

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED**

2260 N Street, Merced  
627 W. 21<sup>st</sup> Street, Merced  
1159 G Street, Los Banos

Thursday, March 21, 2024

**NOTE: Merced Superior Court will no longer be consolidating Courtroom 8 and Courtroom 10.**

**Tentative Rulings are provided for the following Courtrooms and assigned Judicial Officers with scheduled civil matters:**

**Courtroom 8 – Hon. Brian McCabe**

**Courtroom 9 – Commissioner David Foster**

**Courtroom 12 – Hon. Jennifer O. Trimble**

**Courtroom 10 will continue to post separate Probate Notes that are not included in these tentative rulings.**

**IMPORTANT: Court Reporters will NOT be provided; parties must make their own arrangements. Electronic recording is available in certain courtrooms and will only be activated upon request.**

**The specific tentative rulings for specific calendars follow:**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion  
Hon. Brian McCabe  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

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Case No.	Title / Description
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24CV-00821	Noel Espinoza-Cortez v. Alec Anderson
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Order to Show Cause re: Restraining Order

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance. The Court notes that proof of service was filed on March 13, 2024 showing service of the Notice of Hearing, Application for Civil Harassment Restraining Order, and Temporary Restraining Order on Respondent on March 5, 2024.**

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24CV-00827	Charles Peterson v. Zion Porter
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Order to Show Cause re: Restraining Order

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance. The Court notes that proof of service was filed on March 14, 2024 showing service of the Notice of Hearing, Application for Civil Harassment Restraining Order, and Temporary Restraining Order on Respondent on March 4, 2024.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Mandatory Settlement Conferences  
Hon. Brian McCabe  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
9:00 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

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2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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21CV-02850	Juvencio Rios v. Griselda De Sousa
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Mandatory Settlement Conference

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance.**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Limited Civil Calendar  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
10:00 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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23CV-00310	Wells Fargo Bank N.A. v. Tanya Allen
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Motion for Summary Judgment

**Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to arrange for a remote appearance.**

**The unopposed motion by plaintiff Wells Fargo Bank, N.A. for summary judgment is GRANTED. The Court grants plaintiff's request for judicial notice of the verified complaint, summons, and proof of service of summons and complaint that were filed in the court's records in this case. (Evid. Code § 452, subd. (d).) Upon consideration of all the evidence set forth in the papers, particularly the declaration of Loan Workout Specialist Sierra Hickman, and the business records attached to the declaration, the Court finds that there is no triable issue of material fact and plaintiff is entitled to judgment as a matter of law. Plaintiff has proven each required element of its causes of action for breach of contract and common counts, thereby shifting the burden to defendant Tanya Allen to show the existence of one or more triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(1).) In addition, plaintiff has shown plaintiff is entitled to recover reasonable attorney's fees and court costs pursuant to contract. By not filing any written opposition, defendant has failed to meet her burden on this motion.**

**In light of the Court's ruling on the motion for summary judgment, it is unnecessary for the Court to rule on plaintiff's alternative motion for summary adjudication.**

**The Court will sign the proposed order submitted with the moving papers. Plaintiff shall prepare and submit by electronic filing a proposed judgment, memorandum of costs, and declaration in support of a request to award and fix reasonable attorney's fees pursuant to contract.**

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23CV-00316

Kimberly Martinez v. Francine Mestaz, et al.

Order of Examination

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Restraining Orders  
Hon. Jennifer O. Trimble  
Courtroom 12  
1159 G Street, Los Banos

Thursday, March 21, 2024  
11:00 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

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2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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24CV-00465	Rafael Cornejo v. Jimmy Renteria
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Order to Show Cause Re: Restraining Order

**Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance. The Court notes that a proof of service was filed March 5, 2024 showing service of the Notice of Court Hearing, Temporary Restraining Order and Request for Civil Harassment Restraining Order on Respondent on March 4, 2024.**

24CV-00651	Lois Carmo v. Sadie Sardia
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Order to Show Cause Re: Restraining Order

**Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance. The Court notes that a proof of service was filed March 4, 2024 showing service of the Notice of Court Hearing, Temporary Restraining Order and Request for Civil Harassment Restraining Order on Respondent on March 3, 2024.**

24CV-00655

Lois Carmo v. Sophie Sardia

Order to Show Cause Re: Restraining Order

**Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance. The Court notes that a proof of service was filed March 4, 2024 showing service of the Notice of Court Hearing, Temporary Restraining Order and Request for Civil Harassment Restraining Order on Respondent on March 3, 2024.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Hon. Brian McCabe  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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There are no Ex Parte matters scheduled.



