

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

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

Friday, April 26 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 – Judge Pro Tem Peter MacLaren

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

Civil Law and Motion
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Friday, April 26, 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.

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Case No.	Title / Description
18CV-01693	Nathaniel Cervantes, et al. v. Atwater Elementary School District Order to Show Cause re: Dismissal-Notice of Settlement Continued on the Court's own motion to Friday June 21, 2024 at 8:15 A.M. in Courtroom 8 pursuant to Declaration of Attorney Scott G. Lyon filed April 22, 2024.
20CV-00497	Fabian Casanova v. Live Oak Farms Further Proceedings: Final Approval, Order and Judgment The Final Approval, Order and Judgment is approved, and the Court will sign the proposed judgment inserting June 28, 2024 at 8:15 A.M. Courtroom 8 as the time for the Final Compliance Hearing in such Judgment.

21CV-00329

Javier Rodriguez v. Merced Irrigation District

Order to Show Cause re: Dismissal-Notice of Settlement

Continued on the Court's own motion to July 26, 2024 at 8:15 A.M. in Courtroom 8 pursuant to the Notice of Settlement of Entire Case indicating that a dismissal would be entered by July 1, 2024.

21CV-03416

Eric Gardner vs Hilmar Cheese Company, Inc.

Further Proceedings Re: Final Report

Appearance required. Counsel to provide Court with timeline to finalize matter and file a dismissal.

22CV-00553

Pedro Alvarado v. City of Merced

Motion to Vacate Order That Requests for Admission are Deemed Admitted

Relief from an Order that Requests for Admissions are Deemed Admitted due to a failure to respond is available pursuant to a Motion to Withdraw or Amend Deemed Admissions. (See *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 979.) Relief is not available pursuant to CCP § 473(b). (*St. Paul Fire & Marine Ins. Co. v. Sup. Ct.* (1992) 2 Cal.App.4th 843, 852.) Thus, the procedure provided by CCP § 2033.280 is the exclusive remedy to obtain relief from either a waiver of objections or an order that Requests for Admission for which no response was provided be deemed admitted. The requirements for relief under CCP § 2033.280 are that (1) The party has subsequently served a response which is in substantial compliance with CCP § 2033.210, 2033.220, and 2033.230; and (2) the parties' failure to provide a timely response was due to mistake, inadvertence or excusable neglect. The exclusive remedy for withdrawal or amendment to admissions is provided in CCP § 2033.300 and requires a showing of mistake, inadvertence or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced. The Court may impose conditions on the granting of a motion to amend or withdraw Requests for Admissions that are deemed admitted.

The instant Motion to Vacate Order that Requests for Admission be Deemed Admitted seeks Mandatory Relief pursuant to CCP § 473(b) based on evidence that an Order Granting a Motion to be Relieved as Counsel was issued but not served at Plaintiff's then correct address and therefore that the failure by Plaintiff, who apparently speaks limited English, to respond to Requests for Admission served after the Motion to be Relieved as Counsel was the fault of counsel. While it is not clear to the Court that these facts establish grounds for mandatory relief under CCP § 473(b), the fact is that CCP § 473(b) does not apply to Relief from an Order that Requests for Admission be Deemed Admitted. (See *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 979.)

While this Court finds the information provided in support of the present motion might potentially establish mistake, inadvertence or excusable neglect (there is no declaration

by Plaintiff himself concerning why he did not provide a response to the Requests for Admission) the fact is that relief cannot be provided at this time because Plaintiff has not complied with the requirement of CCP § 2033.280 that the party has subsequently served a response which is in substantial compliance with CCP § 2033.210, 2033.220, and 2033.230. Absent service of a code compliant response, it is impossible for the Court or the parties to know which of the requests are admitted and which are denied. It would also be impossible to determine whether Cost of Proof Sanctions are appropriate for those requests that are denied, but then proven by Defendant at trial, and impossible to ascertain the extent of prejudice resulting from an order granting relief as required by CCP § 2033.300. The Court notes that the pending Motion for Summary Judgment is based in part on the Order that Matters be Deemed Admitted and therefore evaluation of prejudice must necessarily address the status of the pending Motion for Summary Judgment if an Order Granting Relief with Respect to the Order that Matters be Deemed Admitted is issued. Accordingly, the present Motion for Relief pursuant to CCP § 473(b) is DENIED WITHOUT PREJUDICE.

Request to Continue Motion for Summary Judgment

In light of the ruling on the Motion to Vacate Order that Requests for Admission be Deemed Admitted, the Motion to Continue the Motion for Summary Judgment is CONTINUED ON THE COURT'S OWN MOTION from the present date of May 22, 2024 to July 10, 2024 at 8:15 A.M. in Courtroom 8. The Case Management Conference currently set for May 22, 2024 is also CONTINUED ON THE COURT'S OWN MOTION to July 10, 2024 at 8:15 A.M. in Courtroom 8.

22CV-04213 Gabino Santiago-Ruiz v. western Motors

Status Conference

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. Appear to address status of Mediation previously set for April 8, 2024.

22CV-00705 Rafael Mayo v. Double B Dairy, G.P., et al.

Status Review of Settlement/Motion for Final Approval of Class Action Settlement

The Motion for Final Approval of Class Action Settlement is GRANTED. The Court will sign the Order and Judgment Lodged April 18, 2024.

23CV-00762 Donovan Soto v. Mid-Valley Disposal, et al.

Case Management Conference

CONTINUED ON THE COURT'S OWN MOTION to May 1, 2024 at 8:15 A.M. in Courtroom 8 to be heard concurrently with the discovery motions pending at that time.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Hon. Brian L. McCabe
Courtroom 8
627 W. 21st Street, Merced

Friday, April 26, 2024
1:15 p.m.

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Case No.	Title / Description
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There are no Ex Parte matters scheduled.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Ex Parte Matters
Judge Pro Tem Alexandria Carl
Courtroom 9
627 W. 21st Street, Merced

Friday, April 26, 2024
1:15 p.m.

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Case No.	Title / Description
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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

Friday, April 26, 2024
1:15 p.m.

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