

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Thursday, August 15, 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 10 – Hon. Donald J. Proietti

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, August 15, 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
20CV-02448	American Academy Holdings, Inc. v. Global Aerospace Insurance

Review of Case Status

Appearance optional. 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 entity is a corporation. A corporation must be represented by an attorney; it cannot represent itself in court either as a self-represented litigant or through an officer or agent who is not an attorney. (*Merco Constr. Eng'rs v. Municipal Court* (1978) 21 Cal.3d 724, 731.) The Defendant's Motion to Dismiss for Failure to Prosecute is scheduled for September 4, 2024, at 8:15am. Plaintiff must have an attorney represent it to appear and advocate for the corporation at the hearing to dismiss. Status hearing continued on the Court's own motion and to trail the motion to dismiss set September 4, 2024.

20CV-02493

Animal Legal Defense Funds v. Foster Poultry Farms

Motion to Advance Hearing on Motion to Seal

Judge McCabe is recused. These Motions will be heard in Courtroom 10, at 8:15 A.M. on Thursday, August 15, 2024. See Separate Tentative Ruling Below.

Motion to Maintain Confidentiality Designations

Judge McCabe is recused. These Motions will be heard in Courtroom 10, at 8:15 A.M. on Thursday, August 15, 2024. See Separate Tentative Ruling Below.

22CV-00282

Marco Zaragoza v. The Roman Catholic Bishop of Fresno

Order to Show Cause re: Dismissal-Notice of Settlement

Appearance optional. 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. Court has received, read, and considered the declarations of Nathalie Hernandez and Charlotte Mikat-Stevens regarding the payout of checks, the unclaimed checks, and that the value of the unclaimed checks has been submitted, and escheats to the state through, to the State Controller's Office. Notice has been given to the class action membership of the settlement and judgment. The Court will close the case. No further proceeding will be calendared.

23CV-01404

Alyssa Sprague v. Officer David Flores, et al.

Defendant's Motion to Compel Further Discovery Responses to Request for Production of Documents and Special Interrogatories, monetary sanctions in the amount of \$1,750, and an Order compelling Plaintiff's Deposition

Defendant's Motion to Compel Further Discovery Responses to Request for Production of Documents and Special Interrogatories, monetary sanctions in the amount of \$1,750, and an Order compelling Plaintiff's Deposition is GRANTED IN PART.

The Court notes as an initial matter that meet and confer efforts are futile if Plaintiff will not communicate with her counsel or provide verifications to further discovery responses, or agree to appear at deposition and Plaintiff's counsel cannot meet and confer in good faith if counsel is unable to agree to anything that will require a verification or appearance of a client who is either not communicating or not cooperating with communications. The opposition is vague as to the extent of Plaintiff's lack of communication with Plaintiff's counsel.

The Declaration of Diana S. Diskin, Esq. indicates that Further Verified Responses without objection to Special Interrogatories 44, 64, 65, 66, and 79, thus rendering the Motion to compel moot with regard to those Special Interrogatories. Accordingly, the Motion to Compel Further Response to Special Interrogatories is DENIED AS MOOT. While the Defendant makes a persuasive argument that the motion was nonetheless necessary to obtain those further responses, the court will DENY sanctions WITHOUT PREJUDICE to the right of Defendant to reset the motion for this and any additional sanctions that accrue in the future due to a failure to resolve discovery issues informally.

The Declaration of Diana S. Diskin, Esq. does not contain any indication that a further verified response to Requests for Production of Documents was served and the separate statement appears to assert that after diligent search and reasonable inquiry Plaintiff has been unable to locate any responsive document and believes that any responsive documents that might have existed were lost and destroyed when Plaintiff lost her storage unit. While this statement would be a full and complete response if contained in a verified further response, no such verified response has been served. Plaintiff is not required to obtain documents in the possession of others for purposes of providing them to Plaintiff though a code compliant response would identify where responsive documents might exist. Accordingly, the Motion to Compel Further Responses to Requests for Production of Documents is GRANTED. Plaintiff is ordered to Serve Verified Code Compliant Further Responses to the subject Requests for Production of Documents by September 16, 2024.

