAN AD LITEM**

[ECF No. 2]

On March 13, 2015, Plaintiffs filed an Ex Parte Application for Appointment of Guardian Ad Litem, requesting that Katherine Hawk be appointed as guardian ad litem for her two minor children, Plaintiffs Alexis Yancy and Jayden Yancy. (ECF No. 2.) For the following reasons, Plaintiffs' Ex Parte Application is **GRANTED**.

I. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 17, “[a] minor . . . who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem – or issue another appropriate order – to protect a minor . . . who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). An individual’s capacity to sue is determined “by the law of the individual’s domicile.”

1 Fed. R. Civ. P. 17(b). Here, both minor Plaintiffs are domiciled in California. (ECF
2 No. 2 at 2.) Under California law, an individual under the age of eighteen is a minor.
3 Cal. Fam. Code § 6502. A minor may bring suit as long as a guardian conducts the
4 proceedings, and the court may appoint a guardian ad litem to represent the minor's
5 interests. Cal. Fam. Code § 6601; Cal. Code Civ. P. § 372(a).

6 "A court has broad discretion in ruling on a guardian ad litem application."
7 *Williams v. Superior Court of San Diego*, 147 Cal. App. 4th 36, 47 (2007) (citing *In*
8 *re Emily R.*, 80 Cal. App. 4th 1344, 1356 (2000)). When determining whether to
9 appoint a particular guardian ad litem, the court must consider whether the minor and
10 guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1). Generally, when a
11 minor is represented by a parent who has the same interests as the child, there is no
12 inherent conflict of interest. *See e.g. Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir.
13 2001) (explaining that when a parent brings an action on behalf of a child, and it is
14 evident that the interests of each are the same, no need exists for someone other than
15 the parent to represent the child's interests under Rule 17(c).). *See also Anthem Life*
16 *Ins. v. Olguin*, 2007 WL 1390672, *2 (E.D. Cal. May 9, 2007) (observing that "[a]
17 parent is generally appointed guardian ad litem.").

18 When there is no conflict of interest, the guardian ad litem appointment is
19 usually made on an ex parte application and involves minimal exercise of discretion
20 by the court. *Kulya v. City and County of San Francisco*, 2007 WL 760776, * 1 (N.D.
21 Cal. 2007); *see also In re Marriage of Caballero*, 27 Cal. App. 4th 1139, 1149 (1994).
22 When choosing a guardian ad litem for a civil lawsuit, the most important issue is
23 protection of the minor's interest in the litigation. *Williams*, 147 Cal. App. 4th at 47.

24 Here, both Plaintiff Alexis Yancy and Plaintiff Jayden Yancy are under the
25 age of eighteen. (*See* ECF No. 2 at 2.) Therefore, their ability to bring suit is
26 contingent upon appointment by the court of a guardian ad litem.

27 Plaintiffs' mother and guardian, Katherine Hawk, states that she is "fully
28 competent and qualified to understand and protect the rights of [Plaintiffs] and has no

1 interests adverse to the interests of these minors.” (*Id.*) Ms. Hawk is not herself a
2 party to the lawsuit and, upon review of the Complaint, does not appear to have any
3 interests in conflict with the minor Plaintiffs she seeks to represent. (*See* ECF No. 1.)
4 The Court finds that Ms. Hawk is qualified to serve as guardian ad litem for her two
5 minor children. Accordingly, Ms. Hawk’s appointment as guardian ad litem for
6 Plaintiffs Alexis Yancy and Jayden Yancy is appropriate.

7 **II. CONCLUSION**

8 Plaintiffs’ Ex Parte Application for Appointment of Guardian Ad Litem is
9 hereby **GRANTED**. Katherine Hawk is appointed to act as guardian ad litem for
10 Plaintiffs Alexis Yancy and Jayden Yancy, and is authorized to prosecute this action
11 on their behalf.

12 **IT IS SO ORDERED.**

13
14 **DATED: April 8, 2015**

15 
16 **JILL L. BURKHARDT**
17 **United States Magistrate Judge**