

**Judge Benson – Law & Motion – Wednesday, July 17, 2024 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 21CV03075 Hall, Chantelle v. City of Chico et al.**

*EVENT: Plaintiff's Motion for "Partial" Summary Judgment*

Plaintiff's Motion for Partial Summary Judgment is DENIED as to both Defendants City of Chico and Defendant Reed Francis.

Plaintiff's Request for Judicial Notice is GRANTED. However, the Court is not assuming the truth of the information contained in the documents.

On summary judgment, we construe the moving parties' evidence narrowly and the non-moving parties' evidence broadly. (See *Monte Vista Dev. Corp. v. Superior Court*, (1991) 226 Cal. App. 3d 1681,1684)

*Defendant Reed Francis*

Preliminarily, the Court notes Plaintiff's reply attempts to introduce new evidence which was not introduced with the moving papers. The Court has discretion whether to accept new evidence with the reply papers (see *Alliant Ins. Services, Inc. v. Gaddy*, (2008) 159 Cal. App. 4th 1292, 1308). The Court is declining to consider the new evidence.

The parties agree an element of a Title III cause of action requires the defendant own, lease, or operate a place of public accommodation. (See *Molski v. M.J. Cable, Inc.*, (2007) 481 F.3d 724, 730) Plaintiff has not met her initial burden demonstrating no triable issue of fact exists. Plaintiffs' UMF 15 states the City owned the sidewalk, and UMF 5 states Plaintiff tripped over the sidewalk. This contradicts Plaintiff's assertion in UMF 15 that Defendant Francis owned the property where the incident occurred. Construing Plaintiff's evidence narrowly, as we are required in this instance, Plaintiff has failed to meet her initial burden.

Further, as Defendant Francis noted, an apartment complex is not a place of public accommodation for purposes of Title III. As a result, the motion is denied as to the Title III cause of action and Defendant Reed Francis. Consequently, the motion is necessarily denied as to the California Disabled Persons Act cause of action pertaining to Defendant Francis.

*Defendant City of Chico*

The parties agree the elements of a Title II violation are:

- (1) she is a "qualified individual with a disability";
- (2) she was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity;

and

(3) such exclusion, denial of benefits, or discrimination was by reason of his disability.

*Weinreich v. Los Angeles County Metro. Transp. Auth.*, (1997) 114 F.3d 976, 978

A triable issue of fact exists as to element #2. The City has provided evidence that the subject sidewalk is not an existing facility for purposes of the ADA. (City's UMF 3) As it pertains to existing facilities, 28 CFR 35.150 requires the City to provide a sidewalk that "when viewed in its entirety, is readily accessible to and usable by individuals with disabilities."

Plaintiff has presented no evidence demonstrating that the subject sidewalk is not, when viewed in the entirety, readily accessible. A triable issue of fact exists on the issue.

Further, Plaintiff has submitted no evidence indicating the sidewalk was "altered" for purposes of the statute.

§ 35.151 New construction and alterations.

(b) Alterations.

(1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

[Emphasis Added]

The plain language of the statute indicates "altered" means affirmative conduct on behalf of the City. A tree root originating from private property is not an alteration for purposes of the ADA as it pertains to the City.

The Court declines addressing the issue of deliberate indifference at this time.

In light of the Court's ruling on the Title II cause of action, the motion is necessarily denied as to the California Disabled Persons Act cause of action.

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

## 2. 22CV02886 V.B. v. DOE 1 et al.

*EVENT: DOE 1's Motion for Terminating, Issue, Or Evidence Sanctions Against Plaintiff for Failure to Comply With Discovery Orders; and Request for Monetary Sanctions in the Amount of \$4,357.00*

DOE 1's Motion for Terminating, Issue, Or Evidence Sanctions Against Plaintiff for Failure to Comply With Discovery Orders; and Request for Monetary Sanctions in the Amount of \$4,357.00 is GRANTED in PART. The request for terminating sanctions is denied without prejudice. Plaintiff is ordered to provide complete responses without objection to DOE 1's outstanding discovery requests within 20 days of this order. If plaintiff fails to comply, the court would consider a motion for terminating sanctions at that time.

Evidentiary sanctions are hereby imposed against plaintiff for his willful violation of the Court's previous order. Plaintiff is prohibited from introducing the following matters into evidence:

- Any evidence, including witness testimony and documents, relating to DOE 1's ownership, control, management, oversight, direction, or operation of the church where DOE 3 allegedly met and sexually assaulted Plaintiff;
- Any evidence, including witness testimony and documents, that DOE 3 was an agent or employee of DOE 1;
- Any evidence, including witness testimony and documents, that DOE 1 is legally responsible for any acts or omissions of DOE 2;
- Any evidence, including witness testimony and documents, that DOE 1 was a successor-in-interest and/or alter ego of any other defendant;
- Any evidence, including witness testimony and documents, relating to DOE 1's care, operation, ownership, supervision, and control of the programs and school that Plaintiff participated in, including the premises where they were located;
- Any evidence, including witness testimony and documents, that DOE 3 sexually assaulted or abused Plaintiff;

- Any evidence, including witness testimony and documents, that DOE 1's pastors, ministers, agents, or employees knew or had any reason to know that DOE 3 sexually assaulted and abused Plaintiff;
- Any evidence, including witness testimony and documents, that Plaintiff reported any abuse by DOE 3 to any of DOE 1's pastors, ministers, agents, or employees;
- Any evidence, including witness testimony and documents, that DOE 1's pastors, ministers, agents, or employees knew or had any reason to know of DOE 3's abuse of any minor children;
- Any evidence, including witness testimony and documents, that Plaintiff's mother reported that she believed DOE 3 was sexually assaulting and/or molesting Plaintiff to DOE 1;
- Any evidence, including witness testimony and documents, that DOE 1 attempted to cover up DOE 3's sexual assault, abuse, and molestation of Plaintiff, including by forcing Plaintiff's mother to sign an agreement not to sue or press charges;
- Any evidence, including witness testimony and documents, that DOE 1 knew or had any reason to know that DOE 3 was not fit to be in a position where he would necessarily come in contact with minors;
- Any evidence, including witness testimony and documents, that DOE 1 knew or had any reason to know that DOE 3 solicited, sexually assaulted, molested, or abused any minor