Judge Benson – Law & Motion – Wednesday, February 25, 2026 @ 9:00 AM
TENTATIVE RULINGS

1. **19CV00468 Kaur, Manjit v. Onkaar Inc, a California Corporation et al**

EVENT: Motion to Enforce Settlement Agreement By Plaintiff Manjit Kaur and Award of Attorney Fees Pursuant to CCP 664.6

Motion to Enforce Settlement Agreement By Plaintiff Manjit Kaur and Award of Attorney Fees Pursuant to CCP 664.6 is GRANTED. Sanctions are awarded in the amount of $1,390.00. Plaintiff shall prepare and submit a form of order within 2 weeks.

2. **21CV02823 Smith, Shane v. Blakley, Connor, et al.**

EVENT: Motion to Strike Answer of Bru Brands (Continued from 1/28/26 and 2/11/26)

The Court will hear from counsel as to whether notice was sent regarding the continued hearing.

3-4. 21CV03075 Hall, Chantelle v. City of Chico et al

EVENT: (1) Defendant City of Chico's Second Motion for Summary Judgment, or in the Alternative, Summary Adjudication (Continued from 1/28/26)

(2) Plaintiff's Motion for Summary Judgment (Continued from 1/28/26)

CITY'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

Preliminarily, as to the City's evidentiary objections, some of the objections comply with CRC 3.1354 and others did not. Plaintiff's opposition references evidence from two separate documents: Declaration of JD Zink in Opposition to the City of Chico's Motion for Summary Judgment; and Declaration of Scottlynn J Hubbard in Support of [Plaintiff's] Second Motion for Summary Adjudication along with exhibits (including approximately 3,500 photos). The City properly filed separate evidentiary objections to Mr. Zink's declaration and related documents but did not file separate evidentiary objections with respect to Mr. Hubbard's declaration and related evidence.

As a result, the City's evidentiary objections to the evidence relating to Mr. Hubbard is overruled for failure to comply with CRC 3.1354. (The Court also notes some of the objections are not cognizable evidentiary objections)

Regarding the evidentiary objections to Mr. Zink's declaration and related evidence, the objections are overruled.

Plaintiff's request for judicial notice is granted as unopposed.

First Cause of Action for Violation of the ADA

The motion is granted in part and denied in part.

A Triable Issue of Fact Exists on the Issue of Whether City Sidewalks Were Inaccessible on a Programmatic Level

As the City notes, the standard to be applied in determining whether Plaintiff was denied access depends on whether the facility is a "new" facility (which requires that sidewalks be "readily accessible" – *see Frame v. City of Arlington* (5th Cir. 2011) 657 F.3d 215, 220–21) or whether the sidewalk constitutes an existing facility – which requires that the public

sidewalks, when viewed in their entirety, are readily accessible. This effectively means the City is not required to make all portions of the sidewalks accessible, *see Cohen v. City of Culver City* (2014) 754 F.3d 690, 696.

Thus, there are two sub issues here – 1) was the sidewalk an existing facility at the time of the 2021 injury and 2) if it was, are the city sidewalks, viewed in their entirety, "readily accessible".

As to the first issue, per Plaintiff's separate statement, she does not dispute City's UMF 3 that the sidewalk in question was installed prior to 1968. Per 28 CFR § 35.151, January 26, 1992 is the relevant date. Facilities constructed after January 26, 1992 are "new" facilities, facilities constructed before January 26, 1992 are "existing" facilities. Section 35.151 does require that when an existing facility is altered, the "new" facility accessibility standards will apply to the alteration.

However, because it is undisputed that the subject sidewalk was an existing facility and was unaltered at the time of the 2021 injury, the alteration rule is inapplicable regarding the 2021 injury. Plaintiff's attempt to argue that the 2025 alterations mean the existing facility standards do not apply is not persuasive. Simply put, the sidewalk had not been altered since 1968 at the time of the 2021 injury. Thus, as it specifically pertains to the 2021 injury, the exiting facility standard applies.

