

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Friday, December 20, 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. Stephanie Jamieson

Courtroom 8 – Hon. Mark V. Bacciarini

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. Stephanie Jamieson
Courtroom 8
627 W. 21st Street, Merced

Friday, December 20, 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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22CV-02252	Ray Morris v. Gustine Unified School District
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Motion for Summary Judgment

Defendants seek Summary Judgment as to Plaintiff's Second Amended Complaint, or, in the alternative Summary Adjudication that the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action are without merit as follows:

The First Cause of Action for Discrimination Based on Disability lacks merit because (a) Plaintiff cannot establish a prima facie case for disability discrimination because he cannot proffer any evidence that an adverse employment action was taken because of disability, and (b) Plaintiff cannot establish pretext.

The Second Cause of Action for Harassment Based on Disability lacks merit because Plaintiff cannot establish a prima facie case of harassment because nothing alleged rises to the level of severe or pervasive.

The Third Cause of Action for Retaliation lacks merit because Plaintiff cannot establish a prima facie case of retaliation because (a) he cannot proffer evidence that an adverse employment action was taken as the result of any protected activity taken by Plaintiff, and (b) Plaintiff cannot establish pretext.

The Fourth Cause of Action for Failure to Accommodate lacks merit because Plaintiff cannot establish that any reasonable accommodation was denied which was necessary for him to perform the functions of his job,

The Fifth Cause of Action for Failure to Engage in the Interactive Process lacks merit because Plaintiff cannot establish a prima facie case of failure to engage in the interactive process because the District has consistently met with Plaintiff and provided him with the accommodations necessary to perform his job.

The Sixth Cause of Action for Failure to Prevent Harassment, Discrimination, or Retaliation lacks merit because Plaintiff cannot establish the underlying claims of harassment, discrimination, and retaliation.

Adverse Employment Action

To establish a prima facie case of discrimination or retaliation, Plaintiff must establish that he suffered an adverse employment action because of his disability (discrimination) or because of a protected activity that he engaged in (retaliation). (*Artega v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 344-345 [adverse employment action is element of prima facie case of discrimination]; *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 [adverse employment action is element of prima facie case of retaliation].)

An adverse employment action requires a substantial adverse change in the terms and conditions of Plaintiff's employment. (*Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal.App.4th 1047, 1063.) "Not every change in the conditions of employment, however, constitutes an adverse employment action. `A change that is merely contrary to the employee's interests or not to the employee's liking is insufficient....'" (*Malais v. Los Angeles City Fire Dept.* (2007) 150 Cal.App. 4th 350, 357 [quoting *McRae v. Department of Corrections and Rehabilitation* (2006) 142 Cal.App.4th 377, 386-387.]

Defendant's Undisputed Facts 1-39 establish a prima facie case that Plaintiff did not suffer an adverse employment action. The Fact that Plaintiff's supervisor visited Plaintiff's classroom on several occasions (Fact 18) in compliance with the terms of the collective bargaining agreement (Fact 23), or that Plaintiff was issued a Conference Memorandum which discussed perceived performance issues (Fact 20), without more, is not an adverse employment action. The fact that Plaintiff received an evaluation indicating Plaintiff was not meeting 6 of 8 standards (Fact 24), without more, is not an adverse employment action. The Fact that Plaintiff, as well as other teachers, was required to turn in lesson plans (Fact 22), without more, is not an adverse employment action. The fact that Plaintiff was placed on administrative leave during the investigation into an incident in which students broke apart their pencil sharpeners and used the razors to cut themselves (Fact 32-33), without more, is not an adverse employment action. The fact that Plaintiff was given a notice of unprofessional conduct and unsatisfactory performance (Fact 35), without more, is not an adverse employment action. The fact that Plaintiff received a letter of warning (Fact 36), without more, is not an adverse employment action. (See, *Pinero v. Specialty Restaurants Corp.* (2005) 130 Cal.App.4th 635, 646.)

This Court finds that Defendant has established a prima facie case that Plaintiff is unable to establish the First Cause of Action for Discrimination or the Third Cause for Retaliation because Plaintiff cannot establish that he suffered an adverse employment action. This shifts the burden of proof to Plaintiff to establish a triable issue of material fact as to whether he suffered an adverse employment action.

Pretext

Even if Plaintiff were to establish a triable issue of material fact as to whether Plaintiff suffered an adverse employment action, Plaintiff would still bear the burden of proving that such adverse employment action was a pretext for discrimination or retaliation. (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 160.)

