

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

627 W. 21st Street, Merced

November 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**

15CV-01747 Kimberly Cromwell vs. Kalel, Inc., et al.

Petition for Confirmation of Arbitration Award

On the Court's own motion, the matter is continued to Tuesday, November 27, 2018 at 8:15am in courtroom 8.

16CV-02447 Martin Madrigal vs. Kalel, Inc., et al.

Petition for Confirmation of Arbitration Award

On the Court's own motion, the matter is continued to Wednesday, November 28, 2018 at 8:15am in courtroom 8.

Status Conference

On the Court's own motion, the matter is continued to Wednesday, November 28, 2018 at 8:15am in courtroom 8.

17CV-02195 Kenneth Myers, et al. vs. Farmers & Merchants Bank of Central California

Motion for Terminating Sanction

On the Court's own motion, the matter is continued to Wednesday, November 28, 2018 at 8:15am in courtroom 8.

Case Management Conference

Appearance required.

17CV-02427 BMO Harris Bank N.A. vs. Rajwinder Johal

Motion for Summary Judgment

On the Court's own motion, the matter is continued to Tuesday, December 4, 2018 at 8:15am in courtroom 8.

18CV-01981 Francisco Ayala vs. Lakeview Loan Servicing

OSC Why Sanctions Should Not Be Imposed on Attorney R. Ambarchyan for Failure to Appear at Case Management Conference on October 22, 2018

Appearance required.

Case Management Conference

Appearance required.

18CV-02552 Ivory-Marie Luna vs. Ronald Johnson

Request for Civil Harassment Restraining Orders

Appearance required.

18CV-04235 Linda Camarillo Martinez vs. Ismael Vargas

Request for Civil Harassment Restraining Orders

Appearance required.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings
Monika Saini, Temporary Judge
Courtroom 9

627 W. 21st Street, Merced

November 14, 2018
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) 725-4240 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

CVM012763 Portfolio Recovery Associates, LLC vs. Joel Armenta

Motion to Vacate Judgment

The unopposed motion by plaintiff Portfolio Recovery Associates, LLC to set aside the default and vacate the default judgment entered on January 8, 2013 against defendant Joel Armenta and to dismiss the action without prejudice is GRANTED in the interests of justice. Plaintiff asserts the debt was successfully disputed by defendant and that plaintiff does not intend to pursue the debt.

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

17CV-03575 Tidewater Finance Company vs. Susana Medel

Motion for Summary Judgment or Summary Adjudication

The unopposed motion by plaintiff Tidewater Finance Company dba Tidewater Credit Services, LLC for summary judgment is GRANTED. Upon consideration of all the evidence set forth in the papers, particularly the declarations of Assistant Manager Lianne C. Smith and attorney Brian D. Cronin, and the business records attached to the

declarations, the Court finds that there is no triable issue of material fact and plaintiff is entitled to judgment as a matter of law. Plaintiff has proven each required element of its claims for breach of contract and common count, thereby shifting the burden to defendant Susana Medel to show the existence of one or more triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(1).) In addition, plaintiff has proven its right to recover attorneys' fees pursuant to contract. By not filing any opposition, defendant has failed to meet her burden on this motion.

In light of the Court's ruling on the motion for summary judgment, it is unnecessary for the Court to rule on plaintiff's alternative motion for summary adjudication.

Plaintiff shall submit a proposed judgment.

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 Monika Saini, temporary judge.

Case Management Conference

In light of the Court's tentative ruling granting plaintiff's motion for summary judgment, the case management conference is vacated.

18CV-01155 Capital One Bank (USA), N.A. vs. Son Y Ku

Motion for Judgment on the Pleadings

The unopposed motion for judgment on the pleadings by plaintiff Portfolio Recovery Associates, LLC is GRANTED without leave to amend the answer. The Court takes judicial notice of its order filed September 6, 2018 granting plaintiff's motion for an order deeming true requests for admission that were propounded to defendant Son Ku. The Court finds that the complaint states facts sufficient to constitute a common counts cause of action against defendant Son Ku and that defendant's deemed admissions negate the denials and defenses asserted in defendant's answer. (See *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549.)

Judgment shall be entered forthwith in favor of plaintiff and against defendant.

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

18CV-02903 Jose Nieto vs Ingrid Ornelas

Motion to Vacate a Judgment

Appearance required.

