

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Tuesday, September 17, 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 calendars:

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

Unlimited Civil Law and Motion
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 17, 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
16CV-03050	Jaime Vega, et al. v. Michael Turner, et al. Motion by Defendants City of Merced, Norm Andrade, Officer John Pinnegar, Det. Chris Russell, Officer Christian Lupian, Officer Moses Nelson, Capitan Thomas Trinidad, and Capt. Bimley West for Summary Judgment or, in the alternative, Summary Adjudication on the grounds that (1) Plaintiffs' lack standing to pursue this action, (2) Plaintiffs' Negligence claims fail because Defendant owned no duty of care to Decedent, (3) Defendants cannot be liable for failure to create a policy or the acts or omissions of others, (4) The Breach of Contract Claim is barred by the Government Claims Act, (5) Plaintiff's contract claims fail because Plaintiffs' claims are based on tort, not contract, (6) Plaintiffs' contract claims fail because no contract existed between Defendants and Decedent, (7) Plaintiffs' Fourteenth Amendment Claims against the individual Defendants fail because the individual Defendants lacked a special relationship with Decedent. (8) The individual Defendants are entitled to qualified immunity, (9) Plaintiffs' Monell claims fails because Plaintiffs cannot identify a city employee who caused a constitutional deprivation by failing to review documents filed by the District Attorney, and (10) Plaintiffs' Monell claims fail because no City employee violated Decedent's rights by failing to disclose to Jail Staff that Decedent was a confidential witness and there is no evidence of deliberate indifference.

(1) Plaintiffs' lack standing to pursue this action

Defendants have established a prima facie case that they are entitled to judgment as a matter of law because Plaintiffs lack standing because at the time of his death, Decedent had a son who succeeded to Decedent's entire estate. As siblings of Decedent, Plaintiffs are not intestate heirs and there is no evidence of a will making them testate heirs. The burden therefore shifts to Plaintiffs to establish a triable issue of material fact. There is no triable issue of material fact as to Fact 3, and Execution of a disclaimer of interest in estate by a guardian ad litem for the son of decedent would not cure this defect because the estate does not encompass heir's cause of action for wrongful death. (*Mayo v. White* (1986) 178 Cal.App.3d 1083, 1090-1091.) While Plaintiffs purport to dispute Fact 3, this Court finds that Fact 3, is undisputed. Accordingly, Defendants' Motion for Summary Adjudication on the grounds that Plaintiffs lack standing is GRANTED.

(2) Plaintiffs' Negligence claims fail because Defendant owed no duty of care to Decedent

Defendants have established a prima facie case that they are entitled to judgment as a matter of law with respect to the Negligence Cause of Action because it is undisputed that Moses Nelson, Christian Lupan, Thomas Trinidad, Chris Russell, Bimley West and Norm Andrade did not arrest or transport Decedent to the Merced County jail where Defendant was attacked and killed by other inmates while in custody at the Merced County Jail. (Undisputed Facts 10-18.) Plaintiffs' evidentiary objections are OVERRULED. While Defendant John Pinnegar arrested Defendant, his declaration establishes a prima facie case that he was not aware that Decedent was a confidential witness. Even if there were triable issues of material fact (which there are not) that the individual defendants were aware that Decedent was a confidential informant, County incarceration is generally of limited duration and there are sound policy reasons that their City police officers might decide not to disclose that a county prisoner was acting as a confidential informant. Holding a failure to disclose confidential status as negligence would require officers to disclose all the identities of all confidential informants to avoid liability if harm were to occur while incarcerated by another agency. Plaintiffs essentially argue that it is per se negligent not to always disclose confidential informant status when an informant is incarcerated. There is no authority for this position. To the contrary, an officer's weighing of factors and deciding not to disclose would be subject to discretionary immunity under Government Code § 820.8. Since Defendants have established a prima facie case that they are entitled to judgment on the negligence claims as a matter of law, the burden shifts to Plaintiff to offer admissible evidence establishing that in this particular instance it was negligent for one or more of the individual Defendants not to disclose Decedent's confidential informant status, given the information in their possession at the time the opportunity for disclosure occurred. While Plaintiffs purport to dispute Facts 4-10, this Court finds that the evidence cited by Plaintiffs fails to establish a triable issue of material fact with respect to Facts 4-10 and that those facts are undisputed. Accordingly, Defendants' Motion for Summary Adjudication of the negligence claim on the grounds that Defendants owed no duty of care to Decedent is GRANTED.

