

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Wednesday, May 29, 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 – 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 L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Wednesday, May 29, 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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21CV-00689	Juan Treminio, et al. v. Kyle Guillory
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Review of Case Status

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to set address the status of retained counsel following the withdrawal of Plaintiff's counsel on June 9, 2022 and status of default against Defendant Kyle Guillory give the failure to file a responsive pleading to complaint served on Defendant Kyle P. Guillory September 23, 2021 per Proof of Service filed September 27, 2021.

21CV-00708	Evelyn Estrada v. Gloria Campbell, et al.
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Case Management Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the case and whether a trial should be set given the stipulation of the parties to continue trial April 26, 2024.

21CV-03773

Toshi Magee v. Children's Dentistry and Orthodontics

Status Conference

Continued on the Court's own motion to December 18, 2024 at 8:15 A.M. in Courtroom 8 pursuant to the Joint Status Conference Statement filed May 14, 2024 indicating that the individual PAGA claim has settled and the parties are set for mediation of the remaining claims on November 7, 2024.

22CV-00106

Joanna Hodges v. ProfessionAILS, et al.

Case Management Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. The Court has received the Declaration of counsel explaining the reason for failure to appear at the prior Case Management Conference and accepts the explanation that the failure to appear was inadvertent. Appear to address the status of the case.

22CV-02118

Carlos Garrido, et al. v. Cecilia Deungria Dandido, et al.

Order to Show Cause re: Dismissal-Notice of Settlement

Continued on the Court's own motion to August 14, 2024 at 8:15 am in Courtroom 8 to facilitate the filing for minors compromise pursuant to the Declaration of Counsel filed May 22, 2024.

22CV-02632

Kevin Cervantes v. Amber Troie-Castillo, et al.

Order to Show Cause re: Dismissal-Notice of Settlement

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the settlement.

22CV-03999

Satinder Kaur v. Nissan North America, Inc.

Case Management Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the case.

22CV-04212

Dorothy Jimenez v. American Honda Motor Co., Inc.

Order to Show Cause re Sanctions

Order to Show Cause vacated pursuant to Declaration of Counsel filed May 21, 2024 establishing that failure to appear was inadvertent.

Case Management Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the case.

23CV-00856

Angel Maldonado, et al. v. Marlin Moreno

Case Management Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance. Appear to address the status of the case.

24CV-00306

Foster Poultry Farms, LLC v. OneSource Virtual, Inc.

Motion to Dismiss pursuant to CCP § 583.410-583.430 by Defendant OneSource Virtual, Inc. on the grounds of failure to comply with contractual forum selection clause, and forum non conveniens.

The Motion to Dismiss pursuant to CCP § 583.410-583.430 by Defendant OneSource Virtual, Inc. on the grounds of failure to comply with contractual forum selection clause, and forum non conveniens is DENIED.

The interpretation of the contract containing the forum selection clause at issue is Delaware Law. Delaware law provides that a clause providing that a certain state “shall” have jurisdiction is mandatory. (*Ashall Homes LTD. V. ROK Ent. Grp., Inc.* (Del. Ch. 2010) 992 A.2d 1239, 1250-1251.) The instant forum selection clause, paragraph 8.2 of the subject contract states: “As a further inducement [OneSource] [Foster Farms] agrees it will irrevocably submit itself to the personal and subject matter jurisdiction of the State and Federal Courts located in New Castle County, Delaware, and will not object to such venue on the theory of forum non conveniens or other legal theory.” While OneSource concedes that the word “shall” does not appear in the forum selection portion of the paragraph 8.2 (The word “shall” does appear in the uncontested choice of law section of that paragraph), OneSource argues that the language concerning the Forum Selection Clause is equivalent to “shall.” Applying Delaware law, this Court disagrees. There is nothing in the Forum Selection portion of Paragraph 8.2 providing that Delaware State and Federal courts “shall” have “exclusive jurisdiction.” Accordingly this Court finds that the Forum Selection Clause in paragraph 8.2 is permissive, not mandatory, and that while Foster Farms may have breached the contract by bringing an action in California instead of Delaware, the clause does not deprive the California Courts of jurisdiction.

Furthermore, this Court finds that Defendant OneSource has failed to establish its initial burden of demonstrating that California is a forum non conveniens vis a vis Delaware.

