

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

2260 N Street, Merced
627 W. 21st Street, Merced
1159 G Street, Los Banos

Tuesday, September 10, 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 calendars:

Courtroom 8 – Hon. Brian L. McCabe

Courtroom 9 – Hon. Mason Brawley

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

Unlimited Civil Law and Motion
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 10, 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.

Case No.	Title / Description
21CV-00718	Edgar Guzman, et al. v. Thomas Climer Petition for Approval of Compromise of Minors Claim Appearance required. 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. On August 27, 2024, this Court appointed independent counsel for the minor because the Guardian Ad Litem had a competing claim. This hearing was set to confirm appointment of minor's counsel.
21CV-03576	Herman Rico, et al. v. Stonefield Home, Inc., et al. Order to Show Cause re: Dismissal-Notice of Settlement Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to seek permission and arrange for a remote appearance. At the August 27, 2024, OSC re: Settlement hearing, counsel represented that the payments had been sent. On Sept. 5, 2024, the Declaration of Scott J. Thomson was filed indicating all the payments had not been received as of the date of the declaration filing. On September 5, 2024, the cross-complaint filed February 2,

2022 was dismissed except as to T.A. Electric. Appear to provide the Court a status of finalizing the settlement and dismissal of the complaint and remaining cross-complaints.

24CV-02876 Kevin McCullom v Merced County Deputy Probation Officer Fernandez

Petition for Writ of Mandate

Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to seek permission and arrange for a remote appearance. Writ of Mandate Petition filed June 12, 2024. No proof of personal service on file. Appear to address status of the case.

24CV-03761 Petition of: Gregory Johnson

Order to Show Cause re: Name Change

Appearance optional. 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. Petition filed July 30, 2024, seeks to change the name of the petitioner himself. Upon the filing of proof of publication and confirming through CLETS the petitioner is eligible for a name change, the Court will GRANT the petition.

24CV-03767 Petition of: Gilbert Francisco Fernandez

Order to Show Cause re: Name Change

Appearance optional. 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. Proof of publication was filed September 3, 2024. The Petition filed July 30, 2024, seeks to change the name of the petitioner himself. Upon confirming through CLETS the petitioner is eligible for a name change, the Court will GRANT the petition.

24CV-03942 Dorothy Sullivan v. Jeffrey Nicols

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 to arrange for a remote appearance. The Court notes that proof of service was filed on August 19, 2024 establishing that the papers filed in this case have been served on Respondent.

24CV-03943

Rebecca Blunt v. Jim Cornejo

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 to arrange for a remote appearance. The Court notes that proof of service was filed on September 5, 2024 establishing that the papers filed in this case have been served on Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Jury Trials and Long Cause Court Trials
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 10, 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:

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
-----------------	----------------------------

There are no Jury Trials and Long Cause Court Trials Scheduled

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Special Set Unlimited Civil Law and Motion
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 10, 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
-----------------	----------------------------

16CV-03050	Jaime Vega, et al. v. Michael Turner, et al.
------------	--

Motion to Dismiss for Failure to Prosecute by Defendants City of Merced, Moses Nelson, Chris Russell, Thomas Trinidad, Bimley West, Christian Lupin, Norm Andrade, and John Pinnegar (hereinafter "City Defendants") and joined by Defendants County of Merced, Vern Warnke, Imelda Vivero, Israel Rosales, and Kenneth Calderon (hereinafter "County Defendants".)

On September 6, 2024, at 1:15 p.m., the City Defendants Ex Parte Application came duly before the Court. The Court GRANTED the request for an Order Shortening Time for Hearing on Motion to Dismiss for Failure to Prosecute and specially set the hearing for Tuesday, September 10, 2024, at 10 a.m., with any reply brief to be filed and served by noon on September 9, 2024. On September 5, 2024, a Joinder in the Motion to Dismiss was filed by the County Defendants.

INITIAL MOTION TO DISMISS AND ORDER.

