

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

2260 N Street, Merced
627 W. 21st Street, Merced
2840 West Sandy Mush Road, Merced
1159 G Street, Los Banos

Thursday, September 19, 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

Thursday, September 19, 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
21CV-00190	Alexis Ruiz Gonzalez v. California Sun Grower Services Company, et al. 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. Appear to address the status of mediation and to set trial.
22CV-00111	Pamela Todd, et al. v. Ramiro Jimenez Trust, et al. 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. Appear to address the status of mediation and to set trial.

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 and the mediation that the parties had agreed to conduct as of the June 24, 2024 Case Management Conference.

Application Pro Hac Vice by Rex P. Fennessey, Esq.

The unopposed Application Pro Hac Vice by Rex P. Fennessey, Esq. is GRANTED.

Motion by Cross-Defendant Invo Peo to Dismiss for Forum Non-Conveniens or, Alternatively, for Stay of Cross-Complaint by Defendant and Cross-Complainant Elite Healthcare Resources, LLC

The First Amended Class Action Complaint names Elite Healthcare Resources, LLC and Tiffany Lisa Fabiani as Defendants, along with Does 1-20 inclusive, and asserts causes of action for (1) Failure to Pay Overtime, (2) Failure to Pay for All Hours Worked, (3) Failure to Pay Minimum Wage, (4) Failure to Authorize and/or Permit Meal Breaks, (5) Failure to Authorize and/or Permit Rest Breaks, (6) Failure to Reimburse Business-Related Expenditures, (7) Failure to Furnish Accurate Wage Statements, (8) Waiting Time Penalties, (9) Unfair Business Practices, and (10) PAGA Violations. The First Amended Complaint alleges that Defendant Elite Healthcare Resources LLC is a staffing agency in the healthcare industry and that Defendant Fabiani owner, managing agent, President, Officer and/or Chief Executive Officer of Elite. Cross-Defendant Invo Peo has not as yet been named as a Defendant in the Class Action Complaint. The Answer filed by Defendant Elite Healthcare Resources, LLC does not assert that actions or negligence of Invo Peo or any other third party as an affirmative defense.

The Cross-Complaint filed by Defendant and Cross-Complainant Elite Healthcare Resources LLC against Invo Peo alleges that: "Invo by contract agreed to provide payroll services, workers compensation, health insurance and other human resources services that, per the representative of Invo insure that Elite would comply with all applicable labor laws, wage and hour laws, payroll and tax reporting and other services inherent to a human resources department" and "In the year 2023, it became apparent that Invo made gross mistakes in overtime and halftime payments and the reporting thereof, which is now the subject of the underlying lawsuit, and further, how the payroll reporting was reflected on the employees' payroll stubs." (Cross-Complaint Paragraph 3 & 5.) The Cross-Complaint contains a First Cause of Action for Breach of Contract, a Second Cause of Action for Complete Indemnity, a Third Cause of Action for Partial Indemnity, and a Fourth Cause of Action for Declaratory Relief. The Cross-Complaint alleges "As a result of said acts, a lawsuit against this Cross-Complainant has been initiated by Plaintiffs alleging injury and damage" and "That if Plaintiffs in fact sustained injury and damages as alleged, which allegations are generally and specifically denied by Cross-Complainant, then said injuries and damages were directly and proximately caused by these Cross-Defendants, and each of their negligence, carelessness and recklessness and were not a result of any act or omission to act on part of this Cross-Complainant" and "Cross-Complainant is entitled to be indemnified and held harmless from any and all liability and from any and all court costs incurred in defending said action, for expert witness fees, for attorney's fees, for expenses of litigation, for any sums paid by way of settlement and/or judgment, and for all other costs incidental to the defense,

investigation and handling of the claims of the Plaintiffs.” (Cross Complaint Paragraph 18 & 19 & 21.)

The Contract between Cross-Complainant Elite Healthcare Resources LLC and Cross-Defendant Invo Peo attached as Exhibit A to the Contract provides: “PEO will co-employ certain employees to the extent required by applicable state law, to perform all job functions identified by workers’ compensation code classifications...No employees shall become employed by PEO, issued a paycheck, covered by PEO’s workers’ compensation insurance, or receive any other benefit of employment until PEO notifies Client that the employee has been hired by PEO as an assigned employee.” (Exhibit A to Cross-Complaint Paragraph III Subparagraphs A. and B.) Cross-Complainant Elite Healthcare Resources LLC asserts that this provision makes and Cross-Defendant Invo Peo a necessary and indispensable party to the Class Action brought by Cheryl Scott and Aziza Lehman against Elite Healthcare Resources LLC. Absent evidence that Defendant/Cross-Complainant Elite Healthcare Resources LLC breached the above agreement by hiring and issuing paychecks to employees that without PEO having notified Defendant/Cross-Complainant Elite Healthcare Resources LLC that such employees were hired by PEO, then the action is not being brought against employers that employed Plaintiff, only against one of the employers that co-employed Plaintiffs. Furthermore, if the argument raised by Defendant/Cross-Complainant Elite Healthcare Resources LLC is accurate, all actual payroll records and all individuals with personal knowledge regarding those records are employees of Invo Peo such that failure to join Invo Peo to the Class Action Lawsuit would require all discovery to be performed using third party discovery tools against an out of state third party. As co-employers, Elite Healthcare Resources LLC and Invo Peo would be jointly and severally liable for any Class Action Judgment and any PAGA Penalties.

