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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DOROTHY RODDEN JACKSON,  
  
Plaintiff,  
  
v.  
  
RICHARD CALONE; CALONE &  
HARREL LAW GROUP, LLP; CALONE  
& BEATTIE, LLP; CALONE LAW  
GROUP, LLP,  
  
Defendants.

No. 2:16-cv-00891-TLN-KJN

**ORDER**

This matter is before the Court on Plaintiff Dorothy Rodden Jackson’s (“Plaintiff”) ex parte application for appointment of a guardian ad litem. (ECF No. 229.) Defendants Richard Calone, Calone & Harrel Law Group, LLP, Calone & Beattie, LLP, and Calone Law Group, LLP, (collectively, “Defendants”) filed an opposition. (ECF No. 231.) Plaintiff filed a reply. (ECF No. 233.) For the reasons set forth below, the Court GRANTS Plaintiff’s application.

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1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           Plaintiff filed this action on April 28, 2016. (ECF No. 1.) Plaintiff asserts a variety of  
3 claims arising from legal services that Defendant Richard Calone, Plaintiff’s former attorney,  
4 provided to her regarding the preparation of a family trust. (Id.) Plaintiff now seeks appointment  
5 of a guardian ad litem on the grounds that her physical impairments — she is 91-years old, legally  
6 blind, and suffers from compromised hearing, hypothyroidism, and diabetes — prevent her from  
7 adequately protecting her interests in this action. (ECF No. 229 at 6.)

8           **II.       STANDARD OF LAW**

9           “A guardian ad litem is authorized to act on behalf of his ward and may make all  
10 appropriate decisions in the course of specific litigation.” *United States v. 30.64 Acres of Land*,  
11 795 F.2d 796, 905 (9th Cir. 1986). Federal Rule of Civil Procedure Rule 17(c) permits  
12 appointment of a guardian ad litem once the necessary showing is made pursuant to the law of the  
13 applicant’s domicile. See, e.g., *AT&T Mobility, LLC v. Yeager*, 143 F. Supp. 3d 1042, 1049 (E.D.  
14 Cal. 2015) (“A person’s capacity to sue is measured by the standard of the law of his domicile.”).

15           Here, the parties agree that Plaintiff is a domiciliary of Hawaii. Hawaii Rule of Civil  
16 Procedure 17(c) allows a court to appoint a next friend or guardian ad litem for a minor or  
17 incompetent person for purposes of prosecuting a lawsuit. Under Hawaii law, appointment of a  
18 guardian ad litem requires a showing that the applicant is “by reason of some legal disability  
19 unable to look after [her] own interests, and to manage the suit . . .” *Nawahie v. Peterson*, 24  
20 Haw. 558, 562 (1918). “[C]ourts should appoint guardians ad litem for parties litigant when  
21 reasonably convinced that a party litigant is not competent, understandingly and intelligently, to  
22 comprehend the significance of legal proceedings and the effect and relationship of such  
23 proceedings in terms of the best interests of such party litigant.” *Leslie v. Estate of Tavares*, 91  
24 Haw. 394, 400 (1999).

25           **III.       ANALYSIS**

26           Plaintiff submits several exhibits in support of her ex parte application. (ECF No. 229-1.)  
27 Exhibit One is a declaration by Plaintiff’s counsel, who states: (1) communication with Plaintiff is  
28 unreasonably difficult given her hearing loss; (2) Plaintiff’s visual limitations render document-

1 related discussions unreasonably difficult; and (3) Plaintiff's overall health causes her to tire  
2 easily, which makes extended communications unreasonably difficult. (Id. at 5.) Exhibit Two is  
3 deposition testimony from Dr. Lee Scaief, Plaintiff's ophthalmologist, who testifies that Plaintiff  
4 is legally blind and therefore struggles to read legal documents. (Id. at 14, 16.) Exhibit Three  
5 includes two declarations by Dr. John Kurap, Plaintiff's physician. In a 2017 declaration, Dr.  
6 Kurap describes Plaintiff's medical conditions, including that she is legally blind, her hearing is  
7 greatly compromised, and she is in overall frail health. (Id. at 23.) Dr. Kurap also states that  
8 Plaintiff's medical problems and associated pain render her depressed and unable to deal with  
9 stressful situations. (Id.) In a 2020 declaration, Dr. Kurap asserts that he last examined Plaintiff  
10 in January 2020, and Plaintiff's condition is the same as he described in the 2017 declaration. (Id.  
11 at 21.) Exhibit Four is a declaration by Plaintiff, in which she describes her medical conditions,  
12 her difficulty in understanding and responding to her attorneys about her case, and her desire for  
13 the Court to appoint her daughter, Terry Jackson, as her guardian ad litem in this matter. (Id. at  
14 32.) Finally, Exhibit Five is a declaration by Terry Jackson, stating that she has no financial  
15 interest in this litigation and is willing to serve as her mother's guardian ad litem. (Id. at 34–35.)

16 In opposition, Defendants primarily take issue with Plaintiff's decision to bring her  
17 request as an ex parte application rather than a regularly noticed motion. (ECF No. 231 at 1.)  
18 However, it bears mentioning that Defendants were given sufficient notice to file an opposition to  
19 the ex parte application. Therefore, whether or not an ex parte application was proper, it appears  
20 Defendants were not harmed by the ex parte filing. It is also unlikely that Defendants will suffer  
21 any harm as a result of granting Plaintiff's request for a guardian ad litem, which is a procedure  
22 intended to protect Plaintiff's interests. See *Davis v. Walker*, 745 F.3d 1303, 1310 (9th Cir.  
23 2014). To the extent there is any risk in appointing a guardian without following formal motion  
24 procedures, that risk is diminished by this Court's continued supervision of this matter. If  
25 Plaintiff later objects to the continued representation of a guardian on her behalf, she may so  
26 advise this Court at any point in the future. For these reasons, the Court is not persuaded that  
27 Plaintiff's application should be denied solely because it was brought ex parte.

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1 Notably, Defendants do not argue that Plaintiff is not incompetent or that Terry Jackson is  
2 somehow unsuitable to serve as guardian ad litem. Although Defendants summarily argue that  
3 “Plaintiff’s condition has not deteriorated” in the last several years (ECF No. 231 at 4),  
4 Defendants fail to develop the argument further or otherwise challenge Plaintiff’s evidence. As it  
5 is, Plaintiff has provided ample evidence supporting her claim that a guardian ad litem is needed  
6 to protect her interests. It is also compelling that Plaintiff herself, rather than the Court or some  
7 other party, is requesting that she be represented by a guardian.

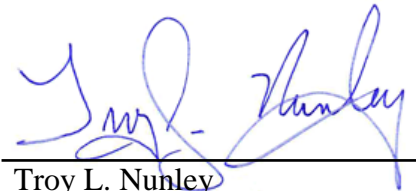
8 Accordingly, the Court finds Plaintiff qualifies for appointment of a guardian ad litem  
9 because her physical impairments prevent her from understanding and meaningfully participating  
10 in her legal proceedings. See Leslie, 91 Haw. at 400; see also In re Doe, 108 Haw. 144, 147  
11 (2005). The Court also finds Terry Jackson is a suitable representative based on her close family  
12 relationship to Plaintiff, her lack of financial interest in the case, and her willingness to represent  
13 her mother. Therefore, the Court GRANTS Plaintiff’s application.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court GRANTS Plaintiff’s ex parte application for  
16 appointment of a guardian ad litem (ECF No. 229) and appoints Terry Jackson, Plaintiff’s  
17 daughter, as guardian ad litem for Plaintiff.

18 IT IS SO ORDERED.

19 DATED: September 14, 2020

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24 Troy L. Nunley  
25 United States District Judge  
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