

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Wednesday, July 24, 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 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

Wednesday, July 24, 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
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17CV-02223	Maria Napoles, et al. v. Lewis Maiorino Ranch, Inc., et al.
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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 arrange for a remote appearance. Appear to address the status of the medical lien and Petition for Adult Compromise.

21CV-00482	Workforce Defense League v. West Creek Builders, LLC, et al.
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Case Management Conference

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. Appear to address the status of Defendant Lionsgate's representation.

Motion to Compel Further Responses to Request for Production, Set 4

Request 61 [All documents concerning any investigation Defendant commissioned or performed into whether during a June 29, 2020, meeting the Kang brothers made threats in response to Defendant’s refusal to pay for work on their driveway]: The instant action seeks damages for unlawful retaliation in Violation of Labor Code § 98.6 and 1102.4, not damages for harm caused by the Kangs or other alleged wrongdoers. Plaintiff only needs to prove that he made complaints about alleged wrongdoing and that such complaints were a motivating factor in the decision to terminate his employment. Whether any alleged wrongdoing did or did not occur is a collateral issue. The City cannot assert attorney client privilege during discovery with regard to the investigations that occurred, and then waive the privilege at trial as evidence that the motivating factor for the termination was that its investigation determined that Plaintiff’s allegations concerning wrongdoing were false and unsubstantiated. If the City elects to stand on its position that all investigation documents are privileged, then, at trial, the court will grant a motion in limine barring any mention that an investigation took place or what its findings might have been and precluding admission of any document for which a privilege claims was made from being offered into evidence. Witnesses will not be allowed to testify about their reliance on an investigation that is being withheld from evidence on a claim of privilege. If the City elects to stand on privilege and be forever barred from offering the investigation into evidence, Plaintiff must then decide whether to proceed to litigate privilege under *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 124. Plaintiff has requested an in camera review of the privilege claim.

In *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 119, the Court held: “documents prepared independently by a party, including witness statements, do not become privileged communications or work product because they are turned over to counsel. (*Id.* [citing *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214].) Thus, to the extent that the City asserts a claim of privilege or work product for documents prepared by City Employees not employed by the City Attorney’s office and forwarded to the City Attorney pursuant to its investigation, any objection based on a claim of privilege or work product doctrine is **OVERRULED.**

In *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 120-121, the Court held:

Another distinction between attorney-client communications and work product derives from Evidence Code section 915 which forbids “disclosure of information claimed to be privileged under this division in order to rule on the claim of privilege....” In commenting on this provision, our Supreme Court has noted that “[t]here is no statutory or other provision that allows for ... an inspection of documents allegedly protected by the attorney-client privilege.” (*Southern Cal. Gas Co. v. Public Utilities Com.* (1990) 50 Cal.3d 31, 45, fn. 19, 265 Cal.Rptr. 801, 784 P.2d 1373.) This means that unless the party holding the privilege allows it, there can be no in camera inspection of documents to determine whether the privilege

exists. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619, 56 Cal.Rptr.2d 341.) However, in camera inspection is the proper procedure to evaluate the applicability of the work product doctrine to specific documents, and categorize whether each document should be given qualified or absolute protection. (*BP Alaska, supra*, 199 Cal.App.3d at p. 1261, 245 Cal.Rptr. 682; *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 68–70, 166 Cal.Rptr. 274.)

(*Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 120-121.) Thus, to the extent that Plaintiff seeks an in camera review of responsive documents to determine whether they are subject to attorney-client privilege, that request is DENIED. To the extent that Plaintiff seeks an in camera review of responsive documents to determine if they are subject to the attorney-work product doctrine, the court will DEFER ruling until Defendant provides a Declaration made under penalty of perjury by a person having personal knowledge, the basis of which is disclosed in the declaration, listing all persons (and their job title) to whom the alleged privileged and or work-product documents were disseminated.

