

DAY v. GRIFFIN, JR.

19CV43812

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO
WRITTEN DISCOVERY AND FOR MONETARY SANCTIONS**

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar **shall** include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on petitioner's failure to include the required language, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

J P MORGAN CHASE BANK, N.A. v. MACLEAN

21CF13548

**PLAINTIFF'S MOTION TO VACATE JUDGMENT AND ENTER
DISMISSAL**

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar **shall** include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on petitioner's failure to include the required language, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

CAPITAL ONE BANK (USA), N.A. v. PARK

21CF13686

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar **shall** include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on petitioner's failure to include the required language, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

LVNV FUNDING v. COPPS

21CF13587

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

This is a limited jurisdiction collections case involving a debt of \$2,793.06. Before the Court this day is an unopposed motion by plaintiff for entry of judgment. For the reasons which follow, the motion is DENIED.

On 09/22/21, defendant made a first appearance and filed an Answer to the complaint. The Answer was blank.

On 10/28/21, plaintiff filed a motion for judgment on the pleadings (CCP §438), contending that the blank Answer failed to state any defense to the action. pursuant to CCP §438. Despite there being no opposition to the motion, this Court denied the motion on procedural grounds.

On 12/03/21, plaintiff filed a second motion for judgment on the pleadings (CCP §438), contending (again) that the blank Answer failed to state any defense to the action. pursuant to CCP §438. Despite there being no opposition to the motion, this Court recognized that the motion was more accurately a motion to strike under CCP §435, not a motion for judgment on the pleadings under CCP §438, because a blank Answer is more akin to a failure to conform rather than a failure to state. The motion was granted, subject to leave for defendant to file a proper Answer. The Court specifically advised that "if no Answer is filed, then plaintiff may proceed via default prove-up." (See Minute Order dated 01/07/22.)

On 03/07/22, plaintiff filed a motion for entry of judgment on the pleadings (CCP §438). Despite there being no opposition to the motion, this Court denied the motion on procedural grounds (no proof of service) and substantive grounds (reminding counsel that the proper approach here was to proceed by way of default judgment prove up).

On 06/06/22, plaintiff filed what is styled as its fourth motion for a judgment under CCP §438. Despite there being no opposition to the motion, or any apparent procedural anomalies, this Court is surprised that plaintiff continues to view a §438 motion as the proper procedure to obtain a judgment in this matter. Both on 01/07/22 and 04/15/22, this Court specifically advised that in the absence of any Answer, the proper procedure is to seek (1) entry of default, and then (2) a clerk's entry of judgment. Plaintiff has repeatedly declined that simple and quick resolution, opting instead for motion practice. To that end, the motion before the Court today is not a motion pursuant to CCP §438(h), but instead more properly is viewed as a motion for reconsideration of this Court's 04/15/22 order. Pursuant to CCP §1008, any motion for reconsideration be timely and supported by an affidavit setting forth the new or different facts, circumstances, or law

warranting reconsideration. The motion is untimely and unsupported by any substantive affidavit.

The motion is DENIED with prejudice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

TYLER v. PIPER

22CV45959

PLAINTIFF'S MOTION TO APPOINT GUARDIAN AD LITEM

This is a wrongful eviction and conversion action involving a residential tenancy. Before the Court this day is a motion by plaintiff to have a guardian ad litem (hereinafter "GAL") appointed to assist her with the continued prosecution of this action.

Pursuant to CCP §372, a party lacking the legal capacity to make decisions "shall appear" through a GAL in any case in which the court finds it expedient to do so. While the process for appointing a GAL is often considered routine (see CRC 3.114(a)(1)), requiring little exercise of discretion, a GAL may be appointed for an adult lacking the legal capacity to make decisions only if (i) he or she consents to the appointment or (ii) upon notice and hearing. (See *Alex R. v. Superior Court* (2016) 248 Cal.App.4th 1, 8-12; *McClintock v. West* (2013) 219 Cal.App.4th 540, 549; *In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1187-1188.)

Here, all of the required due process protections have been satisfied:

1. Plaintiff was personally served with a copy of the pending motion;
2. Plaintiff gave her consent to the proposed GAL to act as her attorney-in-fact pursuant to a springing durable power of attorney (see Gordon Decl Exhibit 1 Introduction);
3. The "spring" indicated in the POA has been triggered (see Gordon Decl Exhibit 1 Para 2.1 and Exhibits 2 and 3);
4. The medical statements provided with the application indicate that plaintiff is suffering end stage dementia and in no position to make informed, let alone helpful, decisions in the matter of her civil action; and
5. The proposed GAL is not a party to the action and has no direct adverse interests to plaintiff (see Calaveras Local Rule 7.2.1).

Although the motion does not appear to have been served on the defendants, there is no clear statute or rule requiring this. (See, e.g., *Alex R, supra* [notice to others only required after appointment made]; *Estate of Lucy* (1975) 54 Cal.App.3d 172, 184 [notice to others of GAL application not required].)

Based on the foregoing, plaintiff's motion is GRANTED. The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the Proposed Order submitted by plaintiff.