

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings
Hon. Brian L. McCabe
Courtroom 8

627 W. 21st Street, Merced

June 14, 2018
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) 725-4240 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 of your intent to appear does not satisfy the requirement of notifying the court.

Case No. Title / Description

16CV-02862 N & S Tractor Co. vs. Kris L. Cooper

Order of Examination

Appearance required.

17CV-01026 Blia Moua vs. Cindica Salcedo, et al.

OSC Why Sanctions Should Not Be Imposed Against Attorney J. Bohn for Failure to Appear at Case Management Conference

Appearance required.

17CV-02501 Tracy Pinto vs. Merced Union High School District, et al.

Motion to Strike Amendment to Complaint

The motion by defendant Suzanne MacInnes to strike the amendment to the complaint filed on February 27, 2017 substituting the name of Suzanne MacInnes for “Doe 1” is

GRANTED as the amendment to the complaint without leave of court is not authorized by statute or prior court order. The Court notes there is a pending motion for leave to amend the complaint scheduled for hearing on July 11, 2018 that seeks in part to add Suzanne MacInnes as a named defendant to this action.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Brian McCabe.

Demurrer to Complaint

In light of the Court's ruling on defendant's motion to strike, the Court declines to rule on the general demurrer by Suzanne MacInnes to the complaint as moot and as presenting issues that are not ripe for determination. The Court notes that many of the arguments made by plaintiff in opposition to the demurrer concern allegations and claims contained in plaintiff's proposed first amended complaint that is not before the Court. The Court notes the pending motion for leave to amend the complaint scheduled for hearing on July 11, 2018.

Motion to Compel Plaintiff's Further Responses to Defendant's Request for Production of Documents, Set Two

The Court continues the hearing on the motion by defendant Sierra Vista Child and Family Services for an order compelling plaintiff Tracy Pinto to provide further responses to defendant's Request for Production of Documents, Set Two, numbers 16, 17, 18 and 19 to Tuesday, June 19 at 8:15 a.m. for in camera review. Prior to the continued hearing, plaintiff shall provide the Court with the witness statements of Tyler Duran, Chelsea Thompson, Sarah Atkins, and Hannah MacWaters so that the Court may determine if any or all of the disputed witness statements are absolutely privileged or should be produced. (See *Coito v. Superior Court* (2012) 54 Cal.4th 480, 500.) Defendant has shown good cause for the discovery sought based on defendant's inability to locate the witnesses and the admitted relevance of these statements to the action. The sparse information provided by plaintiff's counsel in his declaration in opposition is insufficient to show the disputed documents are protected by the attorney-client communication privilege or the absolute privilege for attorney work product (see Code Civ. Proc., § 2018.030, subd. (a)). Based on the limited information provided to the Court about these witness statements, the Court concludes they may be subject to the qualified work product privilege under Code of Civil Procedure section 2018.030, subdivision (b) and therefore subject to production.

Motion to Stay Discovery

In light of the Court's rulings on the motion to strike and demurrer, the Court continues the review hearing on the Court's order temporarily staying discovery proceedings as to MUHSD, Alan Peterson, Torrin Johnson, and Suzanne MacInnes until further order of the court or written consent of the parties. The review hearing is continued to July 11, 2018

at 8:15 a.m. in Courtroom 8 to trail plaintiff's motion for leave to file an amended complaint.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Brian McCabe.

17CV-03212 Nan Bunker vs. David Verbera

Motion to Expunge Lis Pendens

The Court grants plaintiff Nan Bunker's request for judicial notice of the court file in *Bunker v. Verbera*, Merced Superior Court case number 17CV-04163. The Court notes that judgment was entered in that unlawful detainer action in favor of plaintiff and against defendant, and that there is a pending appeal by defendant.

The motion by plaintiff to expunge the two lis pendens recorded by defendant David Verbera with the County of Merced on or about November 29, 2017 as document numbers 2017040490 and 2017040491 is GRANTED. Defendant has not met his burden of establishing by a preponderance of the evidence the probable validity of any real property claim asserted by defendant in the present action. (Code Civ. Proc., § 405.32.) Pursuant to Code of Civil Procedure section 405.38, the moving party is awarded its reasonable attorney's fees and costs in an amount subject to proof.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Brian L. McCabe.

18CV-01721 Petition of: Faye Boyd

Petition for Name Change

Appearance required.

18CV-01970 Michael Topel vs. Peter Pfothenhauer

Request for Civil Harassment Restraining Orders

Appearance required.

18CV-01971 Angel Cortez-Soto vs. Mark Clark

Request for Civil Harassment Restraining Orders

Appearance required.

18CV-01992 Santiago Villanueva vs. Brandon Ellison

Request for Civil Harassment Restraining Orders

Appearance required.
