

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Thursday, May 9, 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 – Commissioner David Foster

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, May 9, 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
----------	---------------------

22CV-03431	Kendall And Davis LLC, et al. v. Le-Nguyen Dental Corporation, et al.
------------	---

Demurrer by Defendants Le-Nguyen Dental Corporation dba El Portal Dental Group and Kang C. Nguyen D.D.S to First Amended Complaint or in the alternative Motion to Strike First Amended Complaint

The Demurrer by Defendants Le-Nguyen Dental Corporation d/b/a El Portal Dental Group and Kang C. Nguyen D.D.S. to the First Amended Complaint Filed March 7, 2024 by the State of California *ex rel* Kendall and Davis, LLC and to the first and only cause of action therein is SUSTAINED WITH LEAVE TO AMEND. The Motion to strike is DENIED AS MOOT.

As previously determine by this Court on February 7, 2024 with respect to the Demurrer to the original Complaint, Defendants are correct that fraud must be alleged with specificity. Adequately pleading a IFPA case requires specifying the particulars of the false claims alleged submitted (*Carrell v. AIDS Healthcare Foundation, Inc*, (11th Cir. 2018) 898 F3d. 1267, 1275 [realtor must alleged the who what where when and how of fraudulent submissions]; See analogous California Law: *Committee on children's Television, Inc. v. General Foods Corporation* (1983) 35 Cal.3d 197, 216; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The instant Complaint and First Cause of Action therein does not allege with specificity each act of fraud, how it was performed, who it was performed by, when it was performed, and where it was performed.

In addition to failing to allege who performed the alleged fraud, the Complaint also fails to allege that such person committed the alleged acts of fraud with the requisite intent to defraud. Thus, even if the alleged fraud were alleged with the requisite specificity, the element of intent to defraud has not been alleged with respect to the person who allegedly committed the alleged fraudulent act. Accordingly the Demurrer to the Complaint and the First Cause of Action therein is SUSTAINED WITH LEAVE TO AMEND.

The Court notes that this will be the second time that Plaintiffs have been granted leave to amend to allege fraud with specificity and has thus far failed to do so. The original complaint alleges at Paragraph 13:

13. On or about March 21, 2021, Relator, through RD Merced, LLC, an affiliated entity, and Amy Critz, DDS, through her professional dental corporation, entered into an agreement with defendants EPDG and Dr. Nguyen to purchase the clinical and non-clinical assets of his dental practice in Merced, California although the final closing for the purchase never occurred. During due diligence and as part of the planned practice purchase, Relator discovered evidence indicating that Dr. Nguyen had been engaged in systemic healthcare fraud by submitting false and fraudulent claims to commercial dental insurance plans. As further detailed below, when Relator brought this improper billing of dental services to Dr. Nguyen's attention, he actively interfered with Dr. Critz and Relator's compliance efforts to correct his improper billing of the practice's services in his new capacity as a contracted employee of the purchased practice. In approximately September 2022, Dr. Nguyen also tried to unilaterally terminate the purchase and take back ownership and control of his dental practice. [Underline added]

The Allegations of Paragraph 13 appears to have been deleted when the First Amended complaint was filed. Defendants assert that the above underlined admission—that after March 21, 2021, Dr. Nguyen had a “new capacity as a contracted employee of the purchased practice” contradicts allegations that Dr. Nguyen engaged in post March 21, 2021 billing fraud (See e.g. Paragraph 22 of the Original and First Amended Complaint) and that deleting this contradictory allegation from the First Amended Complaint invokes the sham pleading doctrine. Defendants further argue that the inclusion of post March 21, 2021 billing fraud after Dr. Nguyen assumed his “new capacity as a contracted employee of the purchased practice” disqualifies the realtor under Cal. Ins. Code § 1817.7(g)(4) which provides that if an IFPA realtor “planned and initiated the violation,” the realtor “shall be dismissed from the civil action and shall not receive any share of the proceeds of the action.” There is no specific allegation as to whether any alleged fraudulent post March 21, 2021 billings were submitted by Dr. Nguyen or the realtor and it is not clear how any alleged interference by Dr. Nguyen to alleged corrections to improper billing practices constitutes fraud. In any case, Dr. Nguyen's involvement in any alleged post March 21, 2021 fraud was be plead with particularity.

Plaintiff shall file a Second Amended Complaint, if any, on or before June 14, 2024.

23CV-01168

Stanislaus Farm Supply Company v. Jose Morales, et al. .

Order of Examination

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 of the Order of Examination was filed on April 11, 2024 showing that the Debtor was personal served with the Order of Examination on April 8, 2024.

23CV-03415

Jesus Lopez v. Raul Garcia, et al.

Motion to Consolidate Case 23CV-03415 with 23CV-03557

The unopposed Motion to Consolidate Case 23CV-03415 with 23CV-03557 is GRANTED, Case 23CV-03415 will be the lead case.

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 both of the cases consolidated by the above order.

24CV-01081

Rafael Barrios v. Saul Cisneros

Order to Show Cause re: Restraining Order

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the settlement. The Court notes that there is no proof of service on file showing service on Respondent.