(3) Defendants cannot be liable for failure to create a policy or the acts or omissions of others, or matters outside the scope of the Government Claim

Defendants have established a prima facie case that Defendants Pinnegar (Fact 20), Defendant Nelson (Fact 22), Defendant Lupin (Fact 24), Defendant Trinidad (Fact 26), Defendant Russell (Fact 28), Defendant West (Fact 29) establishes that those Defendants had the ability to provide suggestions and recommendations to policies and procedures, final policy making authority was vested only in the Chief (Fact 30), and each of the above, Defendants lacked that authority (Facts 20, 22, 24, 26, 28, and 29.) Plaintiffs concede Facts 20-30 to be undisputed. Plaintiffs relevance objections are OVERRULED. Defendants established a prima facie case that because Defendant Andrade believed a policy requiring disclosure of whether an arrestee was a confidential witness to correctional officers would only serve to increase the risk to the witness by permitting more people to know that the decision was subject to discretionary immunity under Government Code § 820.8. Furthermore, Facts 37 and 38 establish a prima facie case that any alleged negligence for failure to implement a system that informed more people that an individual being arrested was a confidential informant is outside the scope of the Government Claim filed by Plaintiffs. This shifts the burden to Plaintiffs to provide admissible evidence establishing a triable issue of material fact as to whether Defendants are liable for failure to create a policy or for the acts or admissions of others and whether that claim was within the scope of the Government Claim filed by Plaintiffs. While Plaintiffs assert that Facts 33-36 and 37-38 are disputed, Plaintiffs evidence does not establish a triable issue of fact as to whether a policy requiring disclosure of confidential informant status existed, or whether these Defendants can be held liable for the failure of others to disclose confidential informant status, or whether such a claim was within the scope of the Government Claim filed by Plaintiffs. This Court finds Fact 33-36 and 37-38 to be undisputed, Accordingly, defendants' Motion for Summary Adjudication of the Negligence Claim on the grounds that Defendants cannot be liable for the failure to enact a policy of the acts or omission of others, and such claims are outside the scope of the Government Claim filed by Plaintiffs is GRANTED.

(4) The Breach of Contract Claim is barred by the Government Claims Act, Defendants establish a prima facie case that Plaintiff's Government Claim did not identify a breach of contract theory (Fact 39) and therefore the Breach of Contract Theory is outside scope of the Government Claim (Fact 40). This shifts the burden to Plaintiffs to provide admissible evidence establishing that the breach of contract claim is within the scope of the Government Claims Act Claim. Plaintiffs argue, without citation to admissible evidence, that Fact 39 is disputed because Defendants hid the evidence and intentionally refused to disclose the existence of a Confidential Witness Form until January 2020. That argument, if assumed to be supported by admissible evidence, would not controvert the fact that the breach of contract claim was outside the scope of the Government Claims Act Claim filed by Plaintiffs. While deliberate failure to disclose the existence of a Confidential Witness Form until January 2020 might, under the delayed discovery rule, toll the statute of limitations for filing a Government Claim and for filing a civil action, Plaintiffs offer no evidence that any Government Claim was ever filed that included a Breach of Contract claim. Clearly Plaintiffs were aware of their Contract claim when the Second Amended Complaint was filed. Accordingly Plaintiffs have failed to establish a triable issue of material fact as to whether the Breach of Contract Claims is barred by the Government Claims Act and therefore the Motion for Summary Adjudication as to the Breach of Contract Claim is GRANTED.

(5) Plaintiff's contract claims fail because Plaintiffs' claims are based on tort, not contract.

While it is true that Plaintiff's claims are based on tort, not contract, and as previously determined above, the Government Claims Act was not satisfied with regard to contract claims, Defendants' Undisputed Facts 41 [no economic benefit is contemplated] and 42 [Plaintiffs allege that Defendants breached a duty resulting in Decedent's death fails to establish a prima facie case that Plaintiffs' claims fail because they are based on tort not contract. Accordingly, Defendants' motion for summary adjudication of the contract claims on the grounds that Plaintiffs' claims are based on contract not tort, is DENIED.

(6) Plaintiffs' contract claims fail because no contract existed between Defendants and Decedent

Defendants' Undisputed Facts 43-45 establish a prima facie case that no enforceable contract existed between Decedent and Defendants. This shifts the burden to Plaintiffs to offer admissible evidence creating a triable issue of material fact as to whether a contract existed. Plaintiffs object to Fact 44 on the grounds of Best Evidence Rule. That objection is OVERRULED because the Confidential Witness Form is the only document alleged to constitute a contract and it has been admitted to evidence and relied upon by the parties, Plaintiffs purport to dispute Facts 43 by asserting that the Confidential Witness Form authorizes MPD to disclose his identify to law enforcement. While this may true, such fact does not controvert Fact 43, accordingly Fact 43 is undisputed. Plaintiffs purport to controvert Fact 44 by balding asserting that the Confidential Witness Form contains an offer that MPD will keep Decedent's identify confidential except law enforcement agencies or person who have a right to know. While the Form evidences an approval of the request to keep his name confidential, there is no language in the Confidential Witness Form indicating the intent by either party that they are entering into a binding contractual relationship, and certainly no language requiring the City to disclose the confidential status of an informant whenever the informant is incarcerated. Accordingly, this Court finds that Fact 44 is undisputed. Finally, Plaintiff purport to controvert Fact 45 [None of the individual defendants signed the form] with evidence that an authorized employee of MPD signed the form. This does not controvert Fact 45. Accordingly, there was no contractual relationship between Decedent and any of the individual defendants because they did sign the form and there was no contract with City of Merced because the approval of the Confidential Witness Form did not contain language indicating that the parties were entering into a binding contractual relationship of any kind, let alone a contract requiring disclosure of confidential informant status whenever the informant was incarcerated, no matter what the circumstances. This Court finds Fact 45 to be undisputed. Accordingly, the Defendants Motion for Summary Adjudication that Plaintiffs' contract claims fail because no contract existed between Decedent and Defendants is GRANTED.