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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There are no ex parte matters scheduled.	
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Hon. Jennifer O. Trimble  
Courtroom 12  
1159 G Street, Los Banos

Thursday, March 21, 2024

1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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There are no Ex Parte matters scheduled.	
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion  
Hon. Brian McCabe  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Thursday, March 21, 2024  
1:30 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
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22CV-01604	Stonefield Homes, Inc. v. Los Banos Unified School District.
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Writ of Mandate and Complaint for Declaratory Relief

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance.**

**Petitioner Stonefield Homes Inc. asserts that a School Impact Mitigation Agreement executed by Manuel P. Cardoza and Pinn Bros. Fine Homes on or about July 20, 2006, among other things, provides for school impact mitigation fees at a rate listed in the School Impact Mitigation Agreement that exceeds the statutory rate resulting in Petitioner Stonefield Homes. Inc. being overcharged by \$22,500 or \$26,055 for school mitigation fees on each of the subject lots.**

**Petitioner Stonefield Homes Inc. further asserts the School Impact Mitigation Agreement executed by Manuel P. Cardoza and Pinn Bros. Fine Homes on or about July 20, 2006 is not valid, enforceable, or otherwise binding on Petitioner Stonefield Homes Inc. because (1) The Agreement is Void *Ab Initio* because Manuel P. Cardoza merely held a mere life estate, not a fee interest, and therefore did not possess the power to encumber the subject land on behalf of his successors in interest; (2) Even if the Agreement potentially encumbered successor interests, certain express conditions precedent to enforcement of the Agreement were never satisfied; and (3) Petitioner was never a party to the**

Mitigation Agreement and the Agreement fails to qualify as a covenant that runs with the land.

Respondent Los Bano Unified School District asserts that (1) Petitioner Stonefield Homes Inc. has not met its evidentiary burden of establishing that Manuel P. Cardoza lacked the ability to enter into an enforceable mitigation agreement; (2) Even if the agreement was not directly enforceable against successors in interest, Petitioner's acceptance of the benefits of the mitigation agreement qualifies as an Implied Assumption of Contract that estops Petitioner from objecting to the burdens created by the mitigation agreement; and (3) that principles of equity require enforcement of the mitigation agreement as an equitable servitude.

For purposes of focusing the parties' oral argument, the Court offers the following observations:

Petitioner does not appear to have offered sufficient admissible evidence to establish that Manuel P. Cardoza lacked legal authority to enter into an enforceable School Impact Mitigation Agreement on or about July 20, 2006. This Court, on its own motion, takes judicial notice pursuant to Evidence Code § 452(d) of Merced Superior Court Case Number 17PR-00314, *In re: the Matter of Identifying the Heirs of: Manuel M. Cardoza, deceased*, the documents filed therein, including but not limited to, the consents filed by all of the heirs and guardian ad litem for the heirs who transferred the title now held by Petitioners, and the orders issued by the Court in that case. This Court, on its own motion, takes judicial notice pursuant to Evidence Code § 452(d) of Merced Superior Court Case 7536, *In re the Matter of the Estate of Joe S. Cardoza*, the documents filed therein and the Orders issued by the Court therein.

While there is no dispute that the nature of the interest held by Manuel P. Cardoza was characterized as a life estate, such life estate was created by the March 28, 1946, will of Joe Cardoza that left a life estate to Manuel M. Cardoza with the remainder to "the lawful issue of...Manuel M. Cardoza in being at the time of his death..." (See Petition to Identify Heirs filed September 22, 2017, Paragraph 2:24-3:8 and Exhibit A thereto [Decree Settling First and Final Report and Order of Final Distribution filed in Merced Superior Court Case 7536 on March 19, 1956].) However, the nature of the remainder estate created by such will was a class whose members could not vest or be ascertained until the death of Manuel P. Cardoza on or around February 12, 2016. In fact fee title to such property could not be conveyed until October 4, 2017, the date that the Order Determining and Establishing Identity of Heirs was issued by this Court.

In *Bliss v. Security-First Nat. Bank of Los Angeles* (1947) 81 Cal.App.2d 50, 55-56, the Court of Appeal stated as follows:

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The owner of a life estate is required by law to do no act to the injury of the inheritance. Civil Code, sec. 818. When successive interests exist in a thing other than land and the present interest is a life interest, then in the absence of a manifestation of an inconsistent intent in the instrument creating the successive interests each future interest includes a right correlative to the duties of the owner of such present interest that (a) he shall for the duration of his interest act relative to the thing in the manner in which the owner of complete property in a like thing normally would act; (b) that he shall not intentionally inflict harm upon the owner of a future interest by the manner in which he exercises his power to transfer or surrender his present interest; and (c) that when the provisions of the instrument creating the successive interests entitle another to such thing, the holder of the present interest shall deliver to the person next entitled the original thing or lawfully substituted things, including all capital gains made during the

continuance of the then ending prior limited interest (Rest. of Law of Property, sec. 204.) [footnote omitted] This means nothing more nor less than that while a life tenant is entitled to the full use and enjoyment of his life estate the only restriction upon such use is that the estate of the remainderman shall not be permanently diminished in value by the life tenant's neglecting to do what an ordinarily prudent person would do in preserving his own property. (33 Am.Jur., \*56 sec. 217.) Although a life tenant is privileged to convert one kind of property into another, he must be at all times guided by principles of prudence to the end that the value of the property is not diminished. 21 C.J., § 245, p. 1040. See also 31 C.J.S., Estates, § 135.