There are no witnesses in Delaware and there are numerous witnesses in California. Accordingly, the Motion to Dismiss pursuant to CCP § 583.410-583.430 by Defendant OneSource Virtual, Inc. on the grounds of failure to comply with contractual forum selection clause, and forum non convenes is DENIED.

Demurrer Pursuant to CCP § 430.10(e) for Failure to State a Cause of Action

The Demurrer Pursuant to CCP § 430.10(e) for Failure to State a Cause of Action is OVERRULED with respect to the First Cause of Action for Breach of Contract and the Fourth Cause of Action for Unfair Competition but is SUSTAINED WITH LEAVE TO AMEND as to the Second Cause of Action for Fraud in the Inducement and the Third Cause of Action for Negligent Misrepresentation. Both California and Delaware law required fraud to be alleged with specificity. While the complaint is fairly specific as to the content of the alleged untrue statements, there is nothing about when and how the statements were communicated and no allegations as to who made the alleged untrue statements. Accordingly the Demurrer is SUSTAINED WITH LEAVE TO AMEND as to the Second Cause of Action for Fraud in the Inducement and the Third Cause of Action for Negligent Misrepresentation.

24CV-00811 Marco Aguilar v. Dole Packaged Foods LLC

Demurrer and Motion for Abatement

The Motion for Abatement and/or Stay is DENIED and the Demurer is OVERRULED. The instant Plaintiff was not a party to the prior action and his motion to intervene in the prior action was denied without prejudice to bringing a separate action. There is no grounds for a stay of the instant action. Defendant has failed to establish the elements of Exclusive Concurrent Jurisdiction. Accordingly the Motion for Abatement and/or Stay is DENIED and the Demurer is OVERRULED.

24CV-01517 Petition of: Tho Che

Order to Show Cause re: Name Change

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance.

24CV-01525 Petition of: Alexis Chavez

Order to Show Cause re: Name Change

Proof of Publication and Proof of Service on the Father having been filed, this Petition will be granted unless there is a cogent objection presenting at or before the time of the hearing.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Wednesday, May 29, 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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21CV-03138	George Jones v. Debra Anderson
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Mandatory Settlement Conference

Appearance Required. Individuals who wish to appear remotely may call (209) 725-4111 for permission to make a remote appearance.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Limited Civil Calendar
Commissioner David Foster
Courtroom 9
627 W. 21st Street, Merced

Wednesday, May 29, 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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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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21CV-03718	Gurwinder Bal v. Donald Hyler, et al.
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Motion for Confirmation of Arbitration Award

Respondent Donald Hyler's unopposed motion for confirmation of the arbitration award in the amount of \$15,116.62 in favor of respondent and against petitioner Gurwinder Bal is GRANTED. (Code Civ. Proc., § 1286.)

The Court will sign the proposed order lodged with the Court.

23CV-01705	Ford Motor Credit Company LLC v. Daisy Perez
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Order to Show Cause re: Dismissal – Notice of Settlement

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.

24CV-00158 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Unlawful Detainer Court Trial

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-01195 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Unlawful Detainer Court Trial

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-01225 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Status Review of Settlement

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to seek permission and arrange for a remote appearance.

24CV-01531 [Parties' names withheld pursuant to CCP § 1161.2(a)(1)]

Unlawful Detainer Court Trial

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. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Wednesday, May 29, 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
Commissioner David Foster
Courtroom 9
627 W. 21st Street, Merced

Wednesday, May 29, 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-02067	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)]
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Ex Parte Application to Set Aside Default and Vacate Default Judgment and/or Stay Execution of Judgment

Appearance required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to seek permission and arrange for a remote appearance.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Wednesday, May 29, 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

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

Wednesday, May 29, 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
22CV-00649	Frank Valdez v. Bryan Limon Order of Examination (Small Claims) Appearance required. The Court notes that proof of substituted service was filed April 12, 2024.
23CV-02899	Theofanis Tsoulouhas v. Bladimir Sabino Order of Examination (Small Claims) Appearance required. The Court notes that proof of service was filed May 14, 2024 indicating personal service on May 12, 2024.
23CV-03692	[Parties' names withheld pursuant to CCP § 1161.2(a)(1)] Unlawful Detainer Court Trial 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.