Initially, the Court notes that at the January 4, 2023, hearing on the City Defendants' original Motion to Dismiss, the Court DENIED the motion and issued the following orders, which were filed as an Order After Hearing on February 1, 2023:

(1) Adopted the Tentative Ruling of this Court,

(2) Thereby denying the Motion to Dismiss for Failure to Prosecute brought by the City Defendants and joining County Defendants,

(3) Held that while CCP § 583.310 and CCP § 583.360 provide for mandatory dismissal of an action not brought to trial within five years after the action is commenced, CCP § 583.340 provides three conditions that “shall be excluded” from the computation of time t which the mandatory dismissal is required if the matter is not brought to trial: (a) the Jurisdiction of the Court to try the action was stayed; (b) prosecution of the trial was stayed or enjoined, and (c) bringing the action to trial for any other reasons was impossible, impracticable, or futile,

(4) Held that, pursuant to CCP § 583.340(a), this Court’s jurisdiction was stayed during the period December 13, 2016, through May 16, 2017, (the date the remand order was served by the federal court), a period of 155 days, because the matter was removed to federal court on December 13, 2016, and did not regain jurisdiction until the motion to remand was granted on May 16, 2017;

(5) Held that pursuant to CCP § 583.340(a) that it was impossible, impracticable, or futile to bring this case to trial during the period from March 3, 2020 through June 30, 2022, a period of 850 days as a result of a worldwide pandemic created by a Coronavirus labeled COVID-19 because (1) the Presiding Judge of the Merced Superior Court suspended civil jury trials during that period, effectively issuing stays in those matters, in part because we had a backlog of criminal jury trials where time was not waived that had priority over civil jury trials, and the suspension of civil jury trials was a necessary condition to obtaining extensions of the time to bring these criminal matters to jury trial from the Chief Justice, (2) the Merced Superior Court had a backlog of criminal jury trials in which time waivers were entered but would have been revoked if the Court were proceeding with civil jury trials, (3) the COVID-19 distancing requirements and the size of the Merced Superior Court Jury Assembly Room, Courtrooms, and Jury Rooms limited the Court to three jury trials per week and it was not, per health directives from the Merced County Health Department, able to schedule civil jury trials during that period, and (4) the Court was operating with reduced staff due to COVID-19 distancing restrictions that precluded the ability to conduct more than three jury trials per week,

(6) Held that 155 days while the case was in the federal court was a time tolled because this Court lacked jurisdiction and the 850 days during which the Presiding Judge suspended civil jury trial, and include the Chief Justice’s Emergency Rule 10 declaration, total of 1005 day, or two years and 275 days, extends the running of the five-year statute in this case from October 7, 2021, to Tuesday July 9, 2024,

(7) Held it was impracticable for this matter to be brought to trial when not at-issue because of the extensions of time to answer, and because discovery was unavailable, both due to COVID-19, these facts are irrelevant because the Merced Superior Court was unable to set a jury trial during that time period even if the answers and discovery responses had been filed and served by the statutory deadlines,

(8) Held that while it is feasible to set the jury trial in this matter earlier than October 3, 2023, the date currently set, and is willing to advance the trial date if the parties so stipulate. However, to obtain the earliest possible jury date, it would be necessary to have this matter trail all criminal jury trials and all other cases having greater priority on a week-by-week basis. Given the potential size and length of this case this Court does

not find that the interests of justice require that trial in this matter be set immediately and trail on a week-by-week basis until a jury becomes available.

On March 21, 2023, City Defendants filed a Petition for Writ of Mandate seeking reversal of the February 1, 2023, Order. (The Writ also filed in the Superior Court on March 23, 2023). On April 6, 2023, the Petition for Writ of Mandate was denied. (The order of denial was filed in the Superior Court on April 7, 2023).

COURT REVIEW OF CURRENT MOTION PAPERS AND UNDISPUTED FACTS.

The Court takes judicial notice of the Court's file pursuant to Evidence Code section 452(d). In such a review, including the papers on the current Motion to Dismiss, the Court notes:

There is no dispute that after the Court found that the Five-Year Statute would expire on July 9, 2024, and further that the parties entered into an agreement to extend the Five-Year Statute again to September 10, 2024. Said agreement was contained in a Stipulation and Order to Continue Mandatory Settlement Conference and Trial Dates filed with the court on June 28, 2023.