A testator has the right to make the life tenant trustee of the property bequeathed; and when this is done the will shall be searched for evidence of the testator's intention that the life tenant should be trustee subject to the general rules pertaining to the obligation of a trustee to his cestui que trust. In re Garrity, 108 Cal. 463, 471, 38 P. 628, 41 P. 485. Where a decree distributes a legacy to a person for his natural life with the unused portion thereof to go to a remainderman, it creates a mere life estate in the first taker and vests the unused portion of the estate in the remainderman. And the first taker holds the estate not as owner but as trustee in the sense that he must have due regard for the rights of him who will succeed to the title in fee. This constitutes him an implied trustee. Hardy v. Mayhew, 158 Cal. 95, 104, 110 P. 113, 139 Am.St.Rep. 73; Collins v. Hartford Accident & Indemnity Co., 178 Va. 501, 17 S.E.2d 413, 418, 137 A.L.R. 1054.

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It would appear from the evidence currently before this Court that Manuel P. Cardoza entered into the School Impact Mitigation Agreement executed on July 20, 2006 both in his capacity as holder of a life estate and in his capacity as trustee for the then unascertained remaindermen, (a) that none of the remaindermen established by the October 4, 2017, Order Determining and Establishing Identity of Heirs objected or sought to repudiate the July 20, 2006, School Impact Mitigation Agreement executed on their behalf by Manuel P. Cardoza in his capacity as Trustee, (b) that there has been no showing that execution of the July 20, 2006 School Impact Mitigation Agreement was not in the best interests of the remaindermen or constituted a breach of trust, and (c) that the Petitioner took title with notice of the Mitigation Agreement executed on July 20, 2006, and ratified it by accepting benefits provided therein.

The Court notes that the interpretation of title proffered by Petitioner, that the creation of a bare life estate with no ascertainable remaindermen renders the subject properties incapable of development for the period May 9, 1955, the date of death of Joe S. Cardoza, to October 4, 2017, the date that the Order Determining and Establishing Identity of Heirs was issued by this Court, a period of 62 years, renders the property impossible to develop. Public policy generally does not support an interpretation of ownership rights that renders property idle or incapable of development. (See e.g. *Murphy v. Burch* (2009) 46 Cal.4<sup>th</sup> 157, 163 ["The rationale driving this presumption is that 'the demands of our society prevent any man-made efforts to hold land in perpetual idleness as would result if it were cut off from all access...'"][quoting *Roemer v. Pappas* (1988) 203 Cal.App.3d 201, 205].)

Petitioner Stonefield Homes Inc. asserts that even if the July 20, 2006, School Impact Mitigation Agreement executed by Manuel P. Cardoza and Pinn Bros. Fine Homes potentially encumbered successor interests, certain express conditions precedent to enforcement of the Agreement were never satisfied. There is no dispute that Pinn Bros. Fine Homes never completed the development. However, the conditions precedent contained in the July 20, 2006, School Impact Mitigation Agreement were eventually satisfied when the property was conveyed to Petitioner and the development completed.

There is nothing about the conditions precedent contained in the July 20, 2006, School Impact Mitigation Agreement requiring the personal performance of such conditions by Pinn Bros. Fine Homes and the purpose of the July 20, 2006, School Impact Mitigation Agreement, to provide schools for the children living in the proposed subdivision, were fully satisfied by the now completed subdivision.

This leaves the Court with a weighing of the equities of enforcement. Respondent Los Bano Unified School District offers evidence that Petitioner had knowledge of, and accepted the benefits of the July 20, 2006, School Impact Mitigation Agreement. (See Declaration of Mark Marshall, Ed.D. In Support of Los Banos Unified School District's Opposition to Petitioner Stonefield Home, Inc's Opening Brief on the Merits of its Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief Filed February 21, 2024. Paragraph 16-18 Pages 6:23-7:15.) Furthermore, there is no argument that the terms of July 20, 2006, School Impact Mitigation Agreement were unfair or unconscionable. Absent compelling oral argument or evidence that enforcement of the July 20, 2006, School Impact Mitigation Agreement is inequitable, the Court is inclined to DENY the Writ of Mandate and issue a Declaratory decree consistent with this tentative ruling.

The Court recognizes that the foregoing is not a legal argument articulated by the parties, though it is consistent with, based on the same facts as, and comes to the same result as the Implied Assumption of Contract theory offered by Respondent.

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