In *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 128, the Court held as follows:

The proposition for which Harding stands is that the employer's injection into the lawsuit of an issue concerning the adequacy of the investigation where the investigation was undertaken by an attorney or law firm must result in waiver of the attorney-client privilege and work product doctrine. With this proposition, we agree. As our Supreme Court has held, waiver is established by a showing that “the client has put the otherwise privileged communication directly at issue and that disclosure is essential for a fair adjudication of the action. [Citation.]” (*Southern Cal. Gas Co. v. Public Utilities Com.*, *supra*, 50 Cal.3d at p. 40, 265 Cal.Rptr. 801, 784 P.2d 1373, *citing Mitchell v. Superior Court*, *supra*, 37 Cal.3d at p. 609, 208 Cal.Rptr. 886, 691 P.2d 642.) California law is to the same effect as federal law in this area, although it is not judge-made. The FEHA itself lays out knowledge and failure to act as necessary preconditions to employer liability for harassment: “... Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.” (Gov.Code, § 12940, subd. (h)(1).) In addition, the FEHA specifies that “[a]n entity shall take all reasonable steps to prevent harassment from occurring.” (*Ibid.*)

If a defendant employer hopes to prevail by showing that it investigated an employee's complaint and took action appropriate to the findings of the investigation, then it will have put the adequacy of the investigation directly at issue, and cannot stand on the attorney-client privilege or work product doctrine to preclude a thorough examination of its adequacy. The defendant cannot have it both ways. If it chooses this course, it does so with the understanding that the attorney-client privilege and the work product doctrine are thereby waived.

(*Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 128.)

There was no demurrer filed in this litigation, and to date, no express assertion by the Defendant as to their contentions other than the Answer filed May 17, 2022. The Third Affirmative Defense asserts: “The Complaint, and each of the purported cause of action alleged therein, is barred in whole or in part because Defendant did not commit any wrongful conduct alleged and is not liable.” The Fourth Affirmative Defense asserts: “The Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Defendant exercised reasonable care to prevent any alleged retaliatory conduct and because Plaintiff failed to reasonably take advantage of the corrective opportunities provided by Defendant to avoid harm or otherwise.” The Eighth Affirmative Defense alleges: “The Complaint, and each of the purported cause of action alleged therein, is barred in whole or in part because Plaintiff’s claims against Defendant are frivolous, unreasonable, and/or groundless, and accordingly, Defendant should recover all costs and attorneys’ fees incurred herein.” The Answer does not appear to contain any other affirmative defenses to which a claim that “defendant employer hopes to prevail by showing that it investigated an employee's complaint and took action appropriate to the findings of the investigation” (*Id.*) would appear to be relevant.

At this juncture, this Court cannot find that the Affirmative defenses quoted above are sufficiently specific as to qualify as a waiver or privilege or work product doctrine. Instead, as discussed above, the Court will simply issue a motion in limine stating no document for which a claim of privilege or work product was asserted will be referred to or offered into evidence, and Defendant is precluded from offering any evidence “showing that it investigated an employee's complaint and took action appropriate to the findings of the investigation.” (See *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 128.)

Request 64 [All documents concerning any investigation Defendant commissioned or performed into whether councilmember Kang made vulgar remarks and gestures to J.T. Mann]: See above, the Tentative Ruling for Request 64 is incorporated herein by this reference.

Request 65 [All documents concerning any investigation Defendant commissioned or performed into Plaintiff’s 2021, complaint that city council members had potentially violated the Brown Act]: See above, the Tentative Ruling for Request 64 is incorporated herein by this reference.

Defendant is ordered to provide the declaration concerning dissemination of alleged privilege or work product documents by July 31, 2024. This matter will be continued to August 7, 2024, for further proceedings concerning the requested in camera review.

22CV-02629

Lowell Dickson v. Foster Farms LLC

Status Conference

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. Appear to address the status of the mediation scheduled for July 9, 2024.

23CV-00483

Rachael Perez, et al. v. Abdul Khattak, et al.

Case Management Conference

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. Appear to address the status of mediation.

23CV-02187

D'von Walker v. Vernon Warnke, et al.

Order to Show Cause re: Sanctions

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. Appear to address the status the reason Plaintiff failed appear at the June 10, 2024, Case Management Conference and whether monetary sanctions of \$100 should be imposed.

23CV-03155

JPMorgan Chase Bank v. Irma White.

Order to Show Cause re: Sanctions

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. Appear to address the status the reason Plaintiff failed appear at the June 10, 2024, Case Management Conference and whether monetary sanctions of \$100 should be imposed.

23CV-04276

Gary Kidgell v. County of Merced

Demurrer by Defendant County of Merced to first, third, fourth, fifth and sixth causes of action in Second Amended complaint

The Demurrer to the Second Amended Complaint's First Cause of Action for Cancellation of a Written Instrument for failure to state a claim not barred by the statute of limitations is SUSTAINED WITH LEAVE TO AMEND to plead around the statute of limitations.

