

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Friday, June 7, 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 McCabe

Courtroom 9 – Judge Pro Tem Peter MacLaren

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

Friday, June 7, 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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18CV-04187	Ramon Romero Castillo v. Landmark Irrigation, Inc., et al.
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Motion to Dismiss for Failure to Bring Action to Trial within Five Years pursuant to CCP § 583.310

The Motion by Landmark Irrigation, Inc. dba Frasier Irrigation for Mandatory Dismissal for Failure to Bring Action to Trial within 5 Years After Commencement (CCP § 583.310) is DENIED.

While Code of Civil Procedure section 583.310 and Code of Civil Procedure section 583.360 provide for mandatory dismissal if an action is not brought to trial within five years after the action is commenced, the five-year statute is not firm or absolute, but qualified. Code of Civil Procedure section 583.340 provides three conditions which shall be excluded from the computation of time to which the mandatory dismissal is required if the matter is not brought to trial: (a) the Jurisdiction of the Court to try the action was stayed; (b) prosecution of the trial was stayed or enjoined; and (c) bringing the action to trial for any other reason was impossible, impracticable, or futile.

On April 6, 2020, in response to the COVID-19 pandemic, the Judicial Council issued Emergency Rule 10, with statewide application, to extend the time period by which to bring an action to trial by six (6) months for all civil actions filed on or before April 6, 2020, extending the five-year term to five years and six months.

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

Therefore, on the Court's own motion, the Court orders a stay be entered into the case management system in this matter, staying proceedings from March 3, 2020, through June 30, 2022, and ordering that these dates, inclusive, shall not be counted when calculating the age of this matter.

The Court notes that this matter was commenced upon the filing of the Complaint on October 16, 2018. Five years and six months from that date is April 18, 2024, for a total of 2099 days. As of today, June 7, 2024, it has been 2,059 days since date of commencement. A review of the record reflects that no other stays apply in this matter. Deducting the 850 days tolled from the 2059 days since the date of filing, this matter is currently aged at 1,209 days, and there remain 800 days in which to bring this matter to trial. Therefore, this Court finds that, absent any additional stays, this matter will have to be brought to trial by Monday, August 17, 2025, to avoid dismissal pursuant to Code of Civil Procedure section 583.310 and Code of Civil Procedure section 583.360. Accordingly, the Motion for Mandatory Dismissal for Failure to Bring Action to Trial within 5 Years After Commencement (CCP 583.310) is DENIED.

20CV-03132

Virginia Allen v. Richard Vargas, Junior

Review of Case Status

Continued on the Court's own motion to June 12, 2024, at 8:15 A.M. in Courtroom 8 to be heard concurrently with the pending Motion to Deem Matters in Requests for Admission Admitted.

21CV-04109

Juan Rebanales v. Verlin Sherrell, Junior, et al.

Motion for Terminating Sanctions Against Defendant Benita Beavers in her individual capacity

The unopposed Motion for Terminating Sanctions Against Defendant Benita Beavers in her individual capacity is DENIED without prejudice. Given that Defendant has failed to comply with a single discovery order, albeit, an order relating to multiple items of discovery and sanctions, terminating sanctions are premature. There was no request for additional monetary sanctions. The Court notes that the discovery orders included orders granting a motion that requests for admission be deemed admitted. A motion for judgment on the pleadings is a more appropriate remedy that terminating sanctions under the circumstances.

Motion for Terminating Sanctions Against Defendant Benita Beavers in her individual capacity as Executor/Administrator of the Estate of Herbie Sherell

The unopposed Motion for Terminating Sanctions Against Defendant Benita Beavers in her capacity as Executor/Administrator of the Estate of Herbie Sherel is DENIED without prejudice. Given that Defendant has failed to comply with a single discovery order, albeit, an order relating to multiple items of discovery and sanctions, terminating sanctions are premature. There was no request for additional monetary sanctions. The Court notes that the discovery orders included orders granting a motion that requests for admission be deemed admitted. A motion for judgment on the pleadings is a more appropriate remedy that terminating sanctions under the circumstances.

22CV-02715

Antonia Cardenas v. Hotel Misson de Oro

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. Appear to address the status of the proposed mediation.

24CV-01759

Petition of: Albert Vega Zavala

Order to Show Cause re: Name Chage

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. This request by an adult to eliminate his own middle name will be granted upon the filing of a proof of publication.

24CV-02126

Liliana Martinez v. Bella Mangano

Order to Show Cause re: Restraining Order

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. The

court notes that proof of service showing service of the papers filed in this action on Respondent was filed on May 28, 2024, showing service on May 23, 2024.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Judge Pro Tem Peter MacLaren
Courtroom 9
627 W. 21st Street, Merced

Friday, June 7, 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:

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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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Appearance required on all matters. 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

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

Friday, June 7, 2024
1:15 p.m.

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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
Judge Pro Tem Peter MacLaren
Courtroom 9
627 W. 21st Street, Merced

Friday, June 7, 2024
1:15 p.m.

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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, June 7, 2024
1:15 p.m.

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