(7) Plaintiffs' Fourteenth Amendment Claims against the individual Defendants fail because the individual Defendants lacked a special relationship with Decedent.

Plaintiffs' evidentiary objections are OVERRULED. Consequently, Facts 46-51 are undisputed and establish a prima facie case that Defendant Nelson, Defendant Andrade, Defendant West, Defendant Trinidad, Defendant Russell, and Defendant Lupian did not arrest or transport decedent and therefore had no special relationship to Plaintiff, an essential element of a Fourteenth Amendment Claim against those Defendants. (See *Patel v. Kent Sch. Dist.* (9th Cir. 2011) 648 F.3d 965-972 [when harm caused by third party, Plaintiff must prove a special relationship existed between decedent and the individual defendant to give rise to a Fourteenth Amendment claim].) While it is undisputed that

Defendant Pinnegar arrested and transported Decedent to the Merced County Jail (Facts 52-53), Plaintiffs purport to dispute Fact 54, that Pinnegar did not know that Decedent was a confidential witness in the Taxi Murder case at the time he arrested him on September 18, 2015 and purport to dispute Fact 55 that Decedent was injured in the Merced County Jail, not when he was in Defendant Pinnegar's custody. Plaintiffs evidentiary objections to Fact 54 are OVERRULED.

Plaintiffs argue that a special relationship between Decedent and Defendant Pinnegar existed because (1) Pinnegar knew that Decedent was a long time informant against the Norteños, (2) Pinnegar was told that Decedent was the CW in the Taxi Cab Murder case against Norteño Castrillo, (3) Decedent was acting as a CI for Pinnegar, all of which put Decedent in danger from the Norteño street gang. Plaintiffs contend that as a member of the GVSU Team, Defendant Pinnegar would have known that decedent was a CW in the Taxicab Murder Case, that he discussed making decedent his own CI with other team members, and decedent was working as a CI with Defendant Pinnegar on September 18, 2015. These facts do not directly controvert Fact 54, that Defendant Pinnegar did not know Decedent was a confidential informant at the time of the arrest. Even if they were deemed to create a triable issue of material fact with regard to the knowledge possessed by Defendant Pinnegar at the time Decedent was turned over to County custody, there is no dispute that Decedent was not injured at the time he was turned over to county custody, and no dispute that the injury causing Decedent's death occurred after Defendant Pinnegar turned Decedent over to county custody, at which time the special relationship terminated. (*Castro v. County of Los Angeles* (9th Cir, 2016) 833 F.3d 1060, 1068-1072 is distinguishable because the Fourteenth Amendment violation related to the conditions of confinement in the jail cells, not conduct by the arresting officer. In *Matican v. City of N.Y.* (2nd Cir. 2008) 524 F.3d 151, 156, the Court rejected the conclusion that a special relationship was created with a confidential source.

Plaintiffs purport to dispute Fact 55, that Decedent was injured by other inmates in the Merced County Jail, not while he was in Defendant Pinnegar's custody, by asserting that, "But for, Officer John Pinnegar's creating an actual particularized danger that Vega would not have otherwise faced had Pinnegar informed the Jailers of Vega's status as a CW for Johnson, a CI for Bowers, and a CI for himself, the inmates of the Merced County jail would not have been able to attack and kill. It was a careless, shameful, affirmative act of deliberate indifference which placed Vega in danger that he would not have otherwise faced." Plaintiffs assert that "the proximate cause of Decedent's injuries were the result of the combined tortious conduct by MPD officers, MSA staff, and other inmates."

Defendant cites no authority that a special relationship between Decedent and Defendant Pinnegar continued after Decedent was placed in County custody, or that Decedent's death was the result of any confidential informant relationship other than the Taxicab murder case. While Plaintiffs contend that Decedent's identify was easily revealed from Johnson's Supplemental Narrative, and that such Narrative was the "Angel of Death" needed to murder Decedent, there is no evidence that Defendant Pinnegar, or for that matter, decedent, had knowledge that Decedent's identify had been or would be disclosed at the time Decedent was placed in County custody. Construing Plaintiffs evidence in the light most favorable to Plaintiff, the undisputed facts establish if Decedent was acting as a confidential informant for Defendant Pinnegar at the time Decedent was turned over to County custody by Defendant Pinnegar, there appears to have been a tacit agreement not to disclose Decedent's alleged confidential informant

status because *neither* Defendant Pinnegar nor Decedent disclosed such alleged fact to the County, though they had several opportunities to do so. Plaintiffs essentially argue that it is per se violation of the Fourteenth Amendment not to always disclose every existing confidential informant status when an informant is incarcerated. There is no authority for this position and the weight of available authority rejects this argument.

