

Judge Benson – Law & Motion – Wednesday, October 8, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV02120 Lewis, Stephanie v. City of Chico et al.

EVENT: Defendant City of Chico's Motion for Summary Judgment

Defendant City of Chico's Motion for Summary Judgment is DENIED.

The Court rules on the following evidentiary objections it deems material:

Plaintiff's objection nos. 6,7: overruled

City's objections to the photographs and video attached to the declaration of Michael Lewis: all overruled.

City's objection to Plaintiff's UMF 44: overruled.

A Triable Issue of Fact Exists Whether the Conditions Were Dangerous

Gov. Code §830

(a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.

A dangerous condition is ordinarily a question of fact, but it may be resolved as a question of law only if reasonable minds can come to but one conclusion. (*Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 76) The Court has reviewed Exhibit 4 to the declaration of Michael Lewis, which is a video depicting the subject tree stump and grate. The video indicates that when a person steps on the grate or otherwise applies pressure, the grate moves up and down several inches.

Additionally, Plaintiff has presented circumstantial evidence that when the City cut down the tree, it was not flush with the grate. (PUMF 15,25,27) The Court finds that the condition of the grate and the condition of the stump, each in isolation, presents a trivial risk of injury. However, when multiple conditions exist, we consider the combined harm, see *Aitkenhead v. San Francisco* (1957) 150 Cal.App.2d 49, 52)

Viewing this evidence in the light most favorable to the opposing party (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843), a triable issue of fact exists whether the combined conditions of the tree grate and tree stump constitute a dangerous condition.

As an aside, the City emphasizes that Plaintiff saw the grate and decided to step on it anyway. However, per Plaintiff's UMF 44, the City's position is that the public is permitted to walk on grates.

Gov. Code § 835

835. When public entity liable for injury caused by dangerous condition of property

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

[Emphasis Added]

As discussed, the Court finds a triable issue of fact whether the combination of the conditions of the grate and the tree stump constitute a dangerous condition is a triable issue of fact. The next issue is whether, for each condition, a triable issue of fact exists with respect to either Gov. Code 835(a) or (b).

The Stump

As discussed, Plaintiff has presented circumstantial evidence that when the City cut down the tree, it was not flush with the grate. (PUMF 15,25,27) Circumstantial evidence may establish a triable issue of fact. (See *Mackey v. Trustees of California State University* (2019) 31 Cal.App.5th 640) In liberally construing Plaintiff's evidence, as we are required to do at this stage, the fact that the stump was not flush at the time of injury leads to the inference that it may not have been flush at the time the tree was cut. Thus, a triable issue of fact exists whether the act of cutting down the tree was a negligent act for purposes of Gov. Code section 835(a).

The Grate

At first glance, based on the testimony from Mr. Bettencourt that he observed the grate was solid, one would question how a triable issue of fact could exist on the issue of whether the City had actual or constructive knowledge of the flimsy condition of the grate. (See PUMF 46) However, similar to the stump, an inference from the circumstantial evidence could be made that because the grate was flimsy at the time of the accident, it was flimsy at the time the tree was cut. If it was flimsy at the time the tree was cut, then Defendant may have had actual or constructive knowledge because an employee observed the grate on the day it was cut.

Based on the rules of construction requiring us to construe defendant's evidence narrowly and plaintiff's evidence liberally, this analysis comports with those rules. As discussed, witness credibility itself is a triable issue of fact. That is especially true when the witness is an adversarial witness.

Additionally, we do not weigh evidence on summary judgment. (*Aguilar, supra*, at p. 856) Thus, despite Mr. Bettencourt's testimony that he "believes" the grate was solid, a triable issue of fact exists whether the City had actual or constructive notice that the grate was flimsy prior to the accident.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

2. 23CV01364 Dickson, Amber Bowen et al v. Amber Grove Place, LLC et al.

EVENT: Plaintiffs' Motion to Invalidate Arbitration Agreements, Limit Defendants' Unilateral Communications with Putative Class Members, and Disqualify Defendants' Counsel

(Continued from 9/17/25)

Plaintiff's Motion to Invalidate Arbitration Agreements, Limit Defendants' Unilateral Communications with Putative Class Members, and Disqualify Defendants' Counsel is GRANTED in PART.