There also is no dispute that Plaintiff filed an Ex Parte Application for an Order Shortening Time and Motion to Continue the Trial on June 17, 2024, which the Court ultimately heard on June 27, 2024, and which the Court granted and set trial for December 10, 2024.

There is an additional non-dispute that on August 27, 2024, Plaintiffs served an Ex Parte Application for an Order Shorten Time to Advance the Trial to September 10, 2024, to avoid mandatory dismissal under the statutory rule when a civil case must be brought to trial. On September 3, 2024, the Court ultimately heard the motion and ruled that it lacked jurisdiction pursuant to CCP § 954(a) and the case of *Au Yang v. Barton* (1999) 21 Cal.4th 958, to set the trial less than 15 days from pronouncement and specifically to September 10, 2024, and instead set the trial for September 18, 2024. The moving parties contend that since the parties have not stipulated to any subsequent extension of the statutory time to bring the civil case to trial, Plaintiff's last day to commence trial in this case is September 10, 2024.

The Court observes that its Tentative Ruling for September 9, 2024, grants the County Defendants' Motions for Summary Judgment. If the September 9, 2024, Tentative Ruling is adopted, the joinder by County Defendants will become moot because an order granting motions for summary judgment qualifies as a trial brought prior to statutory time to commence trial; September 10, 2024. (See *In re Marriage of Dunmore* (1996) 45 Cal.App.4th 1372, 1377-1378 [citing *Southern Pacific Co. v. Seaboard Mills* (1962) 207 Cal.App.2d 97, 104].)

PLAINTIFFS' OPPOSITION.

Plaintiffs' opposition to the Motion to Dismiss raises two arguments, both of which essentially seek a reconsideration of this Court's previous orders. Those arguments are: (1) That the February 1, 2023 Order recited in detail above is incorrect in that it found that this court lost jurisdiction during the removal to federal court for a period of 155 days wherein Plaintiff contends that this court lost jurisdiction for a period of 373 days

(Opposition at Page 1:23-2:25 [notice of removal filed December 28, 2016, Notice of Remand served to proper state court clerk on January 3, 2018, a period of 373 days][citing *Spanair S.A. v. McDonnell Douglas* (2009) 172 Cal.App.4th 348, 356]); and (2) The September 3, 2024, order of this Court that it lacked jurisdiction to advance the trial to September 10, 2024, is incorrect because CCP § 954 is intended to prevent default by reason of insufficient notice of trial and has no application where both parties are represented by counsel when the case is called for trial (Opposition at Page 7, footnote 1 [citing *Sheldon v. Landwehr* (1911) 159 Cal. 778, 782]). Since no formal motion for reconsideration has been filed, Plaintiffs essentially invite the court to reconsider the February 1, 2023, and September 3, 2024, Orders on its own motion.

1. FEDERAL COURT TOLLING CALCULATION.

As an initial matter, the Notice of Removal was filed with this court on December 28, 2016, and the Order to Remand was filed with this Court on January 5, 2018, not January 3, 2018, as stated in Plaintiffs papers. Calculating the time between the removal (December 28, 2016) and the remand from federal court (January 5, 2018) is 373 days.

This complaint in this case was filed on October 7, 2016, and that a period of five years would have been October 7, 2021, and an additional six months per Emergency Rule 10 from that date is April 7, 2022, a total of 2008 days from October 7, 2016. If the 2008 days is increased by the 373 days from December 28, 2016, to January 5, 2018, and the 850 days from March 3, 2020, through June 30, 2022, the total will be 3,231 days. 3,231 days is 8 years and 309 days. Eight years and 309 days from October 7, 2016, would be Monday, August 12, 2025. While Plaintiffs contends that the Five-Year Statute would expire on February 11, 2025, that calculation apparently excludes the six-month extension provided by Emergency Rule 10. (See Opposition at Page 2:10.)