This Court finds that Defendants' evidence established a prima facie case Plaintiffs' Fourteenth Amendment Claims against the individual Defendants fail because the individual Defendants lacked a special relationship with Decedent, shifting the burden to Decedent to provide admissible evidence establishing a triable issue of material fact. Plaintiffs' evidence fails to establish a triable issue of material fact, therefore the Motion for Summary Adjudication that Plaintiffs' Fourteenth Amendment Claims against the individual Defendants fail because the individual Defendants lacked a special relationship with Decedent is GRANTED.

(8) The individual Defendants are entitled to qualified immunity

This immunity argument is based on the same Undisputed Facts as were used in connection with the lack of special relationship argument, with the added facts that Pinnegar arrested Decedent on September 18, 2015 on an outstanding felony arrest warrant (Fact 62), that Decedent did not inform Defendant Pinnegar that Decedent was a confidential informant (Fact 65), and that Pinnegar was aware that jail staff would routinely ask arrestees if there is any groups that pose a danger to the arrestee and that decedent would have the opportunity to ask for protective custody (Fact 66). As discussed above, Plaintiffs' evidentiary objections to Facts 56-61 are OVERRULED. Consequently, Facts 56-61 are undisputed and establish a prima facie case that Defendant Nelson, Defendant Andrade, Defendant West, Defendant Trinidad, Defendant Russell, and Defendant Lupian did not arrest or transport decedent and therefore had no special relationship to Plaintiff, an essential element of a Fourteenth Amendment Claim against those Defendants. (See *Patel v. Kent Sch. Dist.* (9th Cir. 2011) 648 F.3d 965-972 [when harm caused by third party, Plaintiff must prove a special relationship existed between decedent and the individual defendant to give rise to a Fourteenth Amendment claim].) Even if a special relationship were deemed to exist, Plaintiffs assert no fact that would prevent any decision made by Defendant Nelson, Defendant Andrade, Defendant West, Defendant Trinidad, Defendant Russell, and Defendant Lupian concerning Decedent, including any decision not to disclose confidential informant status, would not be entitled to qualified immunity. Accordingly, the Motion for Summary Adjudication by Defendant Nelson, Defendant Andrade, Defendant West, Defendant Trinidad, Defendant Russell, and Defendant Lupian on the grounds that any decision they made was subject to qualified immunity and did not violate a clearly established right is GRANTED.

The Motion for Summary Adjudication that Defendants are entitled to Qualified Immunity is based on Undisputed Facts 56 through 67. Plaintiffs purport to dispute Fact 62, that Defendant Pinnegar arrested Decedent on September 18, 2015, on an outstanding felony warrant by asserting that "Pinnegar arrested Decedent Vega on September 18, 2015, in retaliation for his failure to supply sufficient information regarding gang activities, and used the outstanding felony warrant as a pretext. Pinnegar informed other MPD officers specifically members of the GVSU team that a warrant had been issued for Vega and they should arrest him if they could." Plaintiffs note that Pinnegar's body camera footage of the arrest and interviews has been lost or destroyed and argue that "Pinnegar was arresting Vega when he saw him, nothing was going to change his mind." The Court

notes that Plaintiffs had submitted additional Facts 1-81 which address the history of the Merced Police Department and Decedent Vega but those facts are not cited in Plaintiffs response to Separate Statement as grounds on which Facts 56 through 67 are disputed, and therefore are deemed not to exist for purposes of the instant Motion for Summary Adjudication. Assuming Plaintiffs Facts and Argument are true, they do not controvert the fact that an outstanding felony warrant for Decedent existed and do not controvert the fact that the outstanding felony warrant was the reason for the September 18, 2015 arrest. There is no claim that the felony warrant was not valid or not believed to be valid, so the fact that Defendant Pinnegar intended to arrest Decedent when he saw Decedent and that nothing was going to change his mind, does not establish a triable issue of material fact that the decision to arrest on September 18, 2015 was in violation of Decedent's Fourteenth Amendment Rights or a grounds that Defendant Pinnegar's decision to arrest Decedent was subject to qualified immunity.

Plaintiffs purport to dispute Fact 64, that Pinnegar did not know Decedent was a confidential witness in the Taxi Murder case at the time he arrested him on September 18, 2015, with the same evidence and argument discussed above in connection with Fact 54. As discussed above, these facts do not directly controvert Fact 64, that Defendant Pinnegar did not know Decedent was a confidential informant at the time of the arrest. Even if they were deemed to create a triable issue of material fact with regard to the knowledge possessed by Defendant Pinnegar at the time Decedent was turned over to County custody, there is no dispute that Decedent was not injured at the time he was turned over to county custody, and no dispute that the injury causing Decedent's death occurred after Defendant Pinnegar turned Decedent over to county custody, at which time the special relationship terminated. (*Castro v. County of Los Angeles* (9th Cir, 2016) 833 F.3d 1060, 1068-1072 is distinguishable because the Fourteenth Amendment violation related to the conditions of confinement in the jail cells, not conduct by the arresting officer. In *Matican v. City of N.Y.* (2nd Cir. 2008) 524 F.3d 151, 156, the Court rejected the conclusion that a special relationship was created with a confidential source. Thus, there is no triable issue of material fact as to whether the decision by Defendant Pinnegar to place Decedent in the custody of the County Jail without informing the jail of Decedent's confidential informant status is subject to qualified immunity. Accordingly, this Court finds Fact 64 to be undisputed.

