

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED**

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

Wednesday, March 13, 2024

**NOTE: Merced Superior Court will no longer be consolidating Courtroom 8 and Courtroom 10.**

**Tentative Rulings are provided for the following Courtrooms and assigned Judicial Officers with scheduled civil matters:**

**Courtroom 8 – Hon. Brian McCabe**

**Courtroom 9 – Commissioner David Foster**

**Courtroom 12 – Hon. Jennifer O. Trimble**

**Courtroom 10 will continue to post separate Probate Notes that are not included in these tentative rulings.**

**IMPORTANT: Court Reporters will NOT be provided; parties must make their own arrangements. Electronic recording is available in certain courtrooms and will only be activated upon request.**

**The specific tentative rulings for specific calendars follow:**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Unlimited Civil Law and Motion  
Hon. Brian McCabe  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, March 13, 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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| 19CV-01168 | Helen Brinich-Barnes v. Ocwen Loan Servicing, LLC, et al. |
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Motion for Summary Judgment by Defendants PHH Mortgage Corporation, successor in interest by merger to Ocwen Loan Servicing LLC, U.S. National Bank Association, as Trustee for the CMLTI Asset-Backed-Pass-Through Certificates, Serie 2007-AMC4 and Western Progressive LLC, or, in the alternative, Summary Adjudication that the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action are without merit.

**The Motion for Summary Judgment by Defendants PHH Mortgage Corporation, successor in interest by merger to Ocwen Loan Servicing LLC, U.S. National Bank Association, as Trustee for the CMLTI Asset-Backed-Pass-Through Certificates, Serie 2007-AMC4 and Western Progressive LLC (collectively "Defendants"), or, in the alternative, Summary Adjudication that the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action are without merit is GRANTED.**

**Defendants' Motion for Summary Judgment is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the First Cause of Action for Violation of the Homeowner's Bill of Rights is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the first cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the Second Cause of Action for Breach of Contract is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the second cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the Third Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the third cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the Fourth Cause of Action for Negligence is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the fourth cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the Fifth Cause of Action for Wrongful Foreclosure is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the fifth cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Defendants' Motion for Summary Adjudication as to the Sixth Cause of Action for Unfair Business Practices is supported by a Separate Statement of Undisputed Facts that contains undisputed Facts #1-38 that cites to admissible evidence that establishes a prima facie case that Defendants are entitled to judgment as to the sixth cause of action as a matter of law. This shifts the burden of proof to Plaintiff to submit a Response to the Separate Statement of Undisputed Fact that cites to admissible evidence establishing a triable issue of material fact.**

**Plaintiff filed a Memorandum of Points and Authorities in Opposition to the Motion for Summary Judgment, or in the alternative Summary Adjudication that the First through Sixth Causes of Action are without merit, but failed to file a Response to the Separate**

**Statement of Undisputed Fact and failed to file any admissible evidence raising a triable issue of material fact. Since this Court finds that the moving parties have established a prima face case that they are entitled to judgment as matter of law with respect to both the Motion for Summary Judgment and the Motion for Summary Adjudication that the First through Sixth Causes of Action are without merit, the failure to file a Response to the Separate Statement is by itself grounds for the Court to exercise its discretion to GRANT the Motion for Summary Judgment. (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4<sup>th</sup> 554, 568; *Korjababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4<sup>th</sup> 408, 418; *Batarse v. Services Employees Int'l Union Local 1000* (2012) 209 Cal.App.4<sup>th</sup> 820, 831-833.) Accordingly this Court exercises its discretion to GRANT the Motion for Summary Judgment by Defendants PHH Mortgage Corporation, successor in interest by merger to Ocwen Loan Servicing LLC, U.S. National Bank Association, as Trustee for the CMLTI Asset-Backed-Pass-Through Certificates, Serie 2007-AMC4 and Western Progressive LLC (collectively "Defendants"), or, in the alternative, Summary Adjudication that the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action are without merit.**

**The Court notes that the only argument raised in the Opposition Memorandum of Points and Authorities is Plaintiff's contention that an August 6, 2018 phone conversation between Plaintiff and Ocwen, created an oral contract that modified the written loan mortgage agreement. This argument is made notwithstanding Plaintiff's failure to dispute Defendant's Separate Statement of Undisputed Material Facts and her failure to provide evidence in support of her argument. As the responding party to the Summary Judgement and Summary Adjudication Motions, Plaintiff has failed to meet her burden of proof and Defendants are entitled to Judgment as a matter of law.**

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23CV-01613

Oscar Mendoza v. Myles Ballenger, et al.

Motion by Defendants Myles Ballenger, Gail Bettencourt, and Michael Bettencourt to compel Plaintiff Oscar Mendoza to provide Verified Responses to Defendants' Special Interrogatories, Set One, and Request for Monetary Sanctions of \$1410.00 pursuant to CCP § 2030.290 and 2023.030(a) against Plaintiff and her attorney.

**The unopposed Motion by Defendants Myles Ballenger, Gail Bettencourt, and Michael Bettencourt to compel Plaintiff Oscar Mendoza to provide Verified Responses to Defendants' Special Interrogatories, Set One, and Request for Monetary Sanctions of \$1410.00 pursuant to CCP § 2030.290 and 2023.030(a) against Plaintiff and her attorney is GRANTED. The Court will sign the proposed order lodged with the Court on February 13, 2024.**

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24CV-00641

Briana Slaton v. Misty Marija Morris

Order to Show Cause re: Restraining Order

**Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. The Court notes that Proof of Service was filed February 26, 2024 and that Respondent has filed a Response on March 6, 2024 indicating that Respondent does not agree with the requested restraining order.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, March 13, 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  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, March 13, 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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| 22CV-03226-APP | Margarita Vazquez v. Extreme Auto Repair |
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Order of Examination

**Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to request Court permission and arrange for a remote appearance. This hearing was continued from January 31, 2024. If the judgment has been satisfied by the defendant or the plaintiff fails to appear at the hearing, the hearing will be dropped from calendar.**

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| 23CV-04250 | Anthony J. Machado, et al. v. Eugenio Azevedo, et al. |
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Motion to Determine Attorney's Fees as Costs

**Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance.**

**The unopposed motion by plaintiffs Anthony J. Machado & Lorraine Machado, Trustees of the A & L Machado Revocable Trust Dated August 21, 2009, and Santa Anna Farms, LLC for an order awarding and fixing reasonable attorney's fees by contract is**

**GRANTED. (Civ. Code, § 1717, subd. (a); Cal. Rules of Ct., rule 3.1702.) The Court finds that plaintiffs are the prevailing party on this action for unlawful detainer. The Court also finds commercial lease agreement at issue contains an attorney fees provision. The Court finds reasonable plaintiffs' request for attorney's fees in the amount of \$15,410.00 and fixes attorney's fees as an item of costs in that amount.**

**The Court will sign the proposed order submitted with the moving papers.**

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24CV-00118

[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Default Court Judgment Prove Up Hearing

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 arrange for a remote appearance.**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, March 13, 2024  
1:15 p.m.

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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  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, March 13, 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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| There are no ex parte matters scheduled. |  |
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Motion Hearing  
Hon. Donald J Proietti  
Courtroom 10  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, March 13, 2024  
8:15 am

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| 20CV-02493 | Animal Legal Defense Fund vs Foster Poultry Farms |
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Motion to Compel Further Discovery

**Continue on Court's own Motion to 3-25-24 at 8:15 am in courtroom 10.**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, March 13, 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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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Limited Civil Long Cause Court Trials  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, March 13, 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:

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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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| There are no limited civil long cause court trials scheduled. |  |
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