24CV-01592

Araceli Martinez De Pulidio v. Dora Rodriguez

Order to Show Cause re: Restraining Order

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. The Court notes that proof of service filed April 24, 2024 showing service of the papers filed in this action on the Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, May 9, 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:

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
----------	---------------------

22CV-01010	Sky Harris v. Marita Jimenez, et al.
------------	--------------------------------------

Mandatory Settlement Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Limited Civil Calendar
Commissioner David Foster
Courtroom 9
627 W. 21st Street, Merced

Thursday, May 9, 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:

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
----------	---------------------

20CV-00364	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
------------	--

Demurrer to Third Amended Unlawful Detainer Complaint

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to request Court permission and arrange for a remote appearance.

Defendant correctly asserts that plaintiff's opposition to the demurrer was filed and served late. All papers opposing a motion must be filed with the court and a copy served at least nine court days prior to the hearing and served by a method reasonably calculated to ensure delivery to the other party by the close of the next business day. (Code Civ. Proc., § 1005, subd. (b) and (c).) Absent an order shortening time, plaintiff's opposition papers were required to be filed and served no later than April 26, 2024. Defendant in her reply does not assert prejudice by this delay therefore the Court declines to continue the hearing to allow defendant additional time to respond to plaintiff's arguments.

Defendant generally demurs to the Third Amended Complaint on the ground that the complaint fails to state a cause of action for unlawful detainer because the notice alleged and attached to the complaint is defective and cannot support the cause of action. A demurrer challenges defects appearing on the face of the pleading or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; Code Civ. Proc., § 430.30.)

It is well-settled law that “[p]roper service of a valid three-day notice to pay rent or quit is an essential prerequisite to a judgment declaring a lessor’s right to possession under section 1161, subdivision 2.” (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 513.) Further, unlawful detainer statutes are to be strictly construed and statutory requirements in such proceedings must be followed strictly. (*Dr. Leevil, LLC v. Westlake Health Care Center* (2018) 6 Cal.5th 474, 480.) As applicable in this case, section 1161(2) states in relevant part the following notice requirements “after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days’ notice ... in writing ... stating the amount that is due, the name, *telephone number*, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment....”

It is indisputable that the three-day notice to pay rent or quit that is attached to the complaint in this case does not include the telephone number of the person to whom the rent payment was required to be made personally. None of the cases cited by defendant specifically hold that the failure to provide a telephone number in the notice is a fatal defect to an action for unlawful detainer, nor has the Court through its own legal research found a published appellate decision holding that this specific failure constitutes a fatal defect. This appears to be an issue of first impression. However, an analogous case is *Foster v. Williams* (2014) 229 Cal.App.4th Supp. 9. In *Foster v. Williams*, the Los Angeles Superior Court Appellate Division concluded that a three-day notice was invalid because it did not include an address to a physical location where the rent payment was to be delivered. The court reasoned “[a] judgment must be reversed when it is based on a three-day notice that lacks the information required by Code of Civil Procedure section 1161, subdivision (2).” (*Id.* at Supp. 14; see also *ESA Management, LLC v. Jacob* (2021) 63 Cal.App.5th Supp. 1, 3.)

Based on the reasoning of the appellate divisions in *Foster v. Williams* and *ESA Management, LLC v. Jacob*, *supra*, that a three-day notice that lacks the information required by section 1161, subdivision 2 is defective, the Court SUSTAINS the general demurrer without leave to amend. The three-day notice attached to the Third Amended Complaint is defective in that it does not include a telephone number of the person to whom rent was to be paid as required by Code of Civil Procedure section 1161, subdivision (2). The Court notes that the three-day notice requires the tenant to deliver payment of rent to a location more than 50 miles from the residence, without providing the telephone number of anyone at that location. Since a defect in the notice cannot be cured by amendment, the demurrer is sustained without leave to amend.

The case is dismissed.

23CV-01524 LVNV Funding, LLC v. Esther Canal

Court Trial

Continued from May 9, 2024.

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to request Court permission and arrange for a remote appearance.

24CV-00433 [Parties’ names withheld pursuant to CCP § 1161.2(a)(1)]

Status Review Hearing Following Entry of Stipulated Judgment

Remote appearance by the parties is authorized. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to arrange for a remote appearance.

Pursuant to the terms of the parties' stipulation on April 4, 2024, if no party appears for the status review hearing the case will be dismissed without prejudice with the Court retaining jurisdiction to enforce the terms of settlement.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, May 9, 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:

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
----------	---------------------

24CV-01456	Maria Gonzalez v. Keira Asenat
------------	--------------------------------

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 April 23, 2024 showing service of all papers filed in this action on the Respondent.

24CV-01227	Michelle Lee v. Susan Fournier
------------	--------------------------------

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 April 9, 2024 showing service of all papers filed in this action on the Respondent and that Respondent appeared and requested that the hearing be continued to this date.

23CV-04285

Celina Harris v. Karina Gutierrez Florez

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 is on file showing service of the papers filed in this action on the Respondent.

24CV-01455

Rene Senna v. Jimmie Renteria

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 is on file showing service of the papers filed in this action on the Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, May 9, 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
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Commissioner David Foster
Courtroom 9
627 W. 21st Street, Merced

Thursday, May 9, 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
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, May 9, 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
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--