Plaintiffs purport to dispute Fact 65, the Decedent did not inform Pinnegar that he did not feel safe to house with the Norteños again with evidence that Vega's jail records that he denied being a member of the Norteño Street gang and had been housed in GP. This does not controvert Fact 56 concerning what Decedent did or did not tell Defendant Pinnegar prior to being turned over to County custody. As noted above, The Court notes that Plaintiffs had submitted additional Facts 1-81 which address the history of the Merced Police Department and Decedent Vega but those facts are not cited in Plaintiffs response to Separate Statement as grounds on which Facts 56 through 67 are disputed, and therefore are deemed not to exist for purposes of this Motion for Summary Adjudication. As discussed above, the undisputed evidence shows that neither Defendant Pinnegar nor Decedent elected to advise the County that Decedent was a Confidential Informant. This Court finds Fact 65 to be undisputed.

Plaintiffs purport to dispute Fact 66, that Defendant Pinnegar was aware that Jail staff routinely ask arrestees if there is any group that poses a danger to the arrestee and that Decedent would have the opportunity to ask for protective custody when booked at the jail with evidence that Officer Pinnegar had routinely informed MSO Jail staff that is

arrestee is a CW/CI in the past, arguing that Petitioner intentionally did not inform MSI Staff of Decedent's CW/SI status in retaliation for his failure to provide sufficient information regarding gang activities. Assuming this evidence and argument to be true, it does not controvert Fact 66, that Defendant Pinnegar was aware that jail staff routinely ask those arrested if there is any group that poses a danger. At most, the evidence establishes that Defendant Pinnegar, to the extent Defendant Pinnegar was aware that Petitioner was a confidential informant, he left it up to Decedent to decide what to disclose to the County Jail staff. This does not create a triable issue of material fact as to whether the decision by Defendant Pinnegar decision to place Decedent in the custody of the County Jail without informing the jail of Decedent's confidential informant status is subject to qualified immunity. Accordingly, this Court finds Fact 66 to be undisputed.

Plaintiffs purport to dispute Fact 67, the Decedent was injured by other inmates on the Merced County Jail, not while he was in Pinnegar's custody with unsupported argument that the proximate cause of Decedent's injuries were the result of the combined tortious conduct by MPD officers, MSA staff, and other inmates. This Court finds Fact 67 to be undisputed.

This Court finds that Defendants have established a prima facie case that they are entitled to Judgment as a matter of law as to whether Defendants' actions were subject to qualified immunity, shifting the burden to Plaintiffs to file a Separate Statement supported by admissible evidence detailing evidence issue of material fact as to whether each Defendant is entitled to qualified immunity. In evaluating a defense of qualified immunity in connection with an alleged violation of Fourteenth Amendment or Eighth Amendment rights, the court must determine (1) whether the facts shown by the plaintiff make out a violation of a constitutional right, and (2) whether the right was clearly established at the time alleged misconduct. (*Saucier v. Katz* (2001) 533 U.S. 194, 201.) In this case, Plaintiffs have failed to show that there is a clearly established legal right requiring law enforcement to disclose confidential informant status. This Court finds that Plaintiffs have failed to meet their burden and establish a triable issue of material fact with respect to whether Defendants are entitled to qualified immunity, that 56-67 are in fact undisputed, and that Plaintiffs have not carried their burden of demonstrating that clearly established laws exist under facts for which there are material triable issue of fact. (See e.g. *Isayeva v. Sacramento Sheriff's Department* (9th Cir. 2107) 872 F.3d 938, 945), and, therefore, that Defendants' Motion for Summary Adjudication that Defendants are entitled to Judgment as a Matter of Law is GRANTED.

(9) Plaintiffs' *Monell* claims fails because Plaintiffs cannot identify a city employee who caused a constitutional deprivation of rights by failing to review documents filed by the District Attorney

As noted above, this Court has determined that all of the individual Defendants are entitled to Judgment as a Matter of Law with regard to the Fourteenth Amendment Claims because there exists no triable issue of material fact with regard to whether any of the individual defendants violated Decedent's Fourteenth Amendment rights or whether they were entitled to qualified immunity for their actions. Plaintiffs' Second Amended Complaint poses two theories of liability against the City itself, (1) that the City failed to train employees to prepare police reports or review such reports to assure that such reports, if filed with a court, did not reveal confidential informant status, and (2) that

City failed to implement a policy requiring all officer to disclose confidential informant status when confidential informants are incarcerated in the County Jail.

