627 W. 21st Street, Merced

Monday, May 16, 2022

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 regularly scheduled civil calendars:

Courtroom 8 - Hon. Brian L. McCabe

Courtroom 9 - Hon. Stephanie L. Jamieson

Courtroom 12 – Hon. David W. Moranda

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 wanting a hearing transcript must make their own arrangements.

The specific tentative rulings for specific civil calendars follow:

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

> Monday, May 16, 2022 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. To limit the spread of the COVID-19 virus, the court encourages remote hearings. Parties who contest the tentative ruling or wish to appear at a hearing must contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

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

#### Case No. Title / Description

21CV-02618 Rick Ryan v. Santa Nella Mobile Home Park, LLC, et al.

Demurrer to Second Amended Complaint

On March 2, 2022, this Court SUSTAINED WITH LEAVE TO AMEND a demurrer to the First Amended Complaint granting Plaintiff (A) leave to amend to plead with specificity a claim for fraud against corporate parties that would required Plaintiff to allege (1) the names of the individuals who made the alleged misrepresentations, (2) the authority of the individuals who made the misrepresentations to speak on behalf of each corporation. (3) the person or persons to whom each misrepresentations was made, (4) what the individuals who made the misrepresentations said or wrote, and (5) when each misrepresentation was said or written. (Lazar v. Superior Court (1996) 12 Cal.4th 631, 645; Tarmann v. State Farm Mut. Auto Ins. Co. (1991) 2 Cal.4th 153, 157; Perlas v. GMAC Mortg. LLC (2010) 187 Cal.App.4th 429, 434.); and (B) leave to amend to plead the nature and effect of any extrinsic evidence that Plaintiff contends to be necessary to properly interpret a Settlement Agreement, since the Settlement Agreement at issue does not appear to be vaque or ambiguous on its face, and given that extrinsic evidence cannot be used to support an interpretation of which the language of the agreement is not reasonably susceptible. (See e.g. Wolf v. Superior Court (2004) 114 Cal.App.4th 1343, 1351.) Pursuant to the above order, Plaintiff filed a Second Amended Complaint on March 22, 2022 containing causes of action for (1) Negligence, (2) Premises Liability, (3) Negligent Misrepresentation, (4) Intentional Misrepresentation, (5) Concealment, and (6) False Promise.

On March 18, 2022, Defendant Santa Nella Mobile Home Park LLC, Defendant Santa Nella MHC, LLC and Defendant Harmony Communities, Inc. (collectively "Defendants") filed the instant Demurrer to the Second Amended Complaint asserting that the First, Second, Third, Fourth, Fifth and Sixth Causes of Action each fail to state a cause of action and are uncertain.

As a preliminary matter, Defendants argue that since the Second Amended Complaint contains four new causes of action naming additional Defendants, it exceeded the scope of the order granting leave to amend and should be stricken; however, Defendants have not brought a motion to strike. This Court declines the invitation to strike the Second Amended Complaint on its own motion on the grounds that none of the Defendants have been prejudiced by the amended allegations in that all of the Defendants have had a full and adequate opportunity to address the merits of the new claims, and that interests of judicial economy dictate that the court address the merits of the clams before it rather than strike the complaint and require Plaintiff to bring a motion seeking leave to amend to allege these new allegations.

The Second Amended Complaint alleges that Demurring Defendants operate the subject mobile home park in which Plaintiff was a resident that contained a hazardous condition that caused Plaintiff to suffer personal injured (¶10-12), that Demurring Defendants were negligent in the construction, operation, and maintenance of such premises (¶13), that Plaintiff was represented by Castleton Law firm for his personal injury claim against Demurring Defendants that Demurrering Defendants were aware that Castleton Law Firm represented Plaintiff in connection with Plaintiff's personal injury claim (¶ 14-15), that as a result of the personal injury Plaintiff was unable to work and pay rent owed to Demurring Defendants (¶ 16), that Defendant Santa Nella MHC instituted an Unlawful Detainer Action against Plaintiff (¶ 17), that Defendant Law Offices of Anthony Drew Rowe and Defendant Benjamin D. Rowe represented Defendant Santa Nella MHC in the Unlawful Detainer Action against Plaintiff and that Defendant Law Offices of Anthony Drew Rowe and Defendant Benjamin D. Rowe were aware that Plaintiff was represented by the Castleton Law Firm in connection with the personal injury action (¶ 18-19), that in November 2020, Defendant Benjamin D. Rowe presented Plaintiff with a Stipulation for Entry of Default and Mutual Release in favor of Defendant Santa Nella MHC in the amount of \$13,258.50 that was done without notifying the Castleton Law Firm and without knowledge or presence of any counsel for Plaintiff, and that neither Defendant Law Offices of Anthony Drew Rowe and Defendant Benjamin D. Rowe notified the Castleton Law Firm of the Stipulation for Entry of Default and Mutual Release or provide a copy of the Stipulation for Entry of Default and Mutual Release to the Castleton Law Frim, and that such failure constituted egregiousness action (¶ 20-23), that Defendant Benjamin D. Rowe informed Plaintiff the release had no bearing on his separate personal injury claim against Defendant Santa Nella MHC (¶ 24), that "Defendants negligently mislead and misrepresented to Plaintiff that the Stipulation and Mutual Release had nothing to do with his personal injury claim. Presumably so the defense could sneak one past Plaintiff and his counsel" and that Plaintiff specifically relied upon the representation of Defendants and signed the Mutual Release, and that such reliance was the cause of injury, harm and damage. (¶ 25-27.)

