

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

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

Wednesday, July 16, 2025

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. Stephanie L. Jamieson

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. Stephanie L. Jamieson
Courtroom 8
627 W. 21st Street, Merced
Wednesday, July 16, 2025
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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18CV-02285	OP Development, Inc., et al. v. Scotty Pereira
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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 arrange for a remote appearance. Appear to address the status of the bankruptcy of a party to the case.

Trial Setting 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 arrange for a remote appearance. Appear to address scheduling of trial with respect to any parties that are not subject to a bankruptcy stay.

18CV-04300	Walmart, Inc. v. Summit Development Corporation, et al.
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Readiness 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 arrange for a remote appearance. Appear to confirm readiness for the jury trial set October 21, 2025, with a mandatory settlement conference on September 18, 2025, and motions *in limine* to be heard October 14, 2025.

NOTE: This matter was continued for argument from July 2, 2025, and July 9, 2025, as the assigned judicial officer was absent due to illness. The below tentative ruling is unmodified from the original tentative ruling posted July 1, 2025, and the Court expects to hear argument on July 16, 2025, as timely requested by the plaintiff on July 1, 2025.

Defendant's Demurrer to Plaintiff's Third Amended Complaint

Following a demurrer to the second amended complaint, this Court granted leave to amend to add new claims made in a non-derivative capacity, both on behalf of Mr. Harris and publicly on behalf of the People of the State of California. No such claims appear in the third amended complaint. Instead, Plaintiff appears to have attempted to expand existing claims through a single sentence added to certain claims asserting that they are brought in Harris' individual capacity, without regard for the fact that no such individual standing exists. The only additional claims relate to work performed by Henry Miller Reclamation District No. 2131 pursuant to an Administrative Services Agreement, as well as a project to lower the water table that benefits every San Luis Canal Company owner.

While Defendants argue that leave to amend was essentially obtained by fraud, the real question is whether Plaintiff can or cannot state a viable claim. The failure to file the promised non-derivative claims suggests that Plaintiff does not, in fact, possess sufficient facts to establish such claims. The question, then, is whether the new claims state a viable cause of action.

As discussed in the ruling on two prior demurrers, Plaintiff has again failed to comply with the Government Claims Act, or establish an exception thereto, as required when making a claim for money or damages against a public entity. (Gov't Code § 905, 905.4; *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237; *Sparks v. Kern County Bd. Of Supervisors* (2009) 173 Cal.App.4th 794, 798.) A claim for disgorgement of profits still qualifies as a claim for "money or damages" pursuant to Government Code section 814. Thus, all claims are barred for failure to comply with the Government Tort Claims Act and the demurrer is SUSTAINED.

As also discussed in the ruling on prior demurrers, Plaintiff's claims against the Board of Directors and General Manager for their exercise of discretion are afforded complete immunity under Government Code section 820.2 (*Caldwell v. Montoya* (1955) 10 Cal.4th 972, 981; *San Mateo Union High School Dist. V. County of San Mateo* (2013) 213 Cal.App.4th 418, 433-434.) The argument that Defendants are being sued for acts not performed in their official capacity is ineffective given that such Defendants have in fact been sued in their official capacity. Thus, all claims against the Directors and General Manager in their official capacities are SUSTAINED.

As to the new claims brought by Plaintiff seeking relief under Government Code section 1090 for actions performed in connection with the Administrative Services Agreement and with regard to the Conservation Program and Fallowing Program, Plaintiff's efforts to have the original Government Services Agreement declared unlawful are barred by the applicable statute of limitations. The action must be commenced within four years of when the plaintiff discovered, or, in the exercise of reasonable care, should have discovered the violation of Government Code section 1090, subdivision (a). (Gov't Code

§ 1092, subd. (b).) Plaintiff does not dispute that the Administrative Services Agreement was entered into in 2000, more than twenty years before this action commenced. There is no claim that the shareholders were unaware of the agreement or that interested directors voted for the agreement. Furthermore, the Administrative Services Agreement is subject to an exception to Government Code section 1090 provided for in Government Code section 1091, subdivision (b)(7), for a non-profit corporation formed under the Corporations Code. While the San Luis Canal Company was not always tax-exempt, it was in fact a non-profit corporation, and therefore the exception to Government Code section 1090, subdivision (a) applies. Finally, since Government Code section 1090 does not provide a private right of action for litigants who are not a party to a contract, a derivative claim can only be brought if San Luis Canal Company is a party to the contract. (*San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego, et al.* (2019) 8 Cal.5th 733, 739-741.) Yet the complaint asserts that Henry Miller Reclamation District No. 2131 is, in fact, the sole party to the contract, depriving Plaintiff of standing to bring the action. If San Luis Canal Company is the contracting party, Government Code section 1090 does not apply. Accordingly, the demurrer to the Administrative Services Agreement portion of the Government Code section 1090 claim is SUSTAINED.