Thus, the standard is whether city sidewalks, when viewed in their entirety, are readily accessible. The City simply argues there is no evidence demonstrating inaccessibility on a programmatic level. Because Plaintiff has the burden of proof on this issue, the City has met its initial burden on summary judgment, *see Saelzler v. Advanced Group* 400 (2001) 25 Cal.4th 763, 767.

Plaintiff's counsel's paralegal, Scottlynn Hubbard, submitted a declaration indicating he investigated over 700 city sidewalk locations relating to complaints received by the City for sidewalk repair. Attached as an exhibit to the declaration is a flash drive which separately identifies the address of each location and includes corresponding photographs.

After review, the Court notes many of the locations contain obvious 1" or more height gaps in the sidewalk. Some locations are less obvious and Plaintiff's argument as to those locations appears to be excessive slope. Considering the volume of evidence and the obvious problems depicted in many instances, the Court finds a triable issue of fact exists whether city sidewalks are inaccessible to the disabled public on a programmatic level.

A Triable Issue of Fact Exists Whether the City is Liable for Failing to Remove an Architectural Barrier

Hubbard v. Twin Oaks Health & Rehab. Ctr. (E.D.Cal. 2004) 408 F.Supp. 2d 923, 929:

> Title III of the ADA prohibits discrimination against individuals on the basis of disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages

> or accommodations of any place of public accommodation. See 42 U.S.C. § 12182(a). Title III defines "discrimination" as, among other things, a failure to remove "barriers . . . where such removal is readily achievable." 42 U.S.C. § 12182(b)(2)(A) (iv)
>
> To succeed on a ADA claim of discrimination on account of an architectural barrier, the plaintiff must also prove that (1) the existing facility at the defendants' place of business presents an architectural barrier prohibited under the ADA, and (2) the removal of the barrier is readily achievable. See 42 U.S.C. § 12182(b)(2)(A)(iv)
>
> [Emphasis Added]

There was no issue in *Hubbard* as to what constitutes an "architectural" barrier. The Court has found no case law on the question of whether a tree root which causes a sidewalk to raise is a "architectural" barrier. Although the Court was initially inclined to find the circumstances do not establish an architectural barrier, after careful consideration, the Court finds the facts demonstrate an architectural barrier.

When adopting the architectural barriers rules, ostensibly Congress was more concerned about the end result as opposed to the root cause (no pun intended) of the architectural barrier. In other words, a raised sidewalk is an architectural barrier – the sidewalk is the architectural component and the raised condition is the barrier component. What caused the condition seems to be irrelevant for ADA purposes. Had Congress intended to exempt tree roots originating from private property (or other conditions emanating from private property) such that public entities would be immune from liability in such instances, it could have and would have so indicated.

In enacting the ADA it appears Congress' primary concern was access issues from the disabled person's perspective. Here, from a disabled person's perspective, whether the raised sidewalk was caused by a tree root or some other factor seems immaterial. Rather, the relevant fact is that the sidewalk was raised.

Thus, at a minimum, a triable issue of fact exists whether the subject sidewalk was an architectural barrier. The issue becomes whether removal was readily achievable prior to the 2021 injury. None of the City's papers address the issue of whether remediation of the raised sidewalk was readily achievable prior to the incident. For that reason alone, the motion must be denied.

As a corollary, the City's evidentiary objections to the evidence of the 2025 alteration, including the subsequent remedial objection, are overruled. The evidence of the alterations in 2025 are relevant to whether removal of the barrier is readily achievable, *see Wilson v. Pier 1 Imps*. (US), Inc. (2006) 439 F. Supp. 2d 1054, 1069.

(Note: With respect to the Premises Liability cause of action, the Court agrees with the City that the 2025 repairs are inadmissible for the purpose of establishing the sidewalk was in a dangerous condition at the time of the 2021 incident. Nevertheless, a triable issue of fact exists on that issue as discussed herein.)