In support of the Motion for Summary Adjudication of the first theory, the City asserts that the *Monell* Cause of Action fails because Plaintiffs cannot identify a City Employee that caused a constitutional deprivation of rights by failing to review documents filed by the District Attorney based on Fact 68 [The Merced District Attorney filed the criminal complaints in the Taxi Murder case, not the City, in January 2015] and Fact 69 [The Merced Police Department was not directed to file any document related to the investigation into the Barker homicide]. Plaintiffs concede that Fact 68 is undisputed, but purport to dispute Fact 69 on the grounds that the MPD process is to file all of their investigate reports, the file is then copied and delivered to the District Attorney for his review, and decision whether to prosecute. MPD is aware that their investigative reports may become public record and confidential information could be released to the public. Assuming this evidence to be true, it does not controvert Fact 69, that the Merced Police Department did not file and was not directed to file any documents with the court related to the investigation into the Barker homicide. While it may be true that Merced Police Department may be aware that the District Attorney may decide to disclose portions of police reports provided to them to either defense counsel or the public, such disclosure typically involve redacted versions of the report in order to protect witnesses. The decision on what, if anything should be redacted, is made by the District Attorney, not the law enforcement agencies that prepare the reports, and there is no public policy, let alone legal requirement, supporting the idea that a law enforcement agency should conceal the identify of witnesses from the District Attorney to assure that the District Attorney does not disclose the identity of those witnesses to the public. Accordingly, this Court finds that Fact 69 is undisputed, that the City of Merced has established a prima facie case that they are entitled to judgment as a matter of law, shifting the burden to Plaintiffs to offer admissible evidence establishing a triable issue of material fact, that Plaintiffs have failed to meet their burden, and therefore that the Motion for Summary Adjudication that the *Monell* Cause of Action based on failure of the City to prevent any City Employee from causing a constitutional deprivation of rights by failing to review documents filed by the District Attorney is GRANTED.

(10) Plaintiffs' *Monell* claims fail because no City employee violated Decedent's rights by failing to disclose to Jail Staff that Decedent was a confidential witness and there is no evidence of deliberate indifference.

Defendant City of Merced offers Undisputed Fact 70-79 in support of its Motion for Summary Adjudication of Plaintiffs' *Monell* claim based on the grounds that no City employee violated Decedent's rights by failing to disclose to Jail Staff that Decedent was a confidential witness and there is no evidence of deliberate indifference that are identical to Facts 46-51 establishing that no special relationship existed between any City Employee and Decedent.

Plaintiffs' evidentiary objections are OVERRULED. Consequently, Fact 70-77, as was the case with Facts 46-51, are undisputed and establish a prima facie case that Defendant Nelson, Defendant Andrade, Defendant West, Defendant Trinidad, Defendant Russell, and Defendant Lupian did not arrest or transport decedent and therefore had no special relationship to Plaintiff, an essential element of a Fourteenth Amendment Claim against those Defendants. (See *Patel v. Kent Sch. Dist.* (9th Cir. 2011) 648 F.3d 965-972 [when harm caused by third party, Plaintiff must prove a special relationship existed between

decedent and the individual defendant to give rise to a Fourteenth Amendment claim].) While it is undisputed that Defendant Pinnegar arrested and transported Decedent to the Merced County Jail (Facts 76-77), Plaintiffs purport to dispute Fact 78, as was the Case with Fact 54, that Defendant Pinnegar did not know that Decedent was a confidential witness in the Taxi Murder case at the time he arrested him on September 18, 2015 and purport to dispute Fact 79, as was the case with Fact 55, that Decedent was injured in the Merced County Jail, not when he was in Defendant Pinnegar's custody. Plaintiffs evidentiary objections to Fact 78 are **OVERRULED**.

Plaintiffs argue that a special relationship between Decedent and Defendant Pinnegar existed because (1) Pinnegar knew that Decedent was a long time informant against the Norteños, (2) Pinnegar was told that Decedent was the CW in the Taxi Cab Murder case against Norteño Castrillo, (3) Decedent was acting as a CI for Pinnegar, all of which put Decedent in danger from the Norteño street gang. Plaintiffs contend that as a member of the GVSU Team, Defendant Pinnegar would have known that decedent was a CW in the Taxicab Murder Case, that he discussed making decedent his own CI with other team members, and decedent was working as a CI with Defendant Pinnegar on September 18, 2015. As was the Case with Fact 54, these facts do not directly controvert Fact 78, that Defendant Pinnegar did not know Decedent was a confidential informant at the time of the arrest. Even if they were deemed to create a triable issue of material fact with regard to the knowledge possessed by Defendant Pinnegar at the time Decedent was turned over to County custody, there is no dispute that Decedent was not injured at the time he was turned over to county custody, and no dispute that the injury causing Decedent's death occurred after Defendant Pinnegar turned Decedent over to county custody, at which time the special relationship terminated. (*Castro v. County of Los Angeles* (9th Cir, 2016) 833 F.3d 1060, 1068-1072 is distinguishable because the Fourteenth Amendment violation related to the conditions of confinement in the jail cells, not conduct by the arresting officer. In *Matican v. City of N.Y.* (2nd Cir. 2008) 524 F.3d 151, 156, the Court rejected the conclusion that a special relationship was created with a confidential source.