Plaintiff also added allegations concerning the performance of Custom Work and the Pick Anderson project. The Custom Work is expressly authorized by the Administrative Services Agreement and does not violate Government Code section 1090 even if there was no exemption because Government Code section 1990, subdivision (a)(14) authorizes such public services. Furthermore, as discussed above, the statute of limitations bars actions not brought within four years of the date they were discovered or could have been discovered with the exercise of reasonable diligence. (Gov't Code §§ 1092, 1097.3, subd. (c).) The Pick Anderson project is designed to benefit all shareholders and therefore does not violate Government Code section 1090 even if it were to apply. The demurrer as to the Custom Work and Pick Anderson Project portion of the Government Code section 1090 claim is SUSTAINED.

This Court was previously persuaded to grant leave to amend based on representations concerning allegations that are absent from this amended complaint, which also fails to address the very grounds on which past demurrers were sustained. Absent a clear presentation of facts that may be pleaded to address or plead around the Government Claims Act and immunity defenses discussed above, the demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Case Management Conference

Given the above ruling, further case management conferences would appear to be unnecessary unless further leave to amend is granted.

22CV-03621 Armando Diaz v. Sol Rivas, et al.

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. Appear to address the status of the settlement anticipated at the time of the hearing on June 16, 2025.

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. Appear to address the status of the settlement anticipated at the time of the hearing on June 16, 2025.

Defendant's Motion for Summary Judgment or, in the alternative, Summary Adjudication

The City of Merced moves for summary judgment on the grounds that (1) the City did not have actual notice of the condition giving rise to the plaintiff's injury; (2) the City did not have constructive notice of the condition giving rise to the plaintiff's injury; and (3) the City did not create the condition giving rise to the plaintiff's injury.

The first and third grounds for the motion are supported by undisputed facts contained in the plaintiff's separate statement of undisputed facts in opposition to the motion, and Plaintiff alleges neither that the City had actual notice nor that it caused the condition. (See, Plaintiff's Separate Statement, filed June 26, 2025, facts 13, 20, 22, 26, 29.) Rather, Plaintiff rests their theory of liability on the allegation that the City had constructive notice of the defect. (See, Plaintiff's Opposition to Motion for Summary Judgment.)

The motion for summary judgment is supported by a separate statement of undisputed fact containing facts 1 through 37, which are supported by admissible evidence establishing a prima facie case that the City had neither actual nor constructive notice of the condition giving rise to injury, and that the City did not cause the condition. This shifts the burden to Plaintiff to establish through admissible evidence a triable issue of material fact.

To create a triable issue of material fact, Plaintiff purports to dispute facts 5, 8, 9, 11, 12, 17, 19, 21, 23, 24, 25, 31, 34, 35, 36, and 37.

Plaintiff's dispute of facts 5, 8, 9, 12, 24, 25, 31, 35, 36, and 37, is supported by the declaration of expert Arthur Murphy. Defendant has objected to the admissibility of the expert's declaration and opinions. To the extent the objections are made pursuant to Evidence Code section 801, subdivision (a), they are SUSTAINED. The Court finds that the relevant opinions as to constructive notice as offered by Mr. Murphy are not related to a subject sufficiently beyond the scope of common experience to require expertise to assist the trier of fact. (Evid. Code § 801, subd. (a); see also, *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 112-113 [whether a condition is obvious is within the common experience of a trier of fact and does not require expert opinion].)

Constructive notice of a potentially dangerous condition requires evidence that an "obvious danger existed for a sufficient period of time" to have permitted the city, in its exercise of due care, to discover and remedy the situation. (Gov't Code § 835.2, subd. (b); *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298.) For purposes of determining negligence, constructive notice may be imputed to a public entity that fails

to have a reasonably adequate inspection system, unless the defect is not sufficiently obvious. (*Martinez v. City of Beverly Hills* (2021) 71 Cal.App.5th 508.)

Plaintiff's own separate statement establishes the undisputed fact of at least weekly maintenance of the park. (See, Plaintiff's Separate Statement, facts 20, 27, 28.) Regardless of whether the defect was sufficiently obvious, the maintenance schedule was sufficient to satisfy the standard outlined in *Martinez*. Furthermore, the defect was not sufficiently obvious, based on undisputed evidence. (See, Plaintiff's Separate Statement, facts, 5, 9, 11, 12, 26, and 29.) In *State v. Sup. Ct. for San Mateo County* (1968) 263 Cal.App.2d 396, the minor plaintiff fell into a pit covered by sand created by the burying of coals on the beach. Despite regular inspection, and knowledge that coals are often buried by beachgoers, the covered pit was not discovered and no actual notice was received by the State of California. The appeals court held that the trial court should have granted the motion for summary judgment, on facts similar to those at hand, as the defect was not sufficiently obvious for constructive notice under Government Code section 835.2. Also similar, though a bit more egregious, is *Kotronakis v. City and County of San Francisco* (1961) 192 Cal.App.2d 624, in which the City and County could not be held liable for the plaintiff slipping and falling in a pool of vomit while attempting to board a bus. Although the vomit had been present at least overnight, and the City and County were aware that there was frequently slippery vomit on the sidewalks, they could not be expected to roam the streets cleaning every potential hazard beyond routine inspection of the sidewalks.

