

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Friday, August 16, 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

Friday, August 16, 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
19CV-00643	Yolanda Cortes, et al. v. BL Farms, et al. Readiness 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 confirm readiness for September 17, 2024, Jury Trial and to set briefing schedule for any Motions in Limine or Dispositive Trial Motions that the parties intend to bring.
20CV-01052	K Davis & Associates, LLC v. Merced Truck and Trailer, Inc. Order to Show Cause re: Sanctions No appearance necessary. A Dismissal of Entire Case was filed and Approved on August 13, 2024, at 2:30 p.m. The case is hereby closed and dropped from calendar.

21CV-01365

Arnoldo Padilla v. Ivan Saucedo

Trial Setting 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. On August 9, 2024, this Court vacated the existing trial date, and set this trial setting conference for purposes of setting a new trial date. Appear to set new trial date.

21CV-03035

David Chavez v. Teasdale Foods, Inc.

Case Management Conference

Continued on the Court's own motion to August 28, 2024, at 8:15 A.M. in Courtroom 8 to trial the Motion for Class Certification set for hearing in this matter on that date.

21CV-03416

Eric Gardner, et al. v. Hilmar Cheese Company, Inc., et al.

Order to Show Cause re: Dismissal-Notice of Settlement

No appearance necessary. The Declaration of Kevin Barnes and Abigail Schwartz note all checks have been dispersed and the void date for any uncashed checks was July 30, 2024. The remaining monies escheat to the state through the State Controller's Office. An Acknowledgement of Satisfaction of Judgment was filed August 1, 2024. The case is closed and hereby dropped from calendar.

21CV-03779

The Village of Los Banos, Unit 2 Owners Association v. K. Hovnanian Communities, Inc., et al.

Motion to Stay Proceedings

The Motion for Stay is DENIED. Defendants offer no authority for the proposition that a notice must be given by the claimant as opposed to someone acting on behalf of a claimant. Furthermore, to the extent Defendants seek a stay because of an alleged insufficiency in the pleadings, their remedy is a motion for judgment on the pleadings. The existing complaint is fully at issue. Finally, to the extent that the motion to stay is based on issues relating to discovery, the Court notes that a discovery master has been appointed in this matter and that all discovery related matters, including requests for stay of discovery, should be submitted to the discovery master.

Motion by K. Hovnanian Communities, Inc., K. Hovnanian Homes Northern California, Inc., K. Hovnanian's Four Seasons at Los Banos, LLC, K. Hovnanian California Operations, Inc. and L. Hovnanian Cooperative, Inc. for Summary Judgment, or in the alternative, Summary Adjudication that (1) Plaintiff's lack standing, and (2) Whether individual homeowners' claims are barred by the statute of repose provided under California Civil Code section 941 and California Code of Civil Procedure section 337.15.

All Requests for Judicial Notice are GRANTED.

In *River's Side at Washington Square Homeowner's Association v. The Superior Court of Yolo County* (2023) 88 Cal.App.5th 1209, 1218 ("*River's Side*"), the Third District of California held as follows:

As explained in more detail below, we conclude that Plaintiff has standing to bring claims for damages to the common areas pursuant to Civil Code sections 945 and 5980, and that it at least nominally alleged such damages. We further conclude that Plaintiff may have standing to bring claims for damages to the residential units that sound in contract or fraud if it can meet the requirements for bringing a representative action pursuant to Code of Civil Procedure section 382. Lastly, we hold Plaintiff should have been granted leave to amend to cure any standing defect. We thus grant the petition for writ of mandate and direct the trial court to reverse its order granting the demurrer.

(*River's Side at Washington Square Homeowner's Association v. The Superior Court of Yolo County* (2023) 88 Cal.App.5th 1209, 1218.)

Given that the *River's Side* holding that a Homeowners Association's lack of standing to bring individual unit claims under Civil Code section 5980 may be rendered moot if the Complaint is Amended to allege that the individual homeowners have assigned their individual home claims to the Homeowner's Association, and given the representation by Plaintiff herein that it has obtained appropriate assignments, this Court elects to treat the standing aspects of the Motion for Summary Judgment, or in the alternative, summary adjudication, as a Motion for Judgment on the Pleadings (See *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1118; *Prue v. Brady Co./Sand Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1375-1376) and Grant the Motion for Judgment on the Pleadings with leave to amend to cure any standing defect pursuant to *River's Edge*, including any standing defect to bring contract or fraud claims based on potential standing under Code of Civil Procedure § 382. Although the issue is not directly addressed in *River's Edge*, the decision implicitly finds that the Defendant Builder in a construction defect suit has standing to challenge HOA standing notwithstanding Section 6.11 of the Restatement (3rd) Property. As noted above, this Court is bound by a published decision of a Court of Appeal absent a contrary finding by another Court of Appeal.

Similarly, while Defendants have established a prima facie case that the ten year statute of limitations bars this action at least with respect to some properties, Plaintiff asserts that the ten year statute of limitations is tolled during the period that the Builder controls the Homeowner's association, although there is no allegation in the First Amended Complaint pleading around the statute of limitations. Since the tolling argument is technically outside the scope of the current pleadings, this Court elects to treat the statute of limitations argument in the Motion for Summary Judgment, or in the alternative Summary Adjudication, as a motion for Judgment on the Pleadings, and GRANTS the motion with leave to amend to plead around the statute of limitations. Any Amended Complaint shall be filed by September 30, 2024.

22CV-00502

Randeep Tumber v. Eduardo Tapiatapia

Order to Show Cause re: Dismissal-Notice of Settlement

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 settlement.

22CV-01322

Barbara Ruiz v. Perlei Luxury Salon and Boutique, et al.

Motion to be Relieved as Counsel

The unopposed Motion to be Relieved as Counsel is GRANTED effective upon the filing of proof of service of the order granting the motion upon Plaintiff Barbara Ruiz.

Status Conference

Continued on the Court's own motion to Monday, February 10, 2025, at 10:00 A.M. in Courtroom 8. Clerk of the Court to send notice to all parties including Plaintiff Barbara Ruiz at her address or record.

22CV-02891

Joseph Quercia, et al. v. City of Merced

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. Plaintiff's CMC Statement filed August 6, 2024, notes the parties have recently received the Veteran's Medical Records and the mediation can be set within 120 days. Appear to apprise the Court of the anticipated mediation date. A Trial Setting Conference to be set approximately three weeks following the mediation.

23CV-02171

Peryna Washington-Dillard v. Robyn Ford

Order to Show Cause re: Sanctions

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 Plaintiff's failure to appear at the June 10, 2024, Case Management Conference. Failure to appear will result in the case being set for a OSC re: Dismissal.

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 case. Case Management Conference thereafter will be continued to February 10, 2025, at 10:00 A.M.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Friday, August 16, 2024
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
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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, August 16, 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, August 16, 2024
1:15 p.m.

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