A Triable Issue of Fact Exists on the Issue of "Deliberate Indifference"

A plaintiff must at least establish deliberate indifference to recover monetary damages under the ADA, *see Memmer v. Marin County Courts* (9th Cir. 1999) 169 F.3d 630, 633. Deliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. (*Bd. of the Cnty. Comm'rs v. Brown* (1997) U.S. 520 397, 410)

Here Plaintiff has submitted evidence in the form of a 2017 letter from the City Council which identified ADA barriers. The letter specifically identifies barriers on Manzanita Ave., the street on which the subject sidewalk is located. While the evidence does not conclusively dispose the deliberate "indifference issue", it sufficiently raises a triable issue of fact. Further, the 700 + sidewalk locations identified in Mr. Hubbard's declaration, which were apparently brought to the City's attention via public complaints, also creates a triable issue of fact.

To summarize, summary adjudication is granted on the following legal issue: the sidewalk was a pre-existing facility for purposes of the ADA at the time of the 2021 injury. The motion is denied on the following issues: 1) whether the City's sidewalks were inaccessible on a programmatic level; whether the City is liable for failing to remove an architectural barrier pursuant to 42 USCS § 12182(b)(2)(iv); and on the issue of deliberate indifference.

Second Cause of Action for Violation of the Rehabilitation Act

The motion is entirely premised on the argument that the ADA claim fails. Accordingly, because we have not disposed of the ADA claim, the motion is denied.

Third Cause of Action for Violation of the Rehabilitation Act

Again, the City premises its argument solely on the presumption that the ADA claim fails. Because we have not disposed of the ADA claim, the motion is denied.

Fourth Cause of Action for Violation of the Unruh Civil Rights Act

Plaintiff has conceded this cause of action is no longer viable. Accordingly the motion is granted.

Fifth Cause of Action – Health & Safety Code Section 19955

The City is correct – H&S 19955 does not apply to sidewalks built prior to July 1, 1970, *see Donald v. Sacramento Valley Bank* (1989) 209 Cal.App.3d 1183, 1192. However, it does apply if there is an alteration after that date. Plaintiff contends the 2025 alteration moots the motion. The City's reply contends H&S 19955 is not applicable because there was no alteration at the time of incident. The Court agrees with the City – the only relevant inquiry is whether there was an alteration at the time of the incident. Because there was not, the motion is granted.

Sixth Cause of Action – Premises Liability

The moving papers contend the complaint fails to identify a statute authorizing a premises liability cause of action against the City. It is well settled that the pleader must identify the statutory basis for liability as to a government entity, *see Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802. The moving papers were directed to the original complaint. Since that time, the pleading has been amended twice, and the operative Second Amended Complaint identifies GC § 835(b) as the statutory basis for Plaintiff's premises liability clam. Thus, the argument that the pleading does not identify a statutory basis is moot.

The moving papers proceed to address the merits of the cause of action under the presumption liability would be imposed under Civil Code § 1714. Again, because the operative pleading identifies GC § 835(b), this argument is also moot.

The moving papers then proceed to argue that even if a statutory basis exists, the City is not responsible because statutes and ordinances place duties on private land owners adjacent to public sidewalks to maintain the sidewalks in a safe condition. The City does not cite any case law suggesting duties owed by private property owners with respect to adjacent sidewalks extinguish statutory duties owed by government entities. *Jones v. Deter* (1984) 152 Cal.App.3d 798 does not stand for that proposition. As a result, the motion is denied.

The City shall prepare the form of order within 2 weeks.

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

First Cause of Action – ADA

The motion is denied.

Plaintiff contends there is no triable issue of fact with respect to the "exclusion from a public entity services" element of her ADA claim. (The opposition concedes the other two elements – that Plaintiff qualified under the ADA and that the City is a public entity)

She appears to have alternative arguments: (1) Because of the 2025 alterations, plaintiff is no longer bound by the existing facility standard; rather the "readily accessible" standard for sidewalks that have been modified apply; (2) The raised sidewalk constituted and architectural barrier; there is no triable issue of fact that the raised sidewalk constituted an architectural barrier; and there is no triable issue of fact that repair was readily achievable given the subsequent alteration.