Accordingly, this Court finds that Plaintiff's evidence fails to raise a triable issue of material fact as to whether the City of Merced had actual or constructive notice of the condition causing injury, or as to whether the City of Merced created the potentially dangerous condition. Therefore, the motion for summary judgment or, in the alternative, summary adjudication is **GRANTED**.

23CV-04612

Ricardo McFarlane, et al. v. Austin Mahoney, et al.

Motion for Order Deeming True Matters Specified in Requests for Admission (Set One) as to Plaintiff Ricardo Anthonie McFarlane and for monetary sanctions in the amount of \$1,185.00.

The unopposed motion by defendant, Maryjane Andrea Lona, for an order deeming true the matters specified in requests for admissions (Set One), served on plaintiff, Ricardo Anthonie McFarlane, and for monetary sanctions of \$1,185.00 is GRANTED.

Motion for Order Deeming True Matters Specified in Requests for Admission (Set One) as to Plaintiff Sheldon Harvey and for monetary sanctions in the amount of \$1,185.00.

The unopposed motion by defendant, Maryjane Andrea Lona, for an order deeming true the matters specified in requests for admissions (Set One), served on plaintiff, Sheldon Harvey, and for monetary sanctions of \$1,185.00 is GRANTED.

24CV-04078

In The Matter of: 131 West Main Street, Merced, CA 95340

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 arrange for a remote appearance.

24CV-05129

Windecker, Inc. v. S3 Group, LLC, et al.

Readiness 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 arrange for a remote appearance. Appear to discuss clerical error resulting in a 2026 hearing date for motions *in limine* despite a 2025 court trial date. A mandatory settlement conference is set for July 17, 2025, and will remain as set unless otherwise requested by the parties.

24CV-06333

Cathy Pohan v. The Regents of the University of California

Demurrer to the Third Amended Complaint

Defendant's demurrer to the third amended complaint and all causes of action therein, is SUSTAINED WITH LEAVE TO AMEND. Generalized stress and anxiety are not a qualifying disability under the FEHA. (*Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 80.) A qualifying disability is a necessary element of all six causes of action alleged, therefore Plaintiff's failure to allege a qualifying disability under the FEHA defeats all causes of action on the face of the complaint.

The Court further finds, though not expressly grounds for sustaining the demurrer at this time and in light of the egregious defect cited above, that Plaintiff's opposition to the demurrer consisted of arguments that relied heavily, if not exclusively as to some causes of action, on facts not alleged in the third amended complaint. As leave to amend is granted at this time, Plaintiff would be remiss not to revisit each cause action to ensure that the necessary facts in support are properly alleged.

Motion to Strike

The unopposed motion to strike those portions of the third amended complaint alleging facts relating to a withdrawn age discrimination claim is GRANTED.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Mandatory Settlement Conferences
Hon. Stephanie L. Jamieson
Courtroom 8
627 W. 21st Street, Merced

Wednesday, July 16, 2025
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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24CV-02898	Discover Bank v. Miosotis Freire
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Mandatory Settlement 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 arrange for a remote appearance.

COUNTY OF MERCED

Limited Civil Calendar
Temporary Judge Alexandria Carl
Courtroom 9
627 W. 21st Street, Merced

Wednesday, July 16, 2025
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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24CV-05819	Wells Fargo Bank, N.A. v. Edgar Nieto
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Motion for Judgment on the Pleadings

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 unopposed motion for judgment on the pleadings by plaintiff Wells Fargo Bank, N.A., is GRANTED without leave to amend the answer. (Code Civ. Proc., § 438, subd. (c)(1)(A).) The Court takes judicial notice of the pleadings filed in this action. The Court finds that the complaint states facts sufficient to constitute causes of action for breach of contract and breach of implied-in-fact contract against defendant Edgar A. Nieto. Defendant's answer admits all statements of the complaint and does not allege facts sufficient to constitute a defense.

Judgment shall be entered in favor of plaintiff and against defendant. Plaintiff is entitled to costs as prevailing party. The Court will sign the proposed order and proposed judgment submitted with the moving papers.

The case management conference scheduled for October 10, 2025, at 8:30 a.m. in courtroom 9 is vacated.

24CV-06207

Discover Bank v. Rudy Lujan

Order to Show Cause re Monetary Sanctions

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 permission for a remote appearance. Appear to address the failure of plaintiff's counsel to appear at the May 2, 2025, case management conference.

Case Management 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 arrange for permission for a remote appearance. Appear to address the status of the case.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Stephanie L. Jamieson
Courtroom 8
627 W. 21st Street, Merced

Wednesday, July 16, 2025
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

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2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

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IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.

Case No.	Title / Description
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There are no Ex Parte matters scheduled.	
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Commissioner David Foster
Courtroom 9
627 W. 21st Street, Merced

Wednesday, July 16, 2025
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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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

Wednesday, July 16, 2025
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, July 16, 2025
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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There are no matters scheduled.	
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