The Motion to Compel Plaintiff's Deposition is GRANTED. Absent an agreement in writing to the contrary, Plaintiff is ordered to appear to deposition on or before September 16, 2024 pursuant to the terms of a code compliant notice of Deposition.

Defendant's request for terminating sanctions is DENIED WITHOUT PREJUDICE to renewal of the motion.

23CV-01513 Christina Valenti-Felix v. Mark Martinez Enriquez.

Demurrer by Defendant Merced Board of Supervisors to the First Amended Complaint

The unopposed demurrer to the Amended Complaint is SUSTAINED WITH LEAVE TO AMEND for failure to state facts sufficient to state a cause of action. A Second Amended Complaint shall be filed by August 30, 2024.

23CV-03521 In re: 12628 E. Washington St Le Grand CA 95333

Order to Show Cause

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 inform the court of the status of this Unresolved Claims & Surplus Proceeds of Trustee case.

24CV-01091 Dennis Brazil v. Newrez LLC, et al.

Demurrer by Defendant NewRez LLC dba Shellpoint Mortgage Servicing and Defendant U.S. National Bank N.A. for failure to state facts sufficient to state a cause of action and for misjoinder of parties.

The Demurrer by Defendant NewRez LLC dba Shellpoint Mortgage Servicing and Defendant U.S. National Bank N.A. for failure to state facts sufficient to state a cause of action and for misjoinder of parties is SUSTAINED, Both with regard to Misjoinder and Failure to State Facts Sufficient to State a Cause of Action WITH LEAVE TO AMEND to (1) either drop the request for cancellation of written instruments and for an injunction cancelling alleged void or voidable written instruments or the name the purchasers at any foreclosure sale and any successive owners of the subject property as Defendants or Real Parties in Interest; (2) State a First Cause of Action for Violation of Civil Code § 2923.55,

the appropriate statute for post-foreclosure actions; (3) State a Second Cause of Action that alleges the completion and submission of a completed loan modification agreement and any relevant changes of circumstances; State a Third Cause of Action stating facts establishing that there was a failure appoint a single point of contact; State a Fourth Cause of Action addressing facts establishing that any purported violation was material and that the loan modification process was exhausted; State a Fifth Cause of Action alleging facts establishing that a completed loan modification with all documents required by the loan servicer was submitted; State a Sixth Cause of Action for negligence establishing the facts required by *Sheen v. Wells Fargo , N.A.* (2022) 12 Cal.5th 905; State a Seventh Cause of Action for Wrongful Foreclosure; State an Eighth Causes of Action alleging unlawful conduct occurring before Plaintiff's loan default occurred (See *Jenkins v. JP Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 522-523); and State a Ninth Cause of Action for Cancellation establishing facts that permit cancellation under any legal theory and establishing that Real Parties in interest to not qualify as bona fide purchasers for value and that there has been a valid tender the full amount of the indebtedness.

24CV-03636

Marimar Wheldon v. Michael Avina, Junior

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 a proof of service was filed on July 29, 2024 showing service of the papers filed in this matter on respondent.

24CV-03658

Tommy Espinoza v. Susan Reyburn

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 Respondent has appeared in this action by filing a Response indicating that Respondent does not agree with issuance of the restraining order requested in this action.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, August 15, 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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20CV-02493	Animal Legal Defense Funds v. Foster Poultry Farms
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Additional Relevant Information Regarding Submitted Matter

On August 7, 2024, this Court heard argument on eight Motions to Compel Discovery, Three Relating to Discovery propounded to Real Party in Interest City of Livingston, and Five Relating to Discovery propounded to Defendant Foster Poultry Farms. The Court ordered further meet and confer and continued the Three Motions relating to discovery propounded to Real Party in Interest City of Livingston to August 21, 2024. The Five Motions Relating to Discovery propounded to Defendant Foster Poultry Farms were taken under submission without provision for further briefing.