The Demurrer to the Second Amended Complaint's Third cause of Action for failure to allege a fiduciary duty that was breached by the County of Merced is SUSTAINED WITH

LEAVE TO AMEND to state facts establishing a fiduciary duty owed to Plaintiff by the City of Merced.

The Demurrer to the Second Amended Complaint's Fourth cause of Action for failure to allege a statutory basis for liability against the County of Merced is SUSTAINED WITH LEAVE TO AMEND to state a statutory basis for Plaintiff's claim.

The Demurrer to the Second Amended Complaint's Fifth cause of Action for failure to conduct a fraud investigation of recorded documents is SUSTAINED WITH LEAVE TO AMEND to state fact establishing a duty to conduct an investigation of recorded documents.

The Demurrer to the Second Amended Complaint's Sixth cause of Action for breach of duty is SUSTAINED WITH LEAVE TO AMEND to state fact establishing a duty to breached by the recording of the subject deed.

Motion to Strike Proofs of Service and Punitive Damages Claims in Second Amended Complaint by Defendant City of Merced

The Motion to Strike Punitive Damages Claims is GRANTED WITH LEAVE TO AMEND to state a cause of action and grounds for an award of punitive damages.

The Motion to Strike Proof of Service filed with the Court is DENIED AS MOOT given that Defendant has made a general appearance in this action by filing a demurrer addressing the merits of various causes of action therein. (See e.g. Fireman's Fund Ins. Company v. Sparks Construction, Inc. (2004) 114 Cal.App.4th 1135, 1145.)

24CV-02861 Petition of: Christina Mora

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) 725-4111 to arrange for a remote appearance. This petition by an adult to change her own last name will be granted upon the filing of proof of publication.

24CV-03157 Delma Peara v. Marlena Calvo

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. This Court notes that proof of service was filed on July 9, 2024, showing service of all papers filed in this action on Respondent.

24CV-03161

Lucia Perez v. Andrea Gonzales

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. This Court notes that no proof of service has been filed showing service of all papers filed in this action on Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Mandatory Settlement Conference
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Wednesday, July 24, 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
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There are no Mandatory Settlement Conferences Scheduled

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Limited Civil Calendar
Hon. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Wednesday, July 24, 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:

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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.

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Case No.	Title / Description
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19CV-04296	Calvary Spv I v. Federica Ochoa, Senior
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Motion for Judgment on the Pleadings

Appearance required. 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. Given the prior October 28, 2020, order of this Court that Requests for Admission be Deemed admitted, the Court is inclined Grant the Motion for Judgment on the Pleadings.

Case Management Conference

Appearance required. 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. If the Motion for Judgment on the Pleadings is granted the case management conference will be dropped from calendar as moot,

23CV-03604 Synchrony Bank v. Dianna Rodriguez

Motion for Order that Requests for Admission be deemed admitted

Appearance required. 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.

23CV-03831 Discover Bank v. Elzy Richmond

Court Trial

Appearance required. 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.

24CV-02436 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Court Trial: Unlawful Detainer

Appearance required. 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.

24CV-02723 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Demurrer to Unlawful Detainer Complaint

OVERRULED AS MOOT. A First Amended Complaint was filed on July 8, 2024.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Wednesday, July 24, 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:

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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-03311	Merced Community College District v. Office of Administrative Hearing Ex Parte Application to Stay Office of Administrative Hearings Decision
	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. There is no proof of service on the Real Party in Interest, Denise Warkentin, within the Court's file regarding the Writ of Mandate filed July 2, 2024, or the Ex Parte Application to Stay OAH Decision filed July 2, 2024. Discussion was had by Petitioner's Counsel and the Court at the prior ex parte hearing held July 10, 2024, on the service issues. Real Party in Interest counsel, William Y. Shen and Illisa B. Gold of REICH, ADELL & CVITAN, have filed on July 19, 2024, a Notice of Remote Appearance to appear at the hearing. Said notice is silent on whether a general or special appearance will be made for Real Party in Interest. Appear to discuss notice, appearance, any briefing schedule desired, and/or the substance of the ex parte application.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Wednesday, July 24, 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:

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

Wednesday, July 24, 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:

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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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There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Limited Civil Long Cause Court Trials
Hon. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Wednesday, July 24, 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
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There are no Limited Civil Long Cause Court Trials set for hearing.
