

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED**

2260 N Street, Merced  
627 W. 21<sup>st</sup> Street, Merced  
1159 G Street, Los Banos

Thursday, August 8, 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. 21<sup>st</sup> Street, Merced

Thursday, August 8, 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.

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Case No.	Title / Description
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18CV-02285	OP Development, Inc., et al. v. Scotty Pereira
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Motion to Extend Attachment on Property

**The unopposed Motion to Extend Writ of Attachment on Property is GRANTED and the current writ of attachment is extended one year to August 23, 2025.**

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19CV-02361	Curtis Laclaire v. Foster Poultry Farms, et al.
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Motion by Foster Poultry Farms and Dan Huber for Summary Judgment as to Plaintiff's Third Amended Complaint, or, in the alternative, Summary Adjudication on Plaintiff's Third Amended Complaint and Defendant's Cross-Complaint

**The Court will address the Various Motions for Summary Adjudication in the order they are argued by the parties.**

**Eighth Cause of Action for Defamation**

**The Motion for Summary Adjudication that the Eighth Cause of Action for Defamation is Without Merit is GRANTED.**

The elements of defamation are (1) the intentional publication of a statement of fact, (2) that is false, (3) defamatory, (4) unprivileged, and (5) has a natural tenancy to injure or cause special damage. (*Taus v. Loftus* (2007) 40 Cal.4<sup>th</sup> 684, 720.) There is no evidence

of damage to Plaintiff other than by the fact of the termination of his employment. The decision to terminate was made by Defendant Huber, and there is no evidence that Defendant Huber's decision was motivated by an untrue unprivileged statement of fact made any specific individual, but instead was the result of Defendant Huber's personal opinions concerning Plaintiff's past performance and Plaintiff's ability to function effectively with the new management team. While in responses to discovery and in discussion with members of the board or management team, Defendant Huber and a few other members of the management team discussed their opinions concerning Defendant Huber's dissatisfaction with Plaintiff's performance, those opinions are not actionable as defamation, would appear to be subject to either the common interest privilege or the litigation privilege (See e.g. *Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5<sup>th</sup> 908), 949) and there is no evidence that they were published to any third party in a manner that injured plaintiff or caused Plaintiff damages.

Accordingly, this Court finds that Undisputed Facts 1 to 11 establish a prima face case that Defendant is entitled to judgment as a matter of law on the Eight Cause of Action for Defamation thus shifting the burden of proof to Plaintiff to submit evidence establishing a triable issue of material fact that (1) there was an intentional publication of a statement of fact (not opinion), (2) that was false, (3) that was defamatory, (4) that was unprivileged, and (5) had a natural tenancy to injure or cause special damage by either causing Defendant Huber to decide to terminate Plaintiff or caused Plaintiff harm other than that suffered by the fact of his termination. (See *Taus v. Loftus* (2007) 40 Cal.4<sup>th</sup> 684, 720.) Plaintiff's evidence fails to establish a triable issue of material fact, therefore The Motion for Summary Adjudication that the Eighth Cause of Action for Defamation is Without Merit is GRANTED.

#### Fourth Cause of Action for Breach of Contract

The Motion for Summary Adjudication that the Fourth Cause of Action for Breach of Contract is GRANTED.

There is no dispute that Plaintiff signed at least two separate contracts establishing that his employment was at-will and while there is evidence that some employees were offered severance, and that Plaintiff was in fact offered a severance package that he elected to decline, there is no written contract containing a severance provision and or official company policy entitling all or specific classes of employees to severance packages that is applicable to Plaintiff.

Accordingly this Court finds that Undisputed Facts 12-35 establish a prima facie case that that Defendant is entitled to judgment as a matter of law on the Fourth Cause of Action for Breach of Contract, thus shifting the burden of proof to Plaintiff to provide admissible evidence establishing a triable issue of material fact concerning the existence of a contract and its breach. The Change of Control Agreement expressly states that no payments would be due other than those provided by written policy or agreement. Plaintiff has failed to provide admissible evidence establishing a triable issue of material fact, therefore The Motion for Summary Adjudication that the Fourth Cause of Action for Breach of Contract is GRANTED.

#### Fifth Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing

The Motion for Summary Adjudication that the Fifth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing is GRANTED.

There is no dispute that Plaintiff signed at least two separate contracts establishing that his employment was at-will and while there is evidence that some employees were offered severance, and that Plaintiff was in fact offered a severance package that he elected to decline, there is no written contract containing a severance provision and or

official company policy entitling all or specific classes of employees to severance packages that is applicable to Plaintiff. The implied covenant of good faith and fair dealing cannot contradict an at-will agreement.

