

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, July 25, 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

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

Thursday, July 25, 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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19CV-02322	Domingo Hurtado v. Pacific Express Inn, 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 the case. It appears that a number of Doe Defendants have been recently added but not yet served.

19CV-03971	S.C. Anderson, Inc. v. Golden State Construction and Framing, Inc. .
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Status Conference

Continued on the Court's own motion to August 7, 2024 at 8:15 A.M. in Courtrom 8 to trail the Motion for Leave to Amend set for hearing on that date. The Court notes that a Readiness conference is set for September 9, 2024 and a Court Trial is scheduled for October 29, 2024.

Motion By Defendant Dual Arch International Inc. for Prevailing Party Attorney's fees of \$136,421.03 pursuant to CCP § 1717 on Breach of Contract Claim

Remittitur was issued on July 15, 2024 returning jurisdiction to this court and establishing that the Court of Appeal Opinion filed May 14, 2024 is now final. That Opinion affirmed this Court's May 9, 2023 Order adopting the tentative ruling issued on April 25, 2023 granting the motion to tax costs and providing: "Attorney's fees claimed (Item 9) are not provided for by statute or contract and are therefore not permissible costs." The Court of Court of Appeal opinion addressed each argument that one or more documents in the case established a right by which Plaintiffs could obtain attorney's fees against Defendant Dual Arch International, Inc. and found that there was no legal basis to support a right to attorney's fees by Plaintiffs against Defendant Dual Arch. That there is no contractual basis for an award of attorney fees by Plaintiffs against Dual Arch is now the law of the case and binding on all the parties.

Defendant Dual Arch now seeks an award of \$136,421.03 on the grounds that it is the prevailing party by defeating a contract claim for attorney's fees pursuant to a non-existent contract. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128-129; *Pacific Custom Pools v. Turner Construction Co.* (2000) 79 Cal.App.4th 1254, 1268; *Linear Technology Corp. v. Tokyo Electron Ltd.* (2011) 200 Cal.App.4th 1527, 1538; *M. Perez Co. Inc. v. Base Camp Condominium Assn. No. One* (2003) 111 Cal.App.4th 456, 466; *International Billing Services, Inc. Emigh* (2000) 84 Cal.App.4th 1175, 1178-1179.) The gist of that argument is while there was no right to attorney's fees before Plaintiffs brought, appealed, and ultimately lost their motion for attorney's fees based on contract, such motion, appeal and loss created Defendant Dual Arch's right to attorney's fees as prevailing party on an unsuccessful contract claim for attorney's fees by Plaintiffs due to the mutuality requirements of CCP § 1717.

Controlling Case Law supports the position of Defendant Dual Arch and is contrary to the argument raised by Plaintiffs in opposition. Accordingly this Court finds that Defendant Dual Arch is the prevailing party on the Attorney's fee claim, that it is entitled to an award of prevailing party attorneys fees pursuant to CCP § 1717 notwithstanding the fact that the law of the case establishes that no applicable contract provides a right to attorney's fees, and that the claim for attorney's fees of \$136,421.03 is reasonable under the circumstances of this case. .

Order to Show Cause re Entry of Proposed Judgment

There having been no response to this Court's Order to Show Cause why the proposed judgment following by Plaintiffs and Cross-Defendants Jaswinder Kaur and Parkash Pabla on the Cross-Complaint, that judgment is approved and will be signed by the Court.

21CV-00915

Julie Bulosan v. Kaylee Doe, et al.

Motion for Mandatory Relief Pursuant to CCP § 473(b)

Counsel for Plaintiff Julie Ann Soriano Bulosan provides a declaration of fault due to counsel's mistake, inadvertence, surprise or excuseable neglect with respect to the December 22, 2023 Order that Plaintiff pay \$920 in discovery sanctions and asserts that such relief is mandatory under CCP § 473(b). Defendants assert (1) that CCP § 473(b) is inapplicable to discovery orders, (2) the motion is untimely as it was brought more than six months from the date of the order, and (3) the affidavit of fault does not establish mistake, inadvertence, surprise or excuseable neglect.

The motion for relief is DENIED. This Court agrees with Defendant that (1) that CCP § 473(b) is inapplicable to discovery orders, and (2) the motion is untimely as it was brought more than six months from the date of the order. Furthermore, even if relief was mandatory under CCP § 473(b) this court may grant relief under conditions as may be just. There is no question that discovery responses were substantially delayed and that several motions have been necessary for Defendants to obtain the discovery requested or the sanctions awarded. If Plaintiff's counsel believes that is client should not be required to pay sanctions, then counsel has the option of paying the sanctions himself as there has been no showing that the award of sanctions or the amount was unreasonable or excessive, only that Plaintiff herself was not at fault. Thus the court concludes that while even if relief were granted, the conditions that would be just would require an order that Plaintiff's counsel should pay the sanctions instead of Plaintiff herself.

Motion for Enforcement of Monetary Sanctions

The Motion for Enforcement of Monetary Sanctions is GRANTED in Part. Additional Sanctions in the amount of \$500 are awarded against both Plaintiff and her counsel, jointly and severally. The request for additional monetary santions in excess of \$500 ia DENIED.

22CV-02682

Dylan Gutierrez v. SJ Logistics LLC

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 the settlement.

Status Review 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 settlement.

