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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS HELM HOBBS, by and
through his Power of Attorney,
Christopher Hobbs,
Plaintiff,
v.
WELLS FARGO BANK, NATIONAL
ASSOCIATION,
Defendant.

Case No.: 21-cv-01700-AJB-JLB

**ORDER GRANTING MOTION TO
APPOINT GUARDIAN AD LITEM
(Doc. No. 23)**

Before the Court is Plaintiff Thomas Helm Hobbs’ (“Plaintiff”) motion for appointment of guardian ad litem. (Doc. No. 23.) For the reasons set forth below, the Court **GRANTS** Plaintiff’s motion.

I. BACKGROUND

In the instant motion, Plaintiff seeks appointment of a guardian ad litem on his behalf. Plaintiff’s counsel explains that Plaintiff suffers from a major neurocognitive disorder due to multiple causes including possible Alzheimer’s disease. (Doc. No. 30 at 2.) As a result, Plaintiff suffers from poor memory and requires help with decision making. (*Id.*; Doc. No. 23-7 at 2.)

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1 Plaintiff seeks appointment of his son, Christopher Hobbs, to serve as his guardian
2 ad litem pursuant to Federal Rule of Civil Procedure 17(c)(2). Christopher Hobbs currently
3 serves as Plaintiff’s attorney-in-fact pursuant to a durable power of attorney. (Doc.
4 No. 23-1 at 3.) Moreover, Plaintiff is not conserved and there appear to be no conflicts of
5 interest between Christopher Hobbs and Plaintiff. (*Id.*)

6 **II. LEGAL STANDARD**

7 Rule 17(c) establishes certain rules regarding representation of minors and
8 incompetent persons in federal court actions. First, for individuals “with a representative,”
9 the Rule provides that “[t]he following representatives may sue or defend on behalf of a
10 minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a
11 conservator; or (D) a like fiduciary.” Fed. R. Civ. P. 17(c)(1). Second, for individuals
12 “without a representative,” the Rule provides that “[a] minor or incompetent person who
13 does not have a duly appointed representative may sue by a next friend or by guardian ad
14 litem. The court must appoint a guardian ad litem—or issue another appropriate order—to
15 protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P.
16 17(c)(2) (emphasis added). “As a general matter, the decision whether to appoint a guardian
17 ad litem is ‘normally left to the sound discretion of the trial court.’” *Elliott v. Versa CIC,*
18 *L.P.*, 328 F.R.D. 554, 556 (S.D. Cal. 2018) (quoting *United States v. 30.64 Acres of Land,*
19 *795 F.2d 796, 804 (9th Cir. 1986)*).

20 **III. DISCUSSION**

21 An individual’s capacity to sue is determined “by the law of the individual’s
22 domicile[,]” Fed. R. Civ. P. 17(b), which here is California law. “In California, a party is
23 incompetent if he or she lacks the capacity to understand the nature or consequences of the
24 proceeding, or is unable to assist counsel in the preparation of the case.” *Golden Gate Way,*
25 *LLC v. Stewart*, No. 09–04458, 2012 WL 4482053, at *2 (N.D. Cal. Sept. 28, 2012) (citing
26 *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); Cal. Civ. Proc. Code § 372; and *In*
27 *re Sara D.*, 87 Cal. App. 4th 661, 666–67 (2001)).

28 Under California law, evidence of incompetence may be drawn from various

1 sources, but the evidence relied upon must “speak . . . to the court’s concern . . . whether
2 the person in question is able to meaningfully take part in the proceedings.” *In re Christina*
3 *B.*, 19 Cal. App. 4th 1441, 1450 (1993). California law adopts a broad view of relevance,
4 and a state court of appeal has emphasized a trial judge’s “duty . . . to clearly bring out the
5 facts.” *In re Conservatorship of Pamela J.*, 133 Cal. App. 4th 807, 827–28 (2005). The
6 court’s first-hand observations of and interactions with the person may inform a court’s
7 decision. *See Guardianship of Walters*, 37 Cal. 2d 239, 249 (1951); *see also In re*
8 *McConnell’s Estate*, 26 Cal. App. 2d 102, 106 (1938). Likewise, a federal judge may elicit
9 evidence by direct questioning. *See, e.g., United States v. Lopez-Martinez*, 543 F.3d 509,
10 513 (9th Cir. 2008); *United States v. Larson*, 507 F.2d 385, 389 (9th Cir. 1974).

11 In the instant matter, neither Plaintiff nor Defendant have objected to appointment
12 of a guardian ad litem. No opposition has been filed. There being no opposition, and based
13 on the representations of Plaintiff’s counsel, the Court finds it necessary to take measures
14 to adequately protect Plaintiff in this litigation in accordance with Rule 17(c). Additionally,
15 the Court does not find a conflict between the interests of Christopher Hobbs and Plaintiff
16 such that Christopher Hobbs is an unsuitable guardian ad litem. Additionally, as Plaintiff’s
17 son, Christopher Hobbs is presumed to act in Plaintiff’s best interests and there is nothing
18 to undermine that presumption.

19 **IV. CONCLUSION**

20 For the reasons stated, the Court **APPOINTS** Christopher Hobbs as guardian ad
21 litem for Plaintiff Thomas Helm Hobbs for the purposes of this action only.

22
23 **IT IS SO ORDERED.**

24 Dated: January 10, 2022

25 
26 Hon. Anthony J. Battaglia
27 United States District Judge
28