Defendant's Undisputed Facts 1-39 establish that although Plaintiff's supervisor visited Plaintiff's classroom on several occasions (Fact 18) in compliance with the terms of the collective bargaining agreement (Fact 23), such visits were the same amount and frequency as visits to the classrooms of other teachers. (Fact 19). Although Plaintiff was issued a Conference Memorandum which discussed perceived performance issues (Fact 20), Plaintiff was not the only teacher required to turn in lesson plans. (Fact 22.) Although Plaintiff received an evaluation indicating Plaintiff was not meeting 6 of 8 standards (Fact 24), Plaintiff was not the only teacher to be placed on a PAR or to remain on PAR for more than a year. (Fact 26.) Although Plaintiff was placed on administrative leave during the investigation into an incident in which students broke apart their pencil sharpeners and used the razors to cut themselves (Fact 32-33), there is no dispute that the event occurred or that part of Plaintiff's job duties included the fact that Plaintiff was responsible for insuring the safety of his students in class. (Fact 34.) Although Plaintiff received a letter of warning regarding his distance e-log (Fact 36), there is no dispute that he made a mistake with regard to his distance e-log. Finally, in response to two complaints by Plaintiff concerning actions by Plaintiff's Supervisor, Defendant School District hired an outside investigator to investigate such complaints and both reports determined that the complaints were unsubstantiated. (Fact 28 and Fact 30.) Thus, even if a court might disagree with the decisions made, Defendant School District has made a prima facie case that Defendant had reason to believe that its actions were lawful. (See, *Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 160.)

This Court finds that Defendant has established a prima facie case that Plaintiff is unable to establish the First Cause of Action for Discrimination or the Third Cause of Action for Retaliation because Defendant has established a prima facie case that, in the event that there was a triable issue of fact that an adverse employment action occurred, Plaintiff is unable to establish that such adverse employment action was a pretext for discrimination. This shifts the burden of proof to Plaintiff to establish a triable issue of material fact as to whether any adverse employment suffered by Plaintiff was a pretext for discrimination or retaliation.

Harassment

Unlike Discrimination claims, harassment "consists of action outside the scope of job duties which are not a type necessary to business and personal management." (*Reno v. Baird* (1998) 18 Cal.4th 640, 645-646.) Defendant's Undisputed Facts 1-39 establish a prima facie case that all of the acts that Plaintiff characterizes as harassment were in fact actions taken within the scope of Plaintiff's supervisor's duties relating to business and personal management. Accordingly, Defendant has established a prima facie case that Defendant is entitled to judgment as a matter of law as to the harassment claims. This shifts the burden of proof to Plaintiff to establish a triable issue of material fact as to whether some act of harassment occurred outside the scope necessary to business and personal management.

Triable Issue of Material Fact as to Discrimination, Retaliation or Harassment

The Opposition to the Motion for Summary Judgment and/or Summary Adjudication asserts, on the one hand, that there were failures to engage in the interactive process and failures to accommodate (See Fourth and Fifth Causes of Action), but also asserts, on the other hand, that the School District's attempts to measure the effectiveness of the

accommodations that were provided and to engage in an interactive process concerning aspects of job performance that required improvement, constituted discrimination, harassment and retaliation. The interactive process is not, by its very definition, a one way street where the employee makes demands and the employer is obligated to agree. Both sides need to discuss what is and is not working and attempt to find reasonable ways to address each others' concerns. It is impossible to determine if accommodations are adequate without observing the job performance, which in the case of a teacher requires class observation, and the interactive process requires a discussion of any duties that are not being adequately preformed so that the parties can devise a way to address those concerns. The interactive process involves two types of accommodations: (1) express accommodations where the employee requests a grab bar in the bathroom or dictation software, and the employer installs the grab bar and provides the software, albeit on a laptop that did not initially operate successfully, and (2) implied accommodations where the employee is not able to fully perform a job duty and the employer refrains from taking disciplinary action, thereby implicitly accepting the reduced level of job performance. There is no dispute that, as a result of the express accommodations and implied accommodations provided in this case, Plaintiff remains employed in the position he filled prior to his accident and continues to earn all of the benefits that position provides.