In its reply, Invo Peo argues that it does not meet the requirements of an indispensable party set forth in Code of Civil Procedure § 389. The instant motion is brought on grounds of Forum Non-Conveniens, not absence of in personam jurisdiction, so the first requirement of Code of Civil Procedure § 389—subject to service of process whose joinder will not deprive the court of jurisdiction—is satisfied. The second requirement—in his absence complete relief cannot be accorded among those already parties—is satisfied because all evidence concerning the alleged violations and all witnesses to the work performed alleged to be in the possession of Invo Peo, not Elite Healthcare Resources LLC, and depending upon the amount of any judgment ultimately issued by this Court, Elite Healthcare Resources LLC may not be financially capable of fully compensating the employees and the state for the fully amount of wages and penalties found to be due. The third requirement—he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of his claimed interest—is satisfied as Invo Peo will not doubt assert, as is the case with Elite Healthcare Resources LLC, that there were no violations of the law and no unpaid wages and no penalties due. If Invo Peo is not joined and does not partipate directly in the defense of the class action, its ability to assure that all available defenses were appropriately litigated will be compromised and it will be facing a claim for indemnity not only for the damages and penalties assessed, but the const incurred by Elite Healthcare Resources LLC in its attempt to defend on behalf of itself and Invo Peo. Accordingly, this Court finds that Invo Peo is an indispensable party.

The primary basis raised to in the Motin Dismiss Cross-Complaint for Forum Non-Conveniens is the forum selection clause contained in the contract between Elite Healthcare Resources LLC and Invo Peo. Plaintiffs in this action are not parties to and

are not bound to that forum selection clause when litigations the claims raised in their Complaint. Accordingly, the forum selection clause is irrelevant to the finding that Invo Peo is an indispensable party to the Class Action Lawsuit brought by Chery Scott and Aziza Lehman. While the forum selection clause is applicable to the cross-complaint brought by Elite Healthcare Resources LLC against Invo Peo claims for breach of contract and the cross-complaint claims for full indemnity or partial indemnity, those issues will be, to a large extent, rendered moot by the ultimate judgment or settlement entered with regard to the Class Action Complaint and any action ultimately brought in Tennessee will be bound by the doctrines of res judicata and collaterally estoppel. To the extent Cross-Defendant Invo Peo wishes to preserve its contractual right to have the judgment on the cross-complaint entered by a Tennessee court, motion for stay is **GRANTED**. The motion to dismiss is **DENIED**.

24CV-03906 Petition of: FNU Shehlata

Order to Show Cause re: Name Change

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. This petition by an adult to change her own first and last name will be granted upon the filing of a proof of publication.

24CV-04112 Ronnie Jackson v. Joshua Sanchez

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 no proof of service has been filed showing service of the papers filed in this action on Respondent.

24CV-04115 Sarah Demello v. David Snoke

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 proof of service was filed September 3, 2024, showing service of the papers filed in this action on respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, September 19, 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. 21st Street, Merced

Thursday, September 19, 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
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There are no Limited Civil Matters Scheduled	
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, September 19, 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
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24CV-04114	Pamela Smith v. Unique Sanders
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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 Subsequent Petition and related papers filed in this action on respondent.

24CV-040132	Wendy SanchezLopez v. Jazmin Villagrana
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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 proof of service was filed on September 6, 2024 showing service of the papers filed in this action on respondent on September 5, 2024.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Thursday, September 19, 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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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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22CV-00121	Pandit Sahota, et al. Manpreet Rai
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Ex Parte Application to Continue Trial or Shorten Time for Motion to Continue Trial

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.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Mason Brawley
Courtroom 9
627 W. 21st Street, Merced

Thursday, September 19, 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
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24CV-03426	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Ex Parte Application to Vacate Default 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.

24CV-03426	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Ex Parte Application to Vacate Default Judgment and Stay Execution

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, September 19, 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.
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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.	
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