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5 Attorneys for Party-in-Interest,  
FRANCES R. SHEEHAN

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 TERESA SHEEHANS

11 Plaintiff,

12 vs.

13 CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation;  
14 HEATHER FONG, in her capacity as Chief  
of Police for the CITY AND COUNTY OF  
15 SAN FRANCISCO; KIMBERLY  
REYNOLDS, individually, and in her  
16 capacity as a police officer for the CITY  
AND COUNTY OF SAN FRANCISCO;  
17 KATHERINE HOLDER, individually and  
in her capacity as a police officer for the  
18 CITY AND COUNTY OF SAN  
FRANCISCO; and, San Francisco police  
19 officers DOES 1-25 inclusive,

20 Defendants.  
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Case No. C 09 03889 CRB

**PARTY-IN-INTEREST FRANCES R.  
SHEEHAN’S OPPOSITION TO MOTION  
TO APPOINT GUARDIAN AD LITEM AND  
APPROVE SETTLEMENT**

Time: 10:00 a.m.  
Date: October 14, 2016  
Courtroom 6, 17<sup>th</sup> Floor

Hon. Charles R. Breyer

24 Party-in-Interest Frances R. Sheehan (“Frances”) hereby submits her opposition  
25 (“Opposition”) to the Motion to Appoint Guardian Ad Litem and Approve Settlement (the  
26 “Motion”) filed by Plaintiff Teresa Sheehan (“Plaintiff”), the sister of Frances. The Opposition is  
27 supported by the accompanying Declaration of Frances R. Sheehan in Support of Opposition to  
28 Motion to Appoint Guardian Ad Litem and Approve Settlement.

1 **INTRODUCTION**

2 Frances is the sister of Plaintiff Teresa and holds a general power of attorney to act on  
3 Teresa's behalf. Frances has been extensively involved from the outset in all aspects of the  
4 litigation surrounding this lawsuit and has been the sole vehicle for communications between  
5 Teresa and her lawyers, The Law Offices of John L. Burris. Until very recently, the lawyers at  
6 the Burris firm have consulted with Frances about all strategic decisions that have been made  
7 about this lawsuit. Frances has a general power of attorney to act on Teresa's behalf and make  
8 decisions about all aspects of her life. The Burris law firm is well aware of the general power of  
9 attorney, as discussed in paragraph 2 of Benjamin Nisenbaum's declaration in support of the  
10 Motion.

11 By the Motion, the Burris law firm (not Plaintiff) is seeking to appoint a guardian ad  
12 litem to act on Teresa's behalf because they are angry that Frances refused to accept a settlement  
13 offer that was made at a mediation held on August 1. That settlement offer would have allowed  
14 the Burris firm to get paid and to move on but Frances did not feel that it was in the best interests  
15 of Teresa. The proposed settlement includes a payment of \$1 million (of which Teresa would  
16 receive \$462,742 after payment of fees), as well as certain non-monetary terms, which are  
17 described in the Motion (although not with complete accuracy as further described in Frances'  
18 declaration).

19 The reason Frances refused to accept the settlement offer is that Teresa has made it very  
20 clear to Frances that she wanted to have her day in court. In 2008, Teresa was shot seven times  
21 by officers from the San Francisco Police Department. She suffered severe and extensive wounds  
22 from the assault, some of which have resulted in permanent disability. Teresa has also suffered  
23 from severe emotional distress and depression as a result of the shooting. What Teresa most  
24 wanted from this lawsuit was to have her claims against the City and County of San Francisco  
25 tried by a jury of her peers. Frances also felt that neither the monetary or non-monetary terms of  
26 the "final" settlement proposal were adequate to protect Teresa's long-term interests.

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1 **ARGUMENT**

2 **I. Filing of the Motion Did Not Comply with Local Rules**

3 The Burriss firm filed the Motion on September 23, 2016 and set a hearing date of  
4 October 14, 2016. This appears to be in violation of Local Rule 7-2, which requires 35 days'  
5 notice of a motion and affords a person opposing a motion 21 days to respond. The Burriss firm  
6 also informed Frances that she must file any opposition by no later than October 7, 2016, which  
7 denies Frances the 21 days' response period to which she is entitled. The Burriss firm never  
8 consulted with Frances or Teresa before filing the Motion. At a minimum, Frances requests that  
9 the hearing on the Motion be continued in order to give Frances sufficient time to develop a  
10 proper evidentiary record upon which the Motion can be decided.