Since it is undisputed that Plaintiff's employment continues, that Plaintiff has not received a pay cut or other decrease in employment benefits, there is no triable issue of material fact as to whether Plaintiff has suffered an adverse employment action. While Plaintiff seeks to characterize class observation and warnings as adverse employment actions and harassment, they are not, at least under the facts presented here. Plaintiff has also failed to identify acts by Defendant that were outside the scope of job duties which are not a type necessary to business and personal management, and therefore has failed to establish a triable issue of fact as to whether harassment based on disability occurred. Accordingly, this Court finds that Plaintiff has failed to offer admissible evidence establishing a triable issue of material fact as to the First Cause of Action for Discrimination, the Second Cause of Action for Harassment, or the Third Cause of Action for Retaliation. The Motion for Summary Adjudication as to the First Cause of Action for Discrimination, the Second Cause of Action for Harassment, and the Third Cause of Action for Retaliation is GRANTED.

Evidentiary Objections

Defendant has filed 97 evidentiary objections to the evidence presented by Plaintiff in Opposition to the Motion for Summary Judgment and/or Summary Adjudication. Some of the objections are moot because they object to evidence that was also offered by Defendant in support of its motion. Plaintiff lumps the 97 objections into four discrete categories, and so the court will address those categories.

First, Plaintiff argues that testimony by Plaintiff and other long term employees regarding workplace conditions and common practices are admissible. (See *McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 297; *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1159-1160; *Pantoja v. Anton* (2011) 198 Cal.App.4th 89, 109-111.) This Court agrees that they are admissible, but that as presented in this case, are not particularly probative because evidence of common practices ignores the unique situation presented by Plaintiff's unique limitations resulting from his unique disability. Undisputed Fact 13 lists 9 specific accommodations that were requested and provided, which, by the very nature of accommodation, were not something provided to all employees. The interactive process required that the District evaluate whether these accommodations were adequate, resulting in an increase in scrutiny of Plaintiff that was unnecessary or uncommon for employees who did not require accommodations. While

Plaintiff may not have appreciated the increase in scrutiny, the fact remains that no adverse employment action occurred, and none of the “uncommon” treatment was of a nature unrelated or unnecessary to business and personal management. Therefore, having considered such evidence, this Court finds that such evidence fails to create a triable issue of material fact that an adverse employment action occurred, or that harassment occurred.

Second, Plaintiff argues that documents produced in discovery can be authenticated by attorney declaration and workplace documents received by Defendant can be authenticated by the fact of recript. While both of these argument are technically correct, the authentication actually provided by Plaintiff was cursory and conclusory, simply stating that the documents were true and correct copies, and not addressing the origin of the documents or laying a foundation to establish that they are true and correct copies. On the other hand, there was no argument by Defendant that any of the documents submitted were forgeries or fabrications, and many of the documents were also admitted into evidence by Defendants, making any foundation argument moot. Having reviewed all of the evidence submitted by Plaintiff, the court finds such documents failed to establish a triable issue of material fact with regard to discrimination, harassment or retaliation, and therefore the technical compliance with evidentiary rules is irrelevant to the outcome of the Motion for Summary Judgment or Summary Adjudication. Since the foundation provided by Plaintiff was inadequate, the lack of foundation objections must be SUSTAINED; however, the Court finds that even if the evidentiary objections were overruled, the evidence does not create a triable issue of material fact.

Third, Plaintiff disputes Defendant’s objections asserting that Plaintiff is not competent to testify about his own physical limitations. (See, *Nadaf-Rahrov v. Neiman Marcus, Inc.* (2008) 166 Cal.App. 4th 952, 964.) There is no claim that one or more of Plaintiff’s alleged limitations were fabricated, i.e. that he claimed not to be able to walk long distances when he in fact could walk long distances without adverse consequence. While some amount of medical opinion may be required to establish the fact of disability, the interactive process does not necessarily require a formal medical opinion supporting every request for accommodation. Accordingly, the objections relating to Plaintiff’s testimony concerning his own physical limitations, specifically objections 64, 66, 74, 79, 84 and 89 are OVERRULED.

Fourth, Plaintiff disputes Defendants’ objections asserting that the Teacher’s Union President cannot testify to the Requirements of the Collective Bargaining Agreement. These objections, specifically Objections 89-97 are SUSTAINED. The instant lawsuit is based solely on the law of disability discrimination, not on general labor law. If the union contends that there has been a violation of the collective bargaining agreement, the appropriate process is a grievance, followed by various levels of conferencing, followed by arbitration. Speculation as to whether a specific act might ultimately be determined to breach the collective bargaining agreement is inadmissible. Absent a pending grievance, Defendant’s evidence of a subjective belief that certain acts, such as classroom observation, are authorized or permitted by the collective bargaining agreement establish a prima facie case that such acts are not a pretext for unlawful discrimination or harassment.