On August 7, 2024, Defendant Foster Poultry Farms filed a document entitled "Defendant Foster Poultry Farm's Notice of Additional Relevant Information Following August 7, 2024 Hearing on Plaintiff Motions to Compel indicating that after further investigation, Foster Poultry Farms "never supplemented or amended it original response to Request 29 (which original request was verified), so there was no missing verification of an amended response." On August 8, 2024, Plaintiff filed Plaintiff's Opposition to Defendant's Notice of Additional Relevant Information Following August 7, 2024 Hearing on Plaintiff's Motions to Compel stating: "On July 12, 2024, Defendant served ALDF with Mark Byrne's Verification for Supplemental Responses to ADLF's FRA2 and RFPF5. [citation omitted] This document stated that Mry Byrnes `read the responses to [] Request for Admission No. 29 in Foster Poultry Farms' Supplemental Objections and Responses to Plaintiff's Request for Admissions Set Two." [Citation omitted] ALDF still

needs a verification to Defendant's response to request #29." On August 8, 2024, Defendant Foster Poultry Farms filed "Defendant Foster Poultry Farm's Reply to Plaintiff's Opposition to Notice of Additional Relevant Information stating: "The confusion appears to arise from the fact that the verification at issue states that the Foster Farms representative read the Response to Request for Admissions No. 29, in Foster Farm's Supplemental Objections and Responses to Plaintiff's Request for Admissions. The word Supplemental was inadvertently included in the document title in the verification but given (1) the specific reference to Request No. 29 in the verification and (2) the fact that only one response to Request No. 29 ever existed, the logical conclusion is that Mr. Byrne was verifying Foster Farms Request No. 29. Foster Farms had no intention to leave an response unverified..."

The Court will accept this information as establishing that an original response to Request 29 was verified and no supplemental response provided notwithstanding the communication that a supplemental response had been reviewed.

Motion to Advance Hearing on Motion to Seal

The Motion to Advance Hearing on Motion to Seal is GRANTED. Appear to address the date the motion will be heard and any briefing schedule that needs to be ordered. Absent objection, the Motion to Seal will be heard on August 21, 2024.

Motion to Maintain Confidentiality Designations

The Motion to Maintain Confidentiality Designations until summary judgment or trial is GRANTED. As previously held by this Court, the right of Foster Poultry Farms to reserve a degree of secrecy concerning its chicken processing depends in part on whether the process is ultimately determined to be a lawful non-waste use of water or whether it is determined to be an unlawful process because of water waste, and therefore a process that is not entitled to protection. Accordingly, the Court will defer resolving any dispute concerning Confidentiality Designations unless raised by a party in response to some practical problem resulting from the court's decision to defer its ruling on designations or until the issue of waste has been decided. The Court notes that in the event whatever result this Court reaches on the merits is appealed, the Confidentiality Designations are likely to remain in effect during the pendency of the appeal.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, August 15, 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
21CV-02510	Raymond Mendoza v. Allan Boyer, et al.
Mandatory Settlement 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. The Court notes that a proof of service was filed on July 29, 2024 showing service of the papers filed in this matter on respondent.	

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Limited Civil Calendar
Hon. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Thursday, August 15, 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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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-03518	Capital One Bank (USA), N.A. v. Lisa Sykes
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Motion for Order that Requests for Admission be Deemed Admitted Claim of Exemption

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.

24CV-03065	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Demurrer to UD Complaint

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, August 15, 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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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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24CV-03562	Maria Garcia v. Randolph Martinez
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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 was filed showing service of the papers filed in this action on Respondent.

24CV-03543	Angelina Mendoza v. Esmeralda Mendoza
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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 a proof of service was filed on July 25, 2024.

24CV-02318

Maria Tovar v. Naomi Samaniego

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 both parties have appeared in this action and have been served with copies of the papers filed in this action.

Cross-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 both parties have appeared in this action and have been served with copies of the papers filed in this action.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, August 15, 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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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

Thursday, August 15, 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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24CV-03553	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Ex Parte Application to Vacate Judgment

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, August 15, 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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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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