As was the case with Fact 55, Plaintiffs purport to dispute Fact 79, that Decedent was injured by other inmates in the Merced County Jail, not while he was in Defendant Pinnegar's custody, by asserting that, "But for, Officer John Pinnegar's creating an actual particularized danger that Vega would not have otherwise faced had Pinnegar informed the Jailers of Vega's status as a CW for Johnson, a CI for Bowers, and a CI for himself, the inmates of the Merced County jail would not have been able to attack and kill. It was a careless, shameful, affirmative act of deliberate indifference which placed Vega in danger that he would not have otherwise faced." Plaintiffs assert that "the proximate cause of Decedent's injuries were the result of the combined tortious conduct by MPD officers, MSA staff, and other inmates."

Defendant cites no authority that a special relationship between Decedent and Defendant Pinnegar continued after Decedent was placed in County custody, or that Decedent's death was the result of any confidential informant relationship other than the Taxicab murder case. While Plaintiffs contend that Decedent's identify was easily revealed from Johnson's Supplemental Narrative, and that such Narrative was the "Angel of Death" needed to murder Decedent, there is no evidence that Defendant Pinnegar, or for that matter, decedent, had knowledge that Decedent's identify had been or would be disclosed at the time Decedent was placed in County custody. Construing Plaintiffs evidence in the light most favorable to Plaintiff, the undisputed facts establish if

Decedent was acting as a confidential informant for Defendant Pinnegar at the time Decedent was turned over to County custody by Defendant Pinnegar, there appears to have been a tacit agreement not to disclose Decedent's alleged confidential informant status because *neither* Defendant Pinnegar nor Decedent disclosed such alleged fact to the County, though they both had several opportunities to do so. Plaintiffs essentially argue that it is per se violation of the Fourteenth Amendment not to always disclose every existing confidential informant status when an informant is incarcerated. There is no authority for this position and the weight of available authority rejects this argument.

This Court finds that Defendants' evidence established a prima facie case Plaintiffs' Fourteenth Amendment Claims against the City, as was the case with the individual Defendants, fail because the individual Defendants lacked a special relationship with Decedent, shifting the burden to Decedent to provide admissible evidence establishing a triable issue of material fact. Plaintiffs' evidence fails to establish a triable issue of material fact, therefore the Motion for Summary Adjudication that Plaintiffs' Fourteenth Amendment Claims against the City because the individual Defendants lacked a special relationship with Decedent is GRANTED.

Since the Motions for Summary Adjudication with respect to each Cause of Action in the Second Amended complaint and with respect to Plaintiffs' standing to bring this action have been GRANTED, the Motion for Summary Judgment is GRANTED as to all Defendants.

20CV-02493 Animal Defense Funds v. Foster Poultry Farms

Status Hearing on Feasibility and Meet and Confer

This matter is transferred to Courtroom 10 to be heard by the Hon. Donald J. Proietti. Please see the Tentative Rulings below for Courtroom 10 and obtain the zoom information for Courtroom 10 to make any requested remote appearances.

20CV-03387 People v. \$1,108,400 U.S. Currency

Status 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 seek permission and arrange for a remote appearance. Appear to address the status of the hearing on the criminal case that was scheduled for September 3, 2024, as of the last status conference in this case.

23CV-02442

Laura Avila v. City of Atwater

Motion by Defendant City of Atwater to compel Plaintiff Laura Avilla to Respond to Requests for Production, Set One, Without Objections, Production of Responsive Document, and for Monetary Sanctions of \$1,500 pursuant to Code of Civil Procedure sections 2031.010 and 2021.300.

Dropped From Calendar pursuant to a Stipulation and Order filed by the Parties.

Motion by Defendant City of Atwater to compel Plaintiff Laura Avilla to Respond to Special Interrogatories, Set One, and for Monetary Sanctions of \$1,500 pursuant to Code of Civil Procedure sections 2031.310(h) and 2030.300(d)

Dropped From Calendar pursuant to a Stipulation and Order filed by the Parties.

24CV-01438

Christina Hawley, et al. v. Mary Crookham, Trustee, et al.

Petition for Approval of Minors Compromise re Sean Hawley

Appearance optional. 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 Petition for Approval of Minors Compromise re Sean Hawley is GRANTED. While the half of the settlement for an accident involving all four members of the family go to the wife of the guardian ad litem, the petition articulates a reasonable grounds for this discrepancy. There are no attorney's fees being assessed against the minor's share.

Petition for Approval of Minors Compromise re Evan Hawley

Appearance optional. 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 Petition for Approval of Minors Compromise re Evan Hawley is GRANTED. While the half of the settlement for an accident involving all four members of the family go to the wife of the guardian ad litem, the petition articulates a reasonable grounds for this discrepancy. There are no attorney's fees being assessed against the minor's share.

24CV-03851

Petition of: Alejandra Guzman

Order to Show Cause re: Name Change

Appearance Optional. 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. Proof of Publication having been filed and with Petition's Verified Statement that father of the minor is deceased, this petition by the remaining parent to change the last name of the minor is GRANTED.

24CV-04009

Adolph Cortinas v. Natalie Mayorga Coronado

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) 725-4111 to arrange for a remote appearance. The Court notes that no proof of service has been filed establishing that the papers filed in this case have been served on Respondent.