Regarding the first theory, the 2025 alteration did not change the legal standard with respect to Plaintiff's 2021 injuries. There is no dispute that at the time of the 2021 injury the subject

sidewalk constituted an existing facility. Thus, Plaintiff cannot attempt to use the subsequent 2025 repair to change the legal standard for the 2021 injury. With respect to the 2021 injury, the subject sidewalk was an existing facility which means pursuant to 28 C.F.R.§ 35.150 Plaintiff must demonstrate that city sidewalks, viewed in their entirety, are not readily accessible.

As to the architectural barrier issue, the Court re-incorporates its discussion regarding the City's motion. The Court's finding that a raised sidewalk constitutes an architectural barrier (regardless of what caused the sidewalk to be raised) is a legal determination. Thus, there is no triable issue of fact whether the subject sidewalk constituted an architectural barrier. Thus, the question becomes whether repair was readily achievable.

In the Court's view, the readily achievable issue is not suitable for summary adjudication under these circumstances. With respect to *Wilson v. Pier 1 Imps*. (US), Inc. (2006) 439 F. Supp. 2d 1054, which held that a subsequent repair demonstrated repair was readily achievable, the Court declines extending that decision to this case. *Wilson*, an Eastern District case is persuasive but not binding authority. While the Court agrees with *Wilson* that the subsequent repair is admissible on the issue, it does not agree that a subsequent repair is dispositive on the issue, especially under the facts of our case.

42 USCS § 12181

> (9) Readily achievable. The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—
>
> > (A) the nature and cost of the action needed under this Act;
> >
> > (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
> >
> > (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
> >
> > (D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.
> >
> > [Emphasis Added]

The word "include" indicates the factors in determining whether removal is readily achievable under 42 USCS § 12181 is not exhaustive. This is not a bright line rule, but rather involves a "fact intensive inquiry that will rarely be decided on summary judgment." *White v. Divine Investments, Inc*., 2005 U.S. Dist. LEXIS 23018.

Here, the repair occurred 4 years after the injury. That does not conclusively establish that repair was readily achievable. Does the phrase “easily accomplishable” pertain to the subject barrier in isolation, or would that phrase permit consideration of the City’s broad obligations concerning its sidewalks? There is evidence that the City had a laundry list of issues with its sidewalks. If the City had a laundry list of other barriers to repair, is the repair of the subject barrier still “readily achievable” in that context? Is the cost of repair of the subject sidewalk considered in isolation, or is the cost considered in the context of the City’s obligations generally?

Because the factors in 42 USCS § 12181 is not exhaustive, the Court is inclined to consider these considerations. Due to the factual nature of this issue, the Court finds a triable issue of fact exists.

Second Cause of Action - California Disabled Persons Act

The motion is necessarily denied because Plaintiff’s theory of liability is premised on her ADA claim.

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

5-8. <u>24CV01751 Mendez, Miguel v. Anami, Younis, et al.</u>

EVENT: (1) Motion to Compel Defendant Younes Anani Individually and DBA The Waffle Shop's Response to Form Interrogatories Set One, Request for Monetary Sanctions in the amount of $2,150.00 Against Defendant Younes Anai Individually and DBA The Waffle Shop and/or Its Attorney of Record, Law Offices of Jill A. Wood

(2) Motion to Compel Defendant Younes Anani Individually and DBA The Waffle Shop's Response to Request for Admissions, Set One, Request for Monetary Sanctions in the amount of $2,150.00 Against Defendant Younes Anai Individually and DBA The Waffle Shop and/or Its Attorney of Record, Law Offices of Jill A. Wood

(3) Motion to Compel Defendant Younes Anani Individually and DBA The Waffle Shop's Response to Request for Production of Documents, Set One, Request for Monetary Sanctions in the amount of $2,150.00 Against Defendant Younes Anai Individually and DBA The Waffle Shop and/or Its Attorney of Record, Law Offices of Jill A. Wood

(4) Motion to Compel Defendant Younes Anani Individually and DBA The Waffle Shop's Response to Special Interrogatories, Set One, Request for Monetary Sanctions in the amount of $2,150.00 Against Defendant Younes Anai Individually and DBA The Waffle Shop and/or Its Attorney of Record, Law Offices of Jill A. Wood

The motions are denied without prejudice for failure to comply with CCP 1005 et seq which requires a minimum of 16 court days' notice plus an additional 2 court days for email. According to the proof of service, the moving papers were emailed on February 9, 2026. Factoring in both President's Day court holidays, February 9 is only 10 court days before the hearing.

9. 24CV03959 Discover Bank v. Jarvis, Carly

EVENT: Plaintiff's Motion to Enter Judgment Pursuant to CCP 664.6

Plaintiff's Motion to Enter Judgment Pursuant to CCP 664.6 is GRANTED. The Court will sign the proposed order and judgment.

10. 25CV04576 Curran, Kenneth v. White, Tatton et al.

EVENT: Petition to Confirm Arbitration Award (Continued from 1/14/26)

At the previous hearing the Court indicated concerns it had regarding notice. However, after further review, the Court finds Petitioner substantially complied with notice requirements. Although counsel notes she did not receive a summons – a summons is not required in connection with a petition to confirm an arbitration award. While it is true that CCP 1290.4 requires service of the *petition* "in the same manner as the service of summons", nowhere in the statutory scheme does the code require the issuance of a summons in connection with a petition to confirm an arbitration award.

Additionally, case law indicates that actual notice can constitute substantial compliance with the code despite the lack of a proof of service, *see Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.app.4th 1434, 1143. Thus, because counsel has acknowledged receipt of the Petition (and the Petition indicated a date and time for the initial hearing) the Court finds notice to be sufficient.

The Court has limited authority in the context of a petition to confirm an arbitration award, *see Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 868. There are no allegations of fraud or clerical errors here, thus the Court must confirm the award as written by the arbitrator.

There is no dispute that the arbitrator (1) disassociated Petitioner and (2) established a value for his shares. The arbitrator was clear that he was not ruling on the issue of how payment was to occur. Because he didn't rule on it, we have no authority to rule on it in the context of this proceeding.

Respondent asks the Court to deny this Petition. While the Court appreciates some of the concerns raised in the opposition, including what appears to be unambiguous contractual

terms concerning payment of the shares, the Court lacks the authority to refuse confirming what was awarded. Again, there are no allegations of fraud or clerical errors.

Thus, the petition to confirm arbitration award is granted, but the Court is only confirming what was actually awarded – nothing more. Because the arbitrator did not address the issue of how payment is to be made, neither does this order address that issue.

Any dispute concerning how payment is made can only be addressed in a separate proceeding – it simply cannot be addressed in this proceeding.

The Court will prepare the order. Petitioner shall prepare the judgment.

11. 25CV04716 In re: Huffmon, Maia Elizabeth Catherine

EVENT: Change of name (adult) (continued from 1/28/26 and 2/11/26)

There is no proof of publication on file. The Court will hear from Petitioner.

12. 25CV04866 In re: Van Gorder, Alexa Kelly Jacqueline

EVENT: Change of name (adult) (Continued from 2/11/25)

There is no proof of publication on file. If no proof of publication is submitted by the hearing and there are no appearances, the Court will dismiss the Petition without prejudice.

13. 25CV05040 In re: Reichel, Derek Evert

EVENT: Change of name (adult)

There is no proof of publication on file. Upon filing of the proof of publication, the Court will sign the decree provided.

14. 25CV05052 In re: Brown, Victoria

EVENT: Change of name (adult)

There is no proof of publication on file. Upon filing of the proof of publication the Court will sign the decree provided.

15. 25CV05083 In re: Cloughly, Gaven Jay

EVENT: There is no proof of publication on file. Upon the filing of the proof of publication the Court will sign the decree provided.

There is no proof of publication on file. Upon filing of the proof of publication, the Court will sign the decree provided.

16. 23CV03153 In re: Wyman, Catherine

EVENT: Petitioner's Ex Parte Request to Make Case Records Confidential Pursuant to Senate Bill 59

Petitioner's Ex Parte Request to Make Case Records Confidential Pursuant to Senate Bill 59 is GRANTED. The Court will sign the proposed order.