Demurrer By Defendant PHH Mortgage To Third Amended Complaint and to the First, Second, and Third Cause of Action therein for failure to state facts sufficient to state a cause of action

The Demurrer to the Third Amended Complaint's First Cause of Action for Violation of Civil Code § 2923.6 (Dual Tracking) is SUSTAINED WITHOUT LEAVE TO AMEND. There is no dispute that a Notice of Default was recorded on January 19, 2022. The complaint alleges that a loan modification application was submitted on June 9, 2022, after the Notice of Default had already been recorded. (See Second Amended complaint at Paragraph 38.) Plaintiff argues that a June 23, 2022 letter requesting additional documents constitutes an admission that the June 9, 2022 application was complete because Plaintiff contends that the additional documents requested had already been provided. Contrary to Plaintiff's contention, the plain wording of the letter that additional documents were required and that language cannot reasonably be construed to be an admission that all necessary documents had been provided. A reasonable interpretation of the letter is that either the documents sent had not been received, or that some aspect of the documents was insufficient. Since there is no allegation that Plaintiff responded to the June 23, 2022 letter provided all documents requested in that letter, the subsequent Sale was not in violation of Civil Code § 2923.6. These are the same defects upheld by the Court in the prior Demurrer and Plaintiff has not shown the ability to amend and has not demonstrated that further leave to amend would not be futile. Accordingly the demurrer to the Third Amended Complaint's First Cause of Action for Violation of Civil Code § 2923.6 (Dual Tracking) is SUSTAINED WITHOUT LEAVE TO AMEND.

The Demurrer to the Third Amended Complaint's Second Cause of Action for Violation of Civil Code § 2923.7 (Single Point of Contact) is SUSTAINED. Any failure to appoint a single point of contact in 2017-2018 was known to Plaintiff in 2017-2018 because Plaintiff's communications with Defendant were not directed at any specific person as demonstrated by the attachments to the complaint. Since the original complaint was not filed until October 28, 2022, more than three years after 2018, any 2017-2018 violations of Civil Code § 2923.7 are time barred. Despite previous opportunities to amend, Plaintiff has not successfully alleged delayed discovery or any legitimate grounds for equitable tolling.

To the extent Plaintiff alleges a violation of Civil Code § 2923.7 occurring in 2022, Plaintiff fails to allege facts establishing that any failure concerning the appointment of a single point of contact constituted a material violation within the meaning of Civil Code § 2924.12 i.e. failed to fulfill his or her responsibilities or that any failure was a material violation that affected Plaintiff's loan obligations, disrupted the loan modification process, or otherwise caused Plaintiff harm. (See *Billesbach v. Specialized Loan Servicing LLC* (2021) 63 Cal.App.5th 830, 845.) Plaintiff has not shown that an order granting further leave to amend would not be futile. Accordingly, the Demurrer to the Third Amended Complaint's Second Cause of Action for Violation of Civil Code § 2923.7 (Single Point of Contact) is SUSTAINED WITHOUT LEAVE TO AMEND.

The Demurrer to the Third Amended Complaint's Third Cause of Action for Violation of the Unfair Competition Law is SUSTAINED WITHOUT LEAVE TO AMEND. Plaintiff has failed to allege an unfair, unlawful, or fraudulent practice despite being given several opportunities to do so.

23CV-00271

Mehki Bryant v. Thomas Wilson, et al

Motion by Mercy Medical Center, Merced to Compel Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Specification of Damages, Request for Production of Documents Set One, and that Requests for Admission be Deemed Admitted by Plaintiff

The unopposed Motion by Mercy Medical Center, Merced to Compel Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Specification of Damages, Request for Production of Documents Set One, and that Requests for Admission be Deemed Admitted by Plaintiff is GRANTED. The Motion that Requests for Admission be deemed admitted is GRANTED. The Motion to Compel Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Specification of Damages, and Request for Production of Documents Set One is GRANTED. Plaintiff shall serve, without objection, verified code compliant responses and any responsive documents by August 30, 2024.

23CV-01159

Reyes Pineda De Leon v. Barbara Gillis Reid, et al.

Trial Setting 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 case. While the clerk of this court labeled the hearing as a trial setting conference the case only became at issue when an Answer was filed on July 5, 2024.

24CV-03207

Jagender Singh, et al. v. Mahinder Kajla

Motion to Void Deeds "AB INITIO"

The unopposed Motion to Void Deeds "AB INITIO" is GRANTED.

24CV-03207

Rosie Miranda v. Jesse Garcia

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 July 12, 2024 showing Service of all papers filed in this action on Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, July 25, 2024
9:00 a.m.

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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

Thursday, July 25, 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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23CV-04072	Jefferson Capital Systems LLC v. Francisco Gonzalez
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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.

23CV-04296	Capital One N.A v.Sergio Alvarado
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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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, July 25, 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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Case No.	Title / Description
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24CV-03006	Jennifer Chavez v. Jennie Carrey
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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) 725-4124 to arrange for a remote appearance. The Court notes that Respondent has appeared in this action by filing a response to the Request for Civil Harassment Restraining Order indicating that Respondent does not agree with the request for restraining order.

24CV-02426	Rosaelia Cornejo v. Gabriella Delgdo
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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) 725-4124 to arrange for a remote appearance. The Court notes that a proof of service was filed on June 3, 2024.

24CV-03004

Rave Phillips v. Alexandra Kashakji

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) 725-4124 to arrange for a remote appearance. The Court notes that there is no proof of service on file showing service of the documents filed in this action on Respondent.

24CV-03057

Brett Jones v. Refugio Llamas

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) 725-4124 to arrange for a remote appearance. The Court notes that proof of service was filed on July 12, 2024 showing service of the papers filed in this action on Respondent.

24CV-02318

Maria Tower v. Naomi Samaniego

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) 725-4124 to arrange for a remote appearance. The Court notes that a proof of service was filed on June 6, 2024.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, July 25, 2024
1:15 p.m.

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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. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Thursday, July 25, 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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Case No.	Title / Description
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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, July 25, 2024

1:15 p.m.

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