24CV-04010

Adolph Cortinas v. Brittany Law

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) 725-4111 to arrange for a remote appearance. The Court notes that no proof of service has been filed establishing that the papers filed in this case have been served on Respondent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Tuesday, September 17, 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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Status Hearing on Feasibility and Meet and Confer

This matter has been transferred from Courtroom 8 to Courtroom 10 to be heard by the Hon. Donald J. Proietti. Please see the Tentative Rulings below for Courtroom 10 and obtain the zoom information for Courtroom 10 to make any requested remote appearances.

As ordered by the Court, the parties have submitted a Joint Status Report re: Feasibility in which Plaintiff Animal Legal Defense Fund asserts (1) the reasonable use cases show that the courts consider feasibility alongside the rest of the factors that go to determining whether a use of water is reasonable, and (2) severing feasibility from the rest of the merits would be unduly prejudicial to Plaintiff Animal Legal Defense Fund. Plaintiff Animal Legal Defense Fund asserts that all Feasibility Related Discovery should be ordered produced prior to the Summary Judgment Motions set for hearing on December 4, 2024, and prior to the Court Trial set for January 14, 2025.

Defendant Foster Poultry Farms confirms that it intends to argue the non-feasibility of the extensive renovations requested by Plaintiff Animal Legal Defense Fund in the Complaint. Thus, Foster Poultry Farms essentially concedes that the feasibility related discovery will be directly relevant to the issues to be resolved at trial.

Defendant Foster Poultry Farms supports a bifurcated approach to feasibility, Plaintiff Animal Legal Defense Fund is adamantly opposed. The parties dispute the extent to which case law supports any such bifurcation. Plaintiff Animal Legal Defense Fund asserts that bifurcation would handicap its ability to address the merits and for court to weight all of the factors determining whether use is unreasonable, and that any delay in trial would delay any remedy to the alleged unreasonable use that has continued while this matter has been pending.

With regard to the timing the delay of any remedy to the alleged unreasonable use that has continued while this matter has been pending, the Court notes that there has been no request for preliminary injunction, and it would appear likely, given the importance of this litigation to both parties, that any judgment entered by this court would result in an appeal that would potentially further delay any remedy. The elimination of bifurcation alone would not appear likely to significantly accelerate the ultimate implementation of any remedy that might be ordered. In addition, the financial and operational feasibility of a proposed renovation may be significantly affected by the timing of any discontinuation of the current process while renovations are in progress. A factor affecting feasibility is not only what must be done, but how and when that proposal must be completed. This issue has a potentially enormous impact on the community as well as the parties.

A cursory review of the pending cross-motions for summary judgment indicates that neither side appears to be arguing feasibility in their respective moving papers, although that does not mean that the respective oppositions that have not yet been filed will not address feasibility. Defendant Foster Poultry Farms seeks summary judgment on the grounds that its use of water per chicken processed is consistent with nationwide industry practices and therefore is not unreasonable. Defendant Foster Poultry Farms argues that water usage involves complex policy decisions requiring Water Board involvement and that a volume of use constitutionally unreasonable would be “unprecedented and without basis in existing authority.” Plaintiff Animal Legal Defense Fund seeks summary judgment on the grounds that the volume of water drawn from the overdrafted Merced Subbasin is unreasonable per se, and unreasonable under the circumstances. None of these arguments appear to address the feasibility of any specific modification.

Accordingly, this Court, on its own motion, continues this Status Hearing on Feasibility to December 4, 2024 to trail the pending cross-motions for summary judgment. If this delay in the resolution of the feasibility related discovery issues is viewed as prejudicial to the ability of either party to oppose the cross-motions for summary judgment, that party can file CCP § 437c(h) Opposition seeking to have the motion continued or denied because information crucial to the issues raised in the motion was not available. The parties are ordered to meet and confer on an appropriate date for production of all feasibility related discovery in relation to the currently pending January 14, 2025 Trial Date.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Jury Trials and Long Cause Court Trials
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Tuesday, September 17, 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 Jury Trials and Long Cause Court Trials Scheduled	
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Tuesday, September 17, 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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There are no Ex Parte matters scheduled.	
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Tuesday, September 17, 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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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

Tuesday, September 17, 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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There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion
Hon. Jennifer O. Trimble
Courtroom 12
1159 G Street, Los Banos

Tuesday, September 17, 2024
1:30 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-03712	Petition of Anel Villegas
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Order to Show Cause re: Name Change

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. This Petition by both parents seeking to change the name of their minor child will be granted upon the filing of proof of publication and confirming through CLETS the petitioner is eligible for a name change.

24CV-03789	Petition of Jaziel Ramirez
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Petition of Jaziel Ramirez

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. This Petition by both parents seeking to change the name of their minor child has not been served on the other parent. Appear to address status of service on the other parent.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Unlawful Detainers
Hon. Jennifer O. Trimble
Courtroom 12
1159 G Street, Los Banos

Tuesday, September 17, 2024
2:00 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-03143	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Unlawful Detainer Trial

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance.

24CV-02585	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Unlawful Detainer Trial

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance.

24CV-03803	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Unlawful Detainer Trial

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4124 to seek permission and arrange for a remote appearance.