This Court finds that the above allegations satisfy the essential requirements of pleading a claim of fraud against a corporate entity with specificity with respect to Defendant Santa Nella MHC, LLC in that the Second Amended Complaint alleges (1) the names of the individuals who made the alleged misrepresentations [Defendant Benjamin D. Rowe], (2) the authority of the individuals who made the misrepresentations to speak on

behalf of each corporation [that Defendant Law Offices of Anthony Drew Rowe and Defendant Benjamin D. Rowe represented Defendant Santa Nella MHC in the Unlawful Detainer Action against Plaintiff], (3) the person or persons to whom each misrepresentations was made [Plaaintiff Rick Ryan], (4) what the individuals who made the misrepresentations said or wrote [Defendant Benjamin D. Rowe informed Plaintiff the release had not bearing on his separate personal injury claim against Defendant Santa Nella MHC], and (5) when each misrepresentation was said or written [November 2020] thereby satisfying the requirements of *Lazar v. Superior Court* (1996) 12 Cal.4<sup>th</sup> 631, 645; *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.4<sup>th</sup> 153, 157; and *Perlas v. GMAC Mortg. LLC* (2010) 187 Cal.App.4<sup>th</sup> 429, 434.

This Court also finds that the above allegations are sufficient to establish that the execution by Plaintiff herein of the Stipulation for Entry of Default and Mutual Release was procured by Plaintiff's reasonably reliance on such alleged Fraud and therefore is potentially unenforceable with respect to Defendant Santa Nella MHC LLC. Accordingly, the Demurrer to the Second Amended Complaint by Defendant Santa Nella MHC LLC is OVERRULED as to all causes of action and this Court finds that none of the causes of action against which the demurrer is asserted are uncertain no fail to state a cause of action.

On its own motion, this Court takes Judicial Notice of the Stipulation for Entry of Default and Mutual Release attached as Exhibit A to the Verified Answer filed by Demurring Defendants attached as Exhibit A to the Request for Judicial Notice by Demurring Defendants filed October 18, 2021 and previously granted by this Court on November 18, 2021. While the plain language of the Stipulation for Entry of Default and Mutual Release provides a release for known and unknown claims with respect to Defendant Santa Nella MHC LLC, this Court finds that there is nothing in such document that could reasonably be construed as a release of claims against Defendant Santa Nella Mobile Home Park LLC. or Defendant Harmony Communities, Inc., neither of which was a party to the Stipulation for Entry of Default and Mutual Release or expressly mentioned in the Stipulation for Entry of Default and Mutual Release. Accordingly, this Court finds that Plaintiff has no need to "plead around" the Stipulation for Entry of Default and Mutual Release with respect to its claims against Defendant Santa Nella Mobile Home Park LLC. or Defendant Harmony Communities, Inc.

However, this Court also finds that the allegations summarized above fail to plead a claim of fraud against Defendant Santa Nella Mobile Home Park LLC. or Defendant Harmony Communities, Inc. with the requisite because there is no allegation that Defendant Benjamin D. Rowe represented either Defendant Santa Nella Mobile Home Park LLC. or Defendant Harmony Communities, Inc. and therefore was authorized to speak on their behalf. Accordingly, the Demurrers by Defendant Santa Nella Mobile Home Park LLC. and Defendant Harmony Communities, Inc. are SUSTAINED WITH LEAVE TO AMEND as to the Third Cause of Action [Negligent Misrepresentation], Fourth Cause of Action [Intentional Misrepresentation] Fifth Cause of Action [Concealment] and the Sixth Cause of Action [False Promise] and are OVERRULED with respect to the First Cause of Action [Negligence] and Second Cause of Action [Premises Liability], the causes of action for which specificity is not required against the parties who are not covered by the alleged release.

22CV-01060 Autin Lockhart v. Daniel Gaestel

Order to Show Cause Re: Restraining Order

Continued to July 25, 2022 at 8:15 a.m. in Courtroom 8 for trial setting. All temporary orders to remain in full force and effect pursuant to the stipulation.

