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15 Attorneys for the Plaintiff GERARDO MAGDALENO

16  
17 **UNITED STATES DISTRICT COURT**  
18  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20

21 GERARDO MAGDALENO, by and through  
22 his Guardian Ad Litem, PEDRO FRANCISCO  
23 MAGDALENO,

24 Plaintiff,

25 v.

26 CITY OF UKIAH, JUSTIN WYATT, SAUL  
27 PEREZ, JORDAN MILLER, ALEX COWAN,  
28 ANDY PHILLIPS, and DOES 1-25, inclusive.

Defendants.

Case No. 1:21-cv-02609-RMI

**PLAINTIFF'S ADMINISTRATIVE  
MOTION TO APPROVE SETTLEMENT**

**[Civil Local Rule 7-11]**

1 Pursuant to Local Rule 7-11, Plaintiff brings this administrative motion to approve  
2 settlement between parties. The Declaration of Izaak D. Schwaiger is being filed concurrently  
3 with this motion.

4 **Statement of Facts**

5 Plaintiff Gerardo Magdaleno is a seriously and permanently disabled man who suffers  
6 from schizophrenia and bipolar disorder. Despite treatment and medication, his disability remains  
7 such that he cannot make informed decisions for himself. Plaintiff's disability is such that on  
8 April 19, 2021, the Honorable Vince Chhabria ordered Plaintiff's brother, Pedro Magdaleno,  
9 appointed as Plaintiff's guardian *ad litem*. (Doc. 11.) Defendants have not opposed Pedro's  
10 appointment.

11 Pedro has provided financially for his brother's wellbeing for several years. The chief  
12 interests of Pedro Magdaleno are to continue to provide for his brother and to improve the quality  
13 of psychiatric care available to his brother. Pedro's interests are in alignment with those of  
14 Gerardo's, and there is no conflict between the two.

15 On April 1, 2021, Plaintiff suffered physical and emotional injuries at the hands of the  
16 individual defendants during a use of force event in Ukiah, California involving multiple  
17 deployments of electronic control devices, pepper spray, punches, kicks, and other strikes. (See  
18 Amended Complaint, paras. 13-40, Doc. 35.) As a result, Plaintiff was transferred to a local  
19 hospital where he received medical attention. Plaintiff's physical injuries appear to have now  
20 resolved, but there remain lingering after effects consistent with posttraumatic stress disorder,  
21 such as an unresolved and persistent fear of police.

22 The events in question were video recorded from multiple angles, leaving no factual  
23 dispute as to what occurred.

24 On November 9, 2021, the parties attended a mandatory settlement conference with  
25 Magistrate Judge Laurel Beeler. The case did not settle. (Doc. 32.)

26 On January 10, 2022, defendants tendered a Rule 68 offer to Plaintiff. Plaintiff did not  
27 accept the offer.

1 On February 8, 2022, Plaintiff's life circumstances had deteriorated to such a point that  
2 Plaintiff's GAL/brother felt it was necessary to attempt to settle the lawsuit and use those funds  
3 for Plaintiff's immediate benefit. Mr. Schwaiger discussed the implications of early settlement  
4 with Pedro Magdeleno and explained that with more time, the case could resolve for a higher  
5 dollar figure than what had previously been offered. Mr. Schwaiger is confident that Pedro  
6 understood the implications of early settlement. Mr. Schwaiger is also confident that Pedro's  
7 reasoning for seeking an early, lesser settlement were sound and in the best interest of his brother.  
8 Mr. Schwaiger conveyed the terms of the settlement to Plaintiff, and he expressed a desire to  
9 proceed according to those terms. Later that day Mr. Schwaiger contacted defense counsel Mr.  
10 Allen and requested he re-extend the Rule 68 offer from January 10.

11 Over the next few days, the parties conferred on several occasions and reached a  
12 resolution of the matter. The case's resolution would be a settlement as opposed to a Rule 68  
13 offer of judgment, but the terms would otherwise be the same: \$211,000.00 plus reasonable  
14 attorney fees and costs for a release of all claims. The parties agreed that those fees and costs  
15 would total \$92,511.78. Plaintiff's counsel's contingency fee for the recovery is forty percent.  
16 The total award to Plaintiff is \$126,600.00.

17 On March 7, 2022, Mr. Schwaiger received from Defendants two checks to satisfy their  
18 settlement obligations and have deposited those sums in his attorney trust account. Those funds  
19 will remain in his trust account until the Court approves the settlement.

### 20 **The Applicable Law**

21 Section 372 of the California Code of Civil Procedure provides that a minor and a person  
22 lacking legal competence must appear in court proceedings through a guardian, conservator or  
23 guardian ad litem. A guardian ad litem serves as an officer of the court and is both the  
24 incompetent's representative and a representative of the court. A guardian ad litem is subject to  
25 court supervision. *Sarracino v. Superior Court* (1974) 13 Cal.3d 1, 13. The court retains the  
26 authority to approve, modify or rescind the action taken by a guardian ad litem. For example, a  
27  
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1 guardian cannot repudiate a settlement favorable to a ward without court approval. *Scruton v.*  
2 *Korean Airlines Co.* (1995) 39 Cal.App.4<sup>th</sup> 1596.

3 Accordingly, the Plaintiff Gerardo Magdelano, acting through his guardian ad litem,  
4 requests that this court approve the settlement negotiated between the parties because it is in the  
5 best interest of the Plaintiff while avoiding the risks of further litigation and delays associated  
6 with litigation. This risk was compounded by the Rule 68 offer made by the Defendants coupled  
7 with the present needs of the Plaintiff for immediate care and treatment. The settlement is fair  
8 and reasonable and in the best interests of the Plaintiff.

9  
10 Dated: March 10, 2022

**SCHWAIGER LAW FIRM**

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13 By: /s/ Izaak D. Schwaiger  
14 Attorneys for Plaintiff  
GERARDO MAGDALENO

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**DECLARATION OF IZAAK D.  
SCHWAIGER IN SUPPORT OF  
PLAINTIFF'S ADMINISTRATIVE  
MOTION TO APPROVE SETTLEMENT**

**[Civil Local Rule 7-11]**

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I, Izaak D. Schwaiger, declare as follows:

1. I am counsel of record for the plaintiff in this matter. I have personal knowledge of the following facts and would testify competently thereto if called as a witness. This declaration is made in support of Plaintiff’s administrative motion to approve settlement.

2. Plaintiff Gerardo Magdaleno is a seriously and permanently disabled man who suffers from schizophrenia and bipolar disorder. Despite treatment and medication, his disability remains such that he cannot make informed decisions for himself. Plaintiff’s disability is such that on April 19, 2021, the Honorable Vince Chhabria ordered Plaintiff’s brother, Pedro Magdaleno, appointed as Plaintiff’s guardian *ad litem*. (Doc. 11.) Defendants have not opposed Pedro’s appointment.

3. Pedro has provided financially for his brother’s wellbeing for several years. The chief interests of Pedro Magdaleno are to continue to provide for his brother and to improve the quality of psychiatric care available to his brother. Pedro’s interests are in alignment with those of Gerardo’s, and there is no conflict between the two.

4. On April 1, 2021, Plaintiff suffered physical and emotional injuries at the hands of the individual defendants during a use of force event in Ukiah, California involving multiple deployments of electronic control devices, pepper spray, punches, kicks, and other strikes. (See Amended Complaint, paras. 13-40, Doc. 35.) As a result, Plaintiff was transferred to a local hospital where he received medical attention. Plaintiff’s physical injuries appear to have now resolved, but there remain lingering after effects consistent with posttraumatic stress disorder, such as an unresolved and persistent fear of police.

5. The events in question were video recorded from multiple angles, leaving no factual dispute as to what occurred.

6. On November 9, 2021, the parties attended a mandatory settlement conference with Magistrate Judge Laurel Beeler. The case did not settle. (Doc. 32.)

7. On January 10, 2022, defendants tendered a Rule 68 offer to Plaintiff. Plaintiff rejected the offer.



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**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S ADMINISTRATIVE  
MOTION TO APPROVE SETTLEMENT**

**[Civil Local Rule 7-11]**



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FOR GOOD CAUSE, the Court GRANTS plaintiff's administrative motion to approve settlement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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THE HONORABLE ROBERT M. ILLMAN  
United States Magistrate Judge