

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, February 7, 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, February 7, 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
----------	---------------------

22CV-03431	Kendall And Davis LLC, et al. v. Le-Nguyen Dental Corporation, et al.
------------	---

Demurrer by Defendants Le-Nguyen Dental Corporation d/b/a El Portal Dental Group and Kang C. Nguyen D.D.S. to the Complaint by the State of California *ex rel* Kendall and Davis, LLC and to the first and only cause of action therein

**The Demurrer by Defendants Le-Nguyen Dental Corporation d/b/a El Portal Dental Group and Kang C. Nguyen D.D.S. to the Complaint by the State of California *ex rel* Kendall and Davis, LLC and to the first and only cause of action therein is SUSTAINED WITH LEAVE TO AMEND.**

While Cal. Ins. Code § 1817.7(g)(4) provides that if an IFPA realtor “planned and initiated the violation,” the realtor “shall be dismissed from the civil action and shall not receive any share of the proceeds of the action” may provide an affirmative defense to Defendants, this Court cannot currently determine from the face of the complaint or matters of which it can take judicial notice whether the realtor “planned and initiated” one or more of the alleged acts of fraud. Accordingly, the demurrer based on Cal. Ins. Code § 1817.7(g)(4) is **OVERRULED**.

However, Defendants are correct that fraud must be alleged with specificity. Adequately pleading a IFPA case requires specifying the particulars of the false claims alleged submitted (*Carrell v. AIDS Healthcare Foundation, Inc*, (11<sup>th</sup> Cir. 2018) 898 F3d. 1267, 1275

[realtor must alleged the who what where when and how of fraudulent submissions]; See analogous California Law: *Committee on children's Television, Inc. v. General Foods Corporation* (1983) 35 Cal.3d 197, 216; *Lazar v. Superior Court* (1996) 12 Cal.4<sup>th</sup> 631, 645.) The instant Complaint and First Cause of Action therein does not allege with specificity each act of fraud, how it was performed, who it was performed by, when it was performed, and where it was performed. Accordingly the Demurrer to the Complaint and the First Cause of Action therein is SUSTAINED WITH LEAVE TO AMEND.

In addition to failing to allege who performed the alleged fraud, the Complaint also fails to allege that such person committed the alleged acts of fraud with the requisite intent to defraud. Thus, even if the alleged fraud were alleged with the requisite specificity, the element of intent to defraud has not been alleged with respect to the person who allegedly committed the alleged fraudulent act.

Plaintiff shall file a Second Amended Complaint, if any, on or before March 7, 2024.

---

23CV-01655 Tracey Taber v. Jewel Thomas, et al.

Default Prove Up

**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. Appear to address status of the default prove up package.**

---

23CV-03577 Emmanuel Moreno v. Jacob Frederick, et al.

Petition for Order Permitting a Late Claim Against Government Entity

**The Petition for Order Permitting a Late Claim Against Government Entity is GRANTED. The undisputed facts establish that while a Governmental Claim was filed, it was filed with the wrong government due to mistake, inadvertence and excusable neglect.**

---

24CV-00186 Dorthy Carrasco v. Martin Hernandez.

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 arrange for a remote appearance. The Court notes that no proof of service is currently on file showing that Respondent was served with the Order to Show Cause, the Temporary Restraining Order or the Application for Restraining Order.**

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, February 7, 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.**

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

There are no Mandatory Settlement Conferences Scheduled.

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Limited Civil Calendar  
Judge Pro Tem Peter MacLaren  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, February 7, 2024  
10:00 a.m.

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

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

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

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

23CV-00746	Merced School Employees FCU v, Ali Banks
------------	--

Status Conference

**Appearance by judgment creditor required. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to seek permission and arrange for a remote appearance. Appear to address the status of the case.**

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, February 7, 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.**

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

There are no ex parte matters scheduled.

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Judge Pro Tem Peter MacLaren  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, February 7, 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.**

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

There are no ex parte matters scheduled.

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

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

Wednesday, February 7, 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.**

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

There are no Ex Parte matters scheduled.

---



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Limited Civil Long Cause Court Trials  
Judge Pro Tem Peter MacLaren  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Wednesday, February 7, 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.**

<b>Case No.</b>	<b>Title / Description</b>
-----------------	----------------------------

---

There are no Limited Civil Long Cause Court Trials scheduled.

---