Failure to Accommodate and Failure to Engage in Interactive Process

The Motion for Summary Adjudication that the Fourth Cause of Action for Failure to Accommodate lacks merit because Plaintiff cannot establish that any reasonable accommodation was denied which was necessary for him to perform the functions of his job and the Motion for Summary Adjudication that the Fifth Cause of Action for Failure to Engage in the Interactive Process lacks merit because Plaintiff cannot establish a prima

facie case of failure to engage in the interactive process because the District has consistently met with Plaintiff and provided him with the accommodations necessary to perform his job are GRANTED.

This Court finds that Defendant's Undisputed Facts 1-39 establish a prima facie case that Defendant is entitled to judgment as to the Fourth and Fifth Causes of Action as a matter of law, thus shifting the burden to Plaintiff to establish a triable issue of material fact as to either the Fourth Cause of Action for Failure to Accommodate or the Fifth Cause of Action for Failure to Engage in the Interactive Process.

As discussed above, there is no dispute that some accommodations were requested, some accommodations were provided, discussions and evaluations concerning Plaintiff's job performance and Plaintiff's need for further accommodation continue, and that no adverse employment action or unlawful harassment has occurred as of the date the Motions for Summary Judgment or, in the Alternative Summary Adjudication was filed. While Plaintiff blames some of his alleged performance issues as arising from a failure to adequately accommodate, the fact remains that Defendant has thus far accepted the performance tendered by Plaintiff without resort to any adverse employment action. Accordingly, the Motions for Summary Adjudication that the Fourth Cause of Action for Failure to Accommodate and the Fifth Cause of Action for Failure to Engage in the Interactive Process lack merit are GRANTED.

Failure to Prevent Harassment, Discrimination or Retaliation

The Motion for Summary Adjudication that the Sixth Cause of Action for Failure to Prevent Harassment, Discrimination, or Retaliation lacks merit because Plaintiff cannot establish the underlying claims of harassment, discrimination, and retaliation is GRANTED. As noted above, Plaintiff has failed to establish a triable issue of material fact as to whether any act of harassment, or any adverse employment action necessary for discrimination or retaliation, has occurred. Accordingly, the Motion for Summary Adjudication as to the Sixth Cause of Action is GRANTED.

Motion for Summary Judgment

As noted above, this Court has granted the Motion for Summary Adjudication that the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action are without merit. Accordingly, Plaintiff's Motion for Summary Judgment is GRANTED.

Readiness Conference and Stipulation to Continue Trial

In light of the above orders granting Defendant's Motion for Summary Judgment, the Stipulation to Continue Trial, the Readiness Conference, the Mandatory Settlement Conference Set for May 14, 2025 and the Jury Trial set to commence June 17, 2025 are vacated and dropped from calendar as moot.

SUPERIOR COURT OF CALIFORNIA
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Civil Law and Motion
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Case No.	Title / Description
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23CV-00137	Joseph Griffith v. Robert O'Bryant
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Motion for Forgiveness and Extension of Time

This matter commenced on January 23, 2023, when Plaintiff Joseph Griffith filed a Complaint alleging causes of action for (1) Breach of Fiduciary Duty, (2) Fraudulent Misrepresentation, (3) Negligent Misrepresentation, (4) Conversion, (5) Fraudulent Concealment, (6) Breach of Oral Agreement, (7) Unjust Enrichment, and (9) Violation of Penal Code § 496 based on allegations that Defendants moved into a modular home in which title allegedly vested in Plaintiff and Plaintiff's mother, that the mother died, that Defendants had purchased a insurance policy covering the modular home in which they resided, that the modular home was destroyed by fire, that Defendants could not collect the proceeds of the insurance policy because they did not hold title to the modular home, that Plaintiff "assisted" in acquiring title, and that Defendants have refused to pay any amount of the insurance proceeds to Plaintiff. While Plaintiff contends that title to property that is destroyed cannot be transferred, the law holds otherwise. If in fact, title was transferred, regardless of the state of repair of the property transferred, the outcome of the case will revolve around the conditions of transfer, if any.

The Summons and Complaint were served in March of 2023 and Defendants filed an answer on April 6, 2023. On January 10, 2024, a stipulation and order permitting Plaintiff

to file a First Amended Complaint was filed and an order pursuant to the stipulation was issued granting leave to amend, but no First Amended complaint was ever filed.

On January 28, 2024, Plaintiff filed a Motion for Summary Judgment, an opposition was filed on July 12, 2024, and the Court issued an order denying the motion without prejudice based on a number of procedural defects on July 30, 2024. On August 5, 2024, a Second Motion for Summary Judgment was filed, a Second Opposition was filed on October 4, 2024, and a second order denying the motion without prejudice, again due to procedural defects, was issued by the Court October 22, 2024.

Since then, Plaintiff has filed (1) a Motion to strike late response to Motion for Summary Judgment, (2) a Motion for Reconsideration, Sanctions and Judicial Reassignment, (3) a Motion for Expedited Ruling on Procedural Issues and to strike late opposition, (4) a Memorandum of Points and Authorities and Declaration purporting to support a third motion for summary judgment, though no notice of motion has in fact been filed, (5) An ex parte application for an order compelling Defendants to respond to discovery and for expedited discovery response time, (6) a motion for forgiveness that was denied yesterday, and (7) a Motion for Reconsideration of the Order Denying the Motion for Reconsideration. A small claims dispute is also trailing the above matters.

Plaintiff's Motion to strike late response to Motion for Summary Judgment is DENIED AS MOOT. First, the Motion for Summary Judgment was denied without prejudice for various procedural defects and until such time as Plaintiff files a motion for summary judgment that is procedurally correct and establishes, using admissible evidence, that Plaintiff is entitled to judgment as a matter of law, no opposition is even required. It is the duty of the Court to evaluate the motion on its own merits before determining that a prima face case has been established and an opposition is necessary. Second, even if an opposition is necessary and the necessary opposition is filed late, the Court's policy is to proceed to the merits of the motion unless the late response as caused prejudice and a continuance is appropriate. Here, there was no prejudice to the fact that the opposition may not have been timely. Accordingly, Plaintiff's Motion to strike late response to Motion for Summary Judgment is DENIED AS MOOT.

Plaintiff's Motion for Reconsideration, Sanctions and Judicial Reassignment is DENIED. The Court has already determined that the request for Judicial Reassignment is untimely and procedurally improper. The Motion for Reconsideration fails to comply with CCP § 1008 in that fails to provide new facts or new law and fails to provide an explanation as to why that evidence was not provided with the original motion, other than the fact that Plaintiff is pro per, and not particularly familiar with procedure. If this were sufficient then every pro per would be entitled to reconsideration of every motion that wasn't granted. The Defendants' right to due process requires that the evidence and arguments they have to respond to be included in the original motion, not in various supplemental papers filed after the initial motion is filed. Furthermore, since the Motion for Summary Judgment was denied without prejudice, Plaintiff can always bring a new motion once Plaintiff has gathered the necessary evidence and complied with the procedures set forth in the Code of Civil Procedure. Finally, the request for monetary sanctions is denied. If Plaintiff were paying an attorney, and a late opposition caused Plaintiff to incur unnecessary attorney's fees, then such a request might be reasonable. Here, Plaintiff is pro per, representing himself, and since he has not incurred any attorney's fees, he is not entitled to recover any such fees. Accordingly, the Motion for Reconsideration, Sanctions and Judicial Reassignment is DENIED.

Plaintiff's Motion for Expedited Ruling on Procedural Issues and to strike late opposition is DENIED. First of all, there is no legal authority for the premise that a party who has not yet attempted to enforce any discovery using the traditional means, can get an order waiving the procedures that the Code of Civil Procedure establishes for civil discovery. Second, the procedural issues are moot because the pending motion before the court have been denied, so there is no matter pending requiring a decision. Finally, the fact that a late opposition was filed, is irrelevant unless a procedurally satisfactory motion for summary judgment is filed establishing a prima facie case that Plaintiff is entitled to judgment as a matter of law, an opposition was actually required, and the required opposition was filed late, resulting in prejudice to the other side. Since that was not the case, the to strike the late opposition is DENIED AS MOOT.

Plaintiff has failed a Memorandum of Points and Authorities and Declarations that appear to support a third Motion for Summary Judgment, but Plaintiff has not filed any notice of motion. The Notice of Motion is necessary to apprise the Court and the opposing part of precisely what relief is being requested. Without a Notice of Motion meeting the requirements of the Code of Civil Procedure, a Motion for Summary Judgment cannot be granted.

The Motion for Reconsideration of the Order Denying the Motion for Reconsideration is DENIED. As noted above, Plaintiff failed to file a Code Compliant Motion for Summary Judgment and the Motion was DENIED WITHOUT PREJUDICE. The fact that Plaintiff subsequently filed additional information, does not change the fact that all of the information that the court is asked to consider in support of the motion be filed with the motion and served on the opposing party so the opposing party can file an opposition addressing all issues raised by the motion. Accordingly the Motion to Reconsider the Order Denying the Motion for Reconsideration is DENIED.

23CV-00538

City of Merced v. Viraaj Investments LLC, et al.

Motion by Plaintiff City of Merced for Summary Adjudication that Plaintiff is Entitled to Judgment as a Matter of Law on the First Cause of Action for Violation of Merced Municiple Code § 3.08.060 [failure to remit transient occupancy tax for January 1, 2019 through June 30, 2022] and the Fourth Cause of Action for Violation of Revenue and Taxation Code 72883.5(e) [purchase of hotel without tax clearance certificate] against Defendants Viraaj Investments LLC, Bhavesh Patel, Hitesh Patel, Parijat Investments, LLC, and Parijat Merced, LLC.

The Motion by Plaintiff City of Merced for Summary Adjudication that Plaintiff is Entitled to Judgment as a Matter of Law on the First Cause of Action for Violation of Merced Municiple Code § 3.08.060 [failure to remit transient occupancy tax for January 1, 2019 through June 30, 2022] and the Fourth Cause of Action for Violation of Revenue and Taxation Code 72883.5(e) [purchase of hotel without tax clearance certificate] against Defendants Viraaj Investments LLC, Bhavesh Patel, Hitesh Patel, Parijat Investments, LLC, and Parijat Merced, LLC are GRANTED. Plaintiff's Separate Statement of Undipsuted Fact contains Facts 1-6 with respect to the First Cause of Action and Fact 7-12 with respect to the Fourth Cause of Action that are supported by admissible evidence that establishes a prima facie case that Plaintiff is entitled to judgment as a matter of law as to the First and Fourth Causes of Action. This shifts the burden of proof to Defendants to provide admissible evidence establishing a triable issue of material fact.

The Court notes that Defendants ViraaJ Investments LLC, Bhavesh Patel, and Hitesh Patel did not file an opposition to Plaintiff's Motion for Summary Adjudication. Therefore the Motions for Summary Adjudication of the First and Fourth Causes of Action are GRANTED with respect to those Defendants and the Court awards Judgment in the amount of \$1,149,206.43 against Defendants ViraaJ Investments LLC, Bhavesh Patel, and Hitesh Patel is hereby entered.

Plaintiff's evidentiary objections Numbers 1-2 are SUSTAINED.

Defendants Parijat Investments, LLC, and Parijat Merced, LLC have failed to establish a triable issue of material fact as to whether they are liable pursuant to Revenue and Taxation Code § 7283.5 as successor owners of the subject property. This Court finds that Parijat Investments, LLC, and Parijat Merced, LLC meet the requirements of Revenue and Taxation Code § 7283.5, that no Tax Clearance Certificate was Requested, that Defendants did not withhold sufficient funds from the sale to pay the outstanding TOT, that there is no exception to Revenue and Taxation Code § 7283.5 for nonjudicial foreclosures, and that Defendants' Due Process Argument fails as a matter of law. Therefore the Motion for Summary Adjudication of the Fourth Causes of Action is GRANTED with respect to Parijat Investments, LLC, and Parijat Merced, LLC and the Court awards Judgment in the amount of \$1,149,206.43 against Parijat Investments, LLC, and Parijat Merced, LLC.

23CV-02006

Steven Wilber v. Delhi Unified School District, et al.

Demurrer by Defendants Delhi Unified School District and Kevin Ross to Plaintiff's Third Amended Complaint's Second, Fifth, and Sixth Causes of Action

The Demurrer by Defendants Delhi Unified School District and Kevin Ross to Plaintiff's Third Amended Complaint's Second Cause of Action for Dangerous Condition on Public Property is SUSTAINED WITH LEAVE TO AMEND. The allegations of the Second Cause of Action merely allege that Defendant School District had notice of unspecified bullying and intimidation somewhere on the school grounds at some unspecified time and notice that unsupervised trips to the restroom required the minor plaintiff to cross paths with unspecified bullies. If the Cause of Action is alleging that the school should have provided an escort for the Plaintiff minor at all times the Plaintiff minor was on school premises, Plaintiff must allege facts establishing that duty. If the Cause of Action is asserting that the School should monitor the restrooms or the entrances to the restroom at all times, Plaintiff must allege facts establishing that duty. If the Plaintiff is alleging that there was a known specific danger from a specific bully or group of bullies that the school had a duty to address to prevent some portion of the school grounds from constituting a dangerous condition, Plaintiff must allege facts establishing that duty.

The Demurrer by Defendants Delhi Unified School District and Kevin Ross to Plaintiff's Third Amended Complaint's Fifth Cause of Action for Intentional Infliction of Emotional Distress is SUSTAINED WITH LEAVE TO AMEND. The Fifth Cause of Action is based on a May 11, 2022 interaction between Plaintiff Steven Wilber and an individual not named specifically in the Fifth Cause of Action. The Factual Background alleged in the Second Amended Complaint in Paragraphs 13 through 48 indicate that May 11, 2022 was the date that the minor Plaintiff was bullied in a bathroom, but while the conduct of the alleged bullies may have qualified as outrageous, the Fifth Amended complaint infers it was the

treatment of Plaintiff Steven Wilber himself, and not the minor, that was outrageous. The Fifth Cause of Action must establish who engaged in outrageous conduct, who was subjected to the outrageous conduct, and if a verbal exchange is the conduct alleged to be outrageous, the reason that the conduct should be deemed outrageous.

The Demurrer by Defendants Delhi Unified School District and Kevin Ross to Plaintiff's Thjird Amended Complaint's Sixth Cause of Action Violation of Education Code § 220 is **SUSTAINED WITH LEAVE TO AMEND**. This Court finds that Plaintiff has failed to allege specific facts establishing deliberate indifference to known ongoing harassment. (See *Donovan v. Poway Unified Sch. Dist*, (2008) 167 Cal. App. 4th 567, 609-610.) The type of allegations necessary to establish that bullying created a dangerous condition on public property are analogous to those necessary to establish deliberate indifference to known ongoing harassment.

Any Amended Complaitn shall be filed by January 31, 2025.

23CV-02006 Penny Bauer v. FCA US LLC

Trial Setting Conference

Continued on the Court's Own Motion to Monday July 7, 2025 at 10:00 Courtroom 8.

24CV-00574 Petra Nieto Hernandez v. Classic Yam, Inc.

Plaintiff's Motion to Compel Defendant Classic Yam, Inc. to Provide Further Responses to Plaintiff's Special Interrogatories, Set 1, Nos. 1-10 and 12-13 and for monetary sanctions of \$2,460 pursuant to CCP § 2031.310.

Pursuant to the Joint Stipulation of the Parties this matter is stayed.

Plaintiff's Motion to Compel Defendant Classic Yam, Inc. to Provide Further Responses to Plaintiff's Demand for Production of Documents, Set 1. Nos. 1-6 and 12-63 and for monetary sanctions of \$2,460 pursuant to CCP § 2031.310.

Pursuant to the Joint Stipulation of the Parties this matter is stayed.

24CV-02510 PNC Bank v DHL Trans Inc., et al.

Order of Examination

Continued on the Court's Own Motion to Monday April 28, 2025 at 10:00 Courtroom 8.

24CV-05870

Diocelina Fernandez Farias v. Alejandro Torrez Ramirez

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 there is no proof of service on file showing that Respondent was served with the papers filed in this action.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion
Peter MacLaren, Judge Pro Tem
Courtroom 8
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Case No.	Title / Description
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24CV-02549-APP	Yasha Rahimzadeh v, Joseph Griffith
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Small Claims Appeal

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 for continuance of Small Claims appealed continued to this date to trial related matters set on this calendar.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Mark V. Bacciarini
Courtroom 8
627 W. 21st Street, Merced

Friday, December, 2024
1:15 p.m.

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

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

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

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Friday, December 20, 2024
1:15 p.m.

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

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

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

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

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

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

Friday, December 20, 2024
1:15 p.m.

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

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

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

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

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