22CV-01063 Diane Chappell v. Donn Kennedy

Order to Show Cause Re: Restraining Order

Appearance required. Remote appearances are strongly encouraged. To arrange a remote appearance, contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing. The Court notes that no proof of service has been filed showing that respondent was served with the Notice of Hearing, the Request for Restraining Order, or the Temporary Restraining Order issued in this action. Absent an appearance by Petitioner and a showing of good cause for the failure to serve Respondent, the Order to Show Cause re Restraining Order shall be VACATED, and the matter DISMISSED WITHOUT PREJUDICE.

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

> Monday, May 16, 2022 9:00 a.m.

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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. To limit the spread of the COVID-19 virus, the court encourages remote hearings. Parties who contest the tentative ruling or wish to appear at a hearing must contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

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

### Case No. Title / Description

There are no Mandatory Settlement Conferences scheduled.

Civil Case Management Conferences Hon. Brian L. McCabe Courtroom 8 627 W. 21st Street, Merced

> Monday, May 16, 2022 10:00 a.m.

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Case No.	Title / Description
17CV-04288	Merced Gastroenterology Medical Office, Inc., et al. v. Kirandeep Chima, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

Status Conference

Jesus Munoz, Jr., et al. v. Merced County Office of Education, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

19CV-02134

Joe Santos v. Maggiora Bros. Drilling, Inc.

Trial Setting Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

19CV-02849

Dale Lacoix v. Foster Farms, LLC, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

19CV-03333

Roberto Hernandez, et al. v. Ma Ana Arbo-Tiu, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing

19CV-03393

Dale LaCroix v. Foster Farms, LLC, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

19CV-04054

Gary Pine v. University of California, Merced

Case Management Conference

Jose Hernandez Tapia v. Hafeez Ur Rehman, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

20CV-02515

Heliodoro Silva v. Jeanne Schechter, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

20CV-02521

Gilbert Hernandez v. In-Shape Health Clubs, LLC

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00064

Mike Adams v. West Communication Service, Inc.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00720

Ford Motor Credit Company LLC v. Michaela Craig

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00758

Gotopremiumfinance.com v. Rafael Rodriguez

Case Management Conference

George Quick, et al. v. Blue Mountain Enterprises, LLC, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00786

Keith Guthrie v. ITS Logistics, LLC

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00790

Angelica Barba v. Cynthia Alvarez

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00816

Bonnie Penner v. Ryan Paskin

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00817

Jose Aguilera v. Dole Packaged Foods, LLC

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-00820

Carmen Quinones v. Doe Manager (Doe 1), et al.

Case Management Conference

Celene Rosales v. Stag Leasing Inc., et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-03187

Cristina Ballard Valencia v. Alireza Mahmoudieh, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-03188

Jose Lopez, et al. v. Armando Diaz, et al.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-03215

Nicolas Peralta Cruz, et al. v. Ford Motor Company

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-03237

Madelyn Bell v. Murtos 1, Inc.

Case Management Conference

Appearance Required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

21CV-03335

Price Westgate v. Kali Zorra

Case Management Conference

21CV-03956 Fernando Ruiz v. Eustacio Caballero

Case Management Conference

Ex Parte Matters
Hon. Brian L. McCabe
Courtroom 8
627 W. 21<sup>st</sup> Street, Merced
Monday, May 16, 2022
1:15 p.m.

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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 for hearing.

Ex Parte Matters
Hon. Stephanie L. Jamieson
Courtroom 9
627 W. 21st Street, Merced

Monday, May 16, 2022 1:15 p.m.

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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 for hearing.

Ex Parte Matters
Hon. David A. Moranda
Courtroom 12
1159 G Street, Merced
Monday, May 16, 2022
1:15 p.m.

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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 for hearing.

Short Cause Court Trials Hon. Brian L. McCabe Courtroom 8 627 W. 21<sup>st</sup> Street, Merced

Monday, May 16, 2022 1:30 p.m.

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

#### Case No. Title / Description

20CV-01565 Maria Palomino v. Shirley Hwang

Default Prove-Up Hearing

No Appearance required. There appears to be sufficient evidence filed with the court to support entry of judgment as requested. The court will sign the proposed judgment.

Limited Civil Hon. Stephanie L. Jamieson Courtroom 9 627 W. 21<sup>st</sup> Street, Merced

Monday, May 16, 2022 1:30 p.m.

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

#### Case No. Title / Description

19CV-03485 Synchrony Bank v. Brianna Oneto

Order to Show Cause Re: Dismissal - Notice of Settlement

DROPPED FROM CALENDAR. A Request for Dismissal of Entire Action With Prejudice was filed on May 13, 2022.

21CV-01171 Midland Credit Management Inc. v. Ricardo Cortes

Court Trial

Appearance required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

22CV-00047 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Review of Case Status

Appearance required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

22CV-00547

[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Status Conference

Appearance required. Remote appearances are encouraged. Parties who wish to appear remotely should contact the clerk of the court at (209) 725-4111 to provide their contact information for the remote hearing.

22CV-01011

[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

**Unlawful Detainer Court Trial**