Accordingly, this Court finds that Undisputed Facts 12-35 and 36-38 establish a prima facie case that that Defendant is entitled to judgment as a matter of law on the Fifth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing, thus shifting the burden of proof to Plaintiff to provide admissible evidence establishing a triable issue of material fact concerning the existence of a contract and the breach of the implied covenant of good faith and fair dealing contained therein. Plaintiff has failed to provide admissible evidence establishing a triable issue of material fact, therefore, The Motion for Summary Adjudication that the Fifth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing is GRANTED.

#### **Third Cause of Action for Violation of Labor Code § 970**

The Motion for Summary Adjudication that the Third Cause of Action for Violation of Labor Code § 970 is GRANTED.

To establish a Labor Code § 970 Claim, Plaintiff must establish that (1) Foster Farms made representations about the CHRO position, (2) The Representations were untrue, (3) Foster Farm knew the representations were false when made, (4) Foster Farms intended LeClaire to rely on those representations, (5) LeClaire reasonably relied on Foster Farms Representations and changed his residence, and (6) Plaintiff suffered legally cognizable damages. Plaintiff was hired by one CEO, who later left the company, was replaced by a new CEO with a different management agenda than the CEO that hired Plaintiff, and the replacement CEO fired Plaintiff. There is no evidence that specific representations were made by the CEO or management team that interviewed Plaintiff and intended Plaintiff to rely upon which were known to be false at the time they were made. The termination of Plaintiff's employment resulted from the change in management, rather than the sale of the company.

Accordingly, this Court finds that Undisputed Facts 39-69 establish a prima facie case that Defendant is entitled to judgment as a matter of law with respect to the Third Cause of Action for Violation of Labor Code § 970, thus shifting the burden of proof to Plaintiff to provide admissible evidence establishing a triable issue of material fact. Plaintiff has failed to provide admissible evidence establishing a triable issue of material fact that (1) Foster Farms made representations about the CHRO position, (2) The Representations were untrue, (3) Foster Farm knew the representations were false when made, (4) Foster Farms intended LeClaire to rely on those representations, (5) LeClaire reasonably relied on Foster Farms Representations and changed his residence, and (6) Plaintiff suffered legally cognizable damages, thus, The Motion for Summary Adjudication that the Third Cause of Action for Violation of Labor Code § 970 is GRANTED.

#### **Sixth and Seventh Causes of Action for Discrimination and Violation of Public Policy**

The Motion for Summary Adjudication that the Sixth and Seventh Causes of Action for Discrimination and Discrimination Portion of Violation of Public Policy is GRANTED.

Plaintiff must prove that there was a casual connection between Plaintiff's protected status and an adverse employment decision. (*Mixon v. Fair Employment and Housing Commission* (1987) 192 Cal.App.3d 1306, 1319.) This Court finds that Facts 70-87 establish a prima facie case that Defendant is entitled to judgment as a matter of law with respect to the Sixth Cause of Action for Discrimination and the Seventh Cause of Action for Violation of Public Policy. This shifts the burden to Plaintiff to provide admissible evidence establishing a triable issue of fact that there was a casual connection between Plaintiff's protected status and an adverse employment decision. (*Mixon v. Fair*

***Employment and Housing Commission* (1987) 192 Cal.App.3d 1306, 1319.) Plaintiff has not offered sufficient evidence to establish a triable issue of material fact that Plaintiff's protected status and an adverse employment decision, thus The Motion for Summary Adjudication that the Sixth and Seventh Causes of Action for Discrimination and Violation of Public Policy is GRANTED.**

**First, Second and Seventh Causes of Action for Retaliation Public Policy**

**The Motion for Summary Adjudication that the First, Second and Seventh Causes of Action for Violation of Labor Code § 1102.5, Violation of Labor Code 1197.5 and the retaliation portion of the Public Policy claim is GRANTED.**

**To establish a prima facie case of retaliation under Labor Code § 1102.5, Labor Code § 1197.5 or public policy, Plaintiff must show (1) he engaged in a protected activity, (2) his employer subjected him to an adverse employment action, (3) there was a causal connection between the two. (*McVeigh v. Recology S.F.* (2013) 213 Cal.App. 4<sup>th</sup> 443, 468.) Plaintiff's Evidentiary Objections Number 1-14 are SUSTAINED. Regardless of the precise findings of the pay equity analysis and regardless of whether it was similar or different from a prior analysis, Plaintiff cannot rely on privileged material to establish a violation of law or a reasonable suspicion that a law was violated. (*Gen. Dynamics Corp v. Superior Court* (1994) 7 Cal.4<sup>th</sup> 1164, 1170.) There is no dispute that the pay equity analysis was privileged and there is no evidence of a nexus between any protected activity by Defendant and his termination. This Court finds Undisputed Facts 88-125 establish a prima facie case that Defendant is entitled to judgment as to the First, Second, and Seventh Causes of action for Violation of Labor Code § 1102.5 Labor Code § 1197.5 and retaliation portion of Public Policy claim as a matter of law. This shifts the burden of proof to Plaintiff to submit admissible evidence establishing a triable issue of material fact. Plaintiff has failed to establish a triable issue of material fact as to whether any concerns Plaintiff expressed concerning the pay equity analysis had a causal connection to the termination of his employment. Accordingly, The Motion for Summary Adjudication that the First Second and Seventh Causes of Action for Violation of Labor Code § 1102.5, 1197.5 and the retaliation portion of the Public Policy claim is GRANTED.**

**Given the above orders GRANTING Summary Adjudication of each Cause of Action in the Third Amended Complaint, the Motion for Summary Judgment as to the Complaint is GRANTED.**

**Summary Adjudication of Cross-Complaint's Fourth Cause of Action**

**While the Motion for Summary Adjudication that the Cross-Complaint's Fourth Cause of Action for Breach of Promissory Note is procedurally improper, being combined with the motion attacking the complaint, it is in any case DENIED on the merits. Defendant has failed to establish a prima facie case that it is entitled to judgment as a matter of law, and even if a prima facie case was established, Plaintiff has offered admissible evidence establishing a triable issue of material fact. Accordingly, The Motion for Summary Adjudication that the Cross-Complaint's Fourth Cause of Action for Breach of Promissory Note is DENIED.**

Readiness Conference

**Given the Court's ruling above GRANTING the Motion for Summary Judgment, the Readiness Conference for the Jury Trial on the 3<sup>rd</sup> Amended Complaint is rendered MOOT. The Court requires Defendant and Cross-Complainant, Foster Poultry Farms to appear and indicate if the Cross-Complainant intends on proceeding to trial on its surviving pleading or will be dismissing the Cross-Complaint.**

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19CV-04935                      Ida C. Toscano v Joseph T. Costa

Case Management Conference

**Appearance optional. Defendants John F. Mello and/or beneficiaries of John F. Mello have not been served yet. Case Management Conference continued to February 3, 2025, at 10am in courtroom 8.**

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20CV-03306                      Gracela Munguia, et al. v. Nissan North America, Inc.

Order to Show Cause: Dismissal-Notice of Settlement

**Appearance optional. Based on the Declaration of Dhara Patel, the OSC re: Settlement is continued to October 8, 2024, at 8:15am in courtroom 8.**

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22CV-00449                      Francisco Flores v. Atwater Auto World

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 the failure to appear at the July 8, 2024 Case Management Conference.**

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.**

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22CV-01728                      Starr Jackson, et al. v. Dignity Health, et al.

Status 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.**

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22CV-02714                      Lisette Torres v. Obaid Partners, Inc. .

Status 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.**

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23CV-01521

Camron Avery v. Atwater PJ Corporation

Order to Show Cause: 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.**

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24CV-03558

Halliemarie Chavez v. Janeea Neal

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 all parties there is no proof of service on file showing service of the papers filed in this matter on respondent.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Thursday, August 8, 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
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	There are no Mandatory Settlement Conferences Scheduled
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Thursday, August 8, 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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23CV-00161	Wells Fargo Bank, N.A. v. Miguel Gutierrez
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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.**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Thursday, August 8, 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-03529	Cora Martinez v. Dilia Camacho
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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-03399	Celina Harris v. Karina Gutierrez Florez
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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-02699

Nancy Lucio Martinez v. Teresa Santacruz

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 19, 2024.**

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24CV-02701

Sayra Lucio Martinez v. Teresa Santacruz

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 17, 2024.**

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24CV-03505

Larry Azevedo v. Arturo Torres

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 24 2024.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Thursday, August 8, 2024  
1:15 p.m.

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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. 21<sup>st</sup> Street, Merced

Thursday, August 8, 2024  
1:15 p.m.

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Case No.	Title / Description
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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  
Hon. Jennifer O. Trimble  
Courtroom 12  
1159 G Street, Los Banos

Thursday, August 8, 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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There are no Ex Parte matters scheduled.	
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