

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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 – 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 McCabe
Courtroom 8
627 W. 21st Street, Merced

Thursday, April 25, 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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21CV-01925	Jose Pena v. N&S Tractor Co.
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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 status of new counsel and the status of settlement discussions.

21CV-03987	Edwin Chuc, et al. v. Michael Harris, et al.
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Order to Show Cause re: Dismissal-Notice of Settlement

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 Notice of Settlement filed March 21, 2024 indicated that a dismissal would be filed by March 20, 2024.

22CV-02223

Jane Doe 1, et al. v. Los Banos Unified School District

Motion to Stay

This matter is being heard in Courtroom 10 at 8:15 A.M. on Wednesday April 24, 2024. See separate Tentative Ruling for Courtroom 10 posted below.

Case Management Conference

This matter is being heard in Courtroom 10 at 8:15 A.M. on Wednesday April 24, 2024. See separate Tentative Ruling for Courtroom 10 posted below.

22CV-03537

Carlos Avila v. Ocwen Loan Servicing LLC, et al.

Demurrer By Defendant PHH Mortgage To Second Amended Complaint and to the First, Second, and Third Cause of Action therein for failure to state facts sufficient to state a cause of action

The Demurrer to the Second Amended Complaint's First Cause of Action for Violation of Civil Code § 2923.6 (Dual Tracking) is SUSTAINED. There is no dispute that a Notice of Default was recorded on January 19, 2022. The complaint alleges that a loan modification application was submitted on June 9, 2022, after the Notice of Default had already been recorded. (See Second Amended complaint at Paragraph 38.) Plaintiff argues that a June 23, 2022 letter requesting additional documents constitutes an admission that the June 9, 2022 application was complete because Plaintiff contends that the additional documents requested had already been provided. Contrary to Plaintiff's contention, the plain wording of the letter that additional documents were required and that language cannot reasonably be construed to be an admission that all necessary documents had been provided. A reasonable interpretation of the letter is that either the documents sent had not been received, or that some aspect of the documents was insufficient. Since there is no allegation that Plaintiff responded to the June 23, 2022 letter provided all documents requested in that letter, the subsequent Sale was not in violation of Civil Code § 2923.6. Accordingly the demurrer to the Second Amended Complaint's First Cause of Action for Violation of Civil Code § 2923.6 (Dual Tracking) is SUSTAINED WITH LEAVE TO AMEND to allege that a response to the June 23, 2022 letter provided all documents requested in the June 23, 2022 letter, regardless of whether or not Plaintiff contends or believed that such documents had previously been provided.

The Demurrer to the Second Amended Complaint's Second Cause of Action for Violation of Civil Code § 2923.7 (Single Point of Contact) is SUSTAINED. Any failure to appoint a single point of contact in 2017-2018 was known to Plaintiff in 2017-2018 because Plaintiff's communications with Defendant were not directed at any specific person as demonstrated by the attachments to the complaint. Since the original complaint was not filed until October 28, 2022, more than three years after 2018, any 2017-2018 violations of Civil Code § 2923.7 are time barred. Plaintiff has not successfully alleged delayed discovery or any legitimate grounds for equitable tolling.

To the extent Plaintiff alleges a violation of Civil Code § 2923.7 occurring in 2022, Plaintiff fails to allege facts establishing that any failure concerning the appointment of a single point of contact constituted a material violation within the meaning of Civil Code §

2924.12 i.e. failed to fulfill his or her responsibilities or that any failure was a material violation that affected Plaintiff's loan obligations, disrupted the loan modification process, or otherwise caused Plaintiff harm. (See *Billesbach v. Specialized Loan Servicing LLC* (2021) 63 Cal.App.5th 830, 845.) Accordingly, the Demurrer to the Second Amended Complaint's Second Cause of Action for Violation of Civil Code § 2923.7 (Single Point of Contact) is **SUSTAINED WITH LEAVE TO AMEND** to allege facts establishing a material harm resulting from any 2022 failure to appoint a single point of contact.

The Demurrer to the Second Amended Complaint's Third Cause of Action for Violation of the Unfair Competition Law is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff has failed to allege an unfair, unlawful, of fraudulent practice.

Any Amended Complaint will be filed by May 31, 2024.

23CV-01710 Sophe Soulanone v. Joanne Lewis

Default Prove Up

Continued pursuant to the Stipulation signed by the parties and ordered by the Court to May 22, 2024 at 8:15 A.M. Courtroom 8.

Motion to Set Aside Default

Continued pursuant to the Stipulation signed by the parties and ordered by the Court to May 22, 2024 at 8:15 A.M. Courtroom 8.

Motion to Seal Confidential Declaration of Beatrice Lewis

Continued pursuant to the Stipulation signed by the parties and ordered by the Court to May 22, 2024 at 8:15 A.M. Courtroom 8.

24CV-00344 Mandeep Grewal v. Mann Gurvinder.

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-00345 Mandeep Grewal v. Jaspreet Atwal

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-01081

Rafael Barrios v. 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 proof of service was filed April 17, 2024.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion
Hon. Donald J. Proietti
Courtroom 10
627 W. 21st Street, Merced

Thursday, April 25, 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-02223	Jane Doe 1, et al. v. Los Banos Unified School District
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Motion to Stay

The Motion for Stay is DENIED.

Case Management Conference

Continued on the Court's own Motion to Thursday August 29, 2024 at 8:15 A.M. in Courtroom 10.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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.

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Case No.	Title / Description
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There is no Mandatory Settlement Conferences Scheduled

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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:

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Case No.	Title / Description
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18CV-03962	Kelsten Group v. Angelica Perez Organista, et al.
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Court Trial

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.

24CV-01013	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Unlawful Detainer Court Trial

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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:

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Case No.	Title / Description
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24CV-01284	Cynthia Moreno v. Samuel Duran
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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 no proof of service has been filed showing service of the documents filed in this case on Respondent.

24CV-01217	Ali Ortega v. Nathan Morris
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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 no proof of service has been filed showing service of the documents filed in this case on Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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:

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

Thursday, April 25, 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:

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Case No.	Title / Description
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23CV-03654	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Ex Parte Application for Order Shortening Time on Motion to Set Aside Default and Default Judgment and Staying Execution of Judgment

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, April 25, 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:

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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.