Spanair S.A. v. McDonnell Douglas (2009) 172 Cal.App.4th 348, 356 addresses the period of time that a state court loses jurisdiction when a case is removed to federal court. *Spanair, supra*, holds that the period tolled is from the date the Notice of Removal is filed with the State Court, in this case December 28, 2016, until the date notice or remand is properly served on the state court and without regard to the date the actual remand order was issued by the federal court, in this case January 5, 2018. Under controlling law for the State of California, this court lacked jurisdiction over this case for the 373 days from December 28, 2016, to January 5, 2018.

COURT'S TENTATIVE RULING.

In the interest of justice and fairness because the Court miscalculated by under 218 days the time tolled while the case was in the federal court system, on its own motion, this Court grants nunc pro tunc reconsideration and thereby recalculation of its February 1, 2023, filed order and finds that this court lacked jurisdiction while the case was removed to federal court for the 373 day period from December 28, 2016, to January 5, 2018, not the 155 day period from December 13, 2016, through May 16, 2017, as provided in the order. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105 [“A court could not operate successfully under the requirement of infallibility in its interim rulings. Miscarriage of justice results where a court is unable to correct its own perceived legal errors”][quoting *Case v. Lazban Financial Co.* (2002) 99 Cal.App.4th 172, 185].) Accordingly, the five-years statute expires not on September 10, 2024, but on August 12, 2025. This finding renders the dispute about the number of days the Court can advance a trial date moot.

Accordingly, the City Defendants' Motion to Dismiss for Failure to Prosecute is DENIED. The Joinder in the Motion to Dismiss by the County Defendants has become moot because the Court's granting the County Defendants' motions for summary judgment qualifies as a trial brought prior to statutory time to commence trial; September 10, 2024. (See *In re Marriage of Dunmore* (1996) 45 Cal.App.4th 1372, 1377-1378 [citing *Southern Pacific Co. v. Seaboard Mills* (1962) 207 Cal.App.2d 97, 104].)

Furthermore, in order to place the parties back into the same time position they enjoyed before the series of motions regarding advancement of trial and dismissal of the case were filed and heard and to alleviating the present time pressures to prepare for the Mandatory Settlement Conference currently set on September 16, 2024, and Jury Trial on September 18, 2024, the Court hereby continues the presently set MSC and Jury Trial by reinstating the prior set Mandatory Settlement Conference on November 4, 2024 at 9am and Jury Trial on December 10, 2024 at 9am. (See *Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 344 [“the decision to grant or deny a preferential trial setting rests at all times in the sound discretion of the trial court in light of the totality of the circumstances”].)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 10, 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
-----------------	----------------------------

There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Tuesday, September 10, 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
-----------------	----------------------------

There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Tuesday, September 10, 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
-----------------	----------------------------

There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion
Hon. Jennifer O. Trimble
Courtroom 12
1159 G Street, Los Banos

Tuesday, September 10, 2024
1:30 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
----------	---------------------

24CV-03591	Petition of Christopher Hernandez
------------	-----------------------------------

Order to Show Cause re: Name Change

Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to arrange for a remote appearance. This Petition by an adult to change his own last name will be granted upon the filing of proof of publication and confirming through CLETS the petitioner is eligible for a name change.

23CV-04541	Christina Flores v. CSAA Insurance Group, et al.
------------	--

Mandatory Settlement Conference

Continued on the Court's own motion to Thursday, October 10, 2024 at 8:15 A.M. for trial setting and MSC setting. Since this MSC was set by the parties pursuant to stipulation, the court has not arranged for a pro tem mediator and must therefore continue the matter so all appropriate arrangements can be made.

23CV-02167

Plaza Services LLC v. Kimeca Johnson

Motion to Set Aside Default Judgement and Quash Service of Summons

The unopposed Motion to Set Aside Default Judgement and Quash Service of Summons is GRANTED.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Unlawful Detainers
Hon. Jennifer O. Trimble
Courtroom 12
1159 G Street, Los Banos

Tuesday, September 10, 2024
2:00 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
-----------------	----------------------------

	There are no Unlawful Detainer Matters Scheduled
--	--