Pre-Certification Opt-Outs Are Void

Preliminarily, the Court is not commenting on the enforceability or lack thereof of the dispute resolution agreements outside the context of this lawsuit. The critical issue before the Court is whether a waiver of participation in this lawsuit as a putative class member or class member is enforceable considering the waivers were executed while this case was pending.

California courts have recognized the trial court has both the duty and the authority to exercise control over precertification communications between the parties and putative class members to ensure fairness in class actions. (*Barriga v. 99 Cents Only Stores* (2001) LLC 51 Cal.App.5th 299, 307-308) The Court's research indicates there are very few published state court decisions on issues concerning pre-certification communications and the consequences of improper pre-certification communications. It is apparent, however, that California courts follow Federal decisions in this area of the law.

Ex parte solicitation of opt-outs by a defendant before class certification is improper. (*Camp v. Alexander* (2014) 300 F.R.D. 617, 625) Ultimately, the dispute resolution agreements were tantamount to an ex parte solicitation to opt out of this case. The Court makes the factual finding that Defendant and its counsel improperly solicited putative class members to opt of this case while the case was pending.

Consequently, the agreements are invalid to the extent they attempted to preclude putative class members from participating in this case.

Ex Parte Communications with Putative Class Members

Based on the Court's factual finding of improper solicitation, going forward, Defendant and its counsel are prohibited from engaging in ex parte communications with putative class members concerning this case without prior approval until further order of the Court.

A Corrective Notice is Required

In light of the Court's finding, a corrective notice is required. The Court has reviewed the proposed corrective notice drafted by Plaintiffs' counsel and finds the notice to be generally adequate. However, a few modifications are necessary.

As noted, this ruling is limited to invalidating the putative class-members' waiver to participate in this class action. The notice needs to make that clear and needs to make clear that the Court is not making any rulings with respect to the enforceability of the agreement beyond that.

Plaintiff shall resubmit a proposed corrective notice no later than October 17, 2025. A review hearing is hereby scheduled for October 29, 2025 at 9:00am. Assuming the notice is in order and is approved by the Court, the Court will set a schedule for the mailing of the notices at that time. Defendant will be required to reimburse Plaintiffs' counsel for the mailing costs.

Employee Declarations

The Court denies Plaintiff's request to strike the declarations, however, the Court reserves the right to give appropriate weight to the declarations in light of other evidence presented.

Request to Disqualify Defense Counsel

Plaintiffs' request to disqualify defense counsel is denied. There is no evidence of an attorney client relationship between defense counsel and any employee.

Plaintiffs shall prepare a form of order consistent with this ruling within 2 weeks.

3. **24UD04177 Norman Hueckel Trustee of the Hueckel Family Trust v. Platinum Health Partners Inc.**

EVENT: Motion for Attorney's Fees and Costs Pursuant to Civil Code § 1717 (Continued from 9/24/25)

Motion for Attorney's Fees and Costs Pursuant to Civil Code § 1717 is GRANTED. Plaintiff is awarded \$8,901.00 in attorney fees. Plaintiff shall prepare an amended judgment.

4. **25AP00007 Button, Patrick v. Durham Irrigation District**

EVENT: Writ of Mandate

The Court will conduct a hearing. The Petition is DENIED today. There is no proof of service on file demonstrating Respondents have been served with the Petition. The Petition must be served in accordance with the Code of Civil Procedure before the Petition can proceed.

5. **25CV00302 Wells Fargo Bank, N.A. v. Ruttman, Ma L**

EVENT: Plaintiff's Motion for an Order Deeming the Truth of the Matters Specified in Plaintiff's Request for Admissions as Admitted

Plaintiff's Motion for an Order Deeming the Truth of the Matters Specified in Plaintiff's Request for Admissions as Admitted is GRANTED. The Court will sign the proposed order.

6-7. 25CV03266 Fugate, Bryce v. Wittmeier, Kristen et al.

EVENT: Plaintiff's Motion for Preliminary Injunction

In light of the pending motion to compel arbitration, Plaintiff's motion for a preliminary injunction is continued to October 22, 2025 to trail said motion.

As an aside, Plaintiff has attempted to introduce new evidence in the reply papers. The Court is not considering that evidence, see *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537).