11 **II. There is No Evidence to Support the Motion**

12 The Burriss firm makes the Motion on the grounds that Teresa is incompetent under  
13 Federal Rule 17(c)(1), which appears to be the wrong statute on which the Motion should be  
14 based. Rule 17(c)(1) is for cases in which there as an authorized representative in place. The  
15 appropriate section would appear to be Rule 17(c)(2) if the Burriss firm is making the argument  
16 that Plaintiff is *not represented* by a duly authorized representative. However, the Court cannot  
17 appoint a guardian ad litem under Rule 17(c)(2) because the court is only authorized to do so "to  
18 protect a minor or incompetent person who is *unrepresented* in an action." (Emphasis added.)  
19 Here, not only is Teresa represented by Frances, but she is represented by the Burriss firm itself.  
20 The Rule does not provide for the appointment of a guardian ad litem under these circumstances.

21 In any event, the Burriss firm has submitted no evidence whatsoever of Teresa's  
22 competence. The Court cannot make a determination as to Plaintiff's competence without any  
23 evidence. "The Court's obligation to appoint a guardian ad litem or to issue another appropriate  
24 order under Rule 17(c) does not arise until after a determination of incompetence has been made  
25 by the court in which the issue is raised." *AT&T Mobility, LLC v. Yeager*, 143 F.Supp. 3d 1042  
26 (Sec. II, Discussion, no pin cite provided) (E.D. Cal. 2015) (citing to *Foirte v. Cnty of Merced*,  
27 2013 WL 3282957 at \*3 (E.D. Cal. 2013). Simply stated, there is no evidence before the Court  
28 on the issue of Teresa's competence.

1 Finally, the Court should deny the Motion simply for the mere absurdity of the notion  
2 that an attorney who does not agree with his client's decision can go out and get a third party to  
3 step into a lawsuit and take over decision-making authority of the client in order to benefit the  
4 attorney. If allowed, this notion would throw the entire concept of the attorney-client relationship  
5 on its head. It is the client that gets to make the ultimate decision, not the attorney. Under the  
6 circumstances, there is no basis for appointing a guardian ad litem here.

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8 **III. The Proposed Guardian Does Not Know What is Plaintiff's Best Interests.**

9 By the Motion, the Burriss Firm seeks to appoint Herb Thomas as guardian ad litem to  
10 accept the settlement agreement and to be in control of the distribution of Teresa's share of the  
11 settlement payment. The Burriss firm has never communicated with their client, Teresa, about the  
12 proposal to appoint Mr. Thomas as guardian ad litem. Moreover, Mr. Thomas has never met with  
13 or spoken to Teresa. He knows nothing about her and certainly does not know what is in her best  
14 interest.

15 **IV. The Settlement Proposal Is Acceptable On The Same Terms Offered At**  
16 **Mediation.**

17 To be clear, Frances is willing to enter into a settlement agreement on Teresa's behalf,  
18 but only under the exact same terms that were conveyed to Frances at the mediation held on  
19 August 1. The non-monetary terms of that settlement offer are different from the terms described  
20 by Benjamin Nisenbaum in support of the Motion. Frances would be willing to enter into a  
21 settlement agreement under the terms offered, which are described in Frances' accompanying  
22 declaration. However, Frances' willingness to enter into the settlement agreement is contingent  
23 upon the Court rejecting the Burriss' Firm's request that Herb Thomas be appointed guardian ad  
24 litem. Frances respectfully requests that the Court either appoint Frances to be guardian ad litem  
25 or continue the hearing in order that a proper evidentiary record can be presented.  
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**CONCLUSION**

For the aforementioned reasons, the Motion should be denied.

DATED: October 7, 2016

BRUNETTI ROUGEAU LLP

/s/ Gregory A. Rougeau  
Gregory A. Rougeau  
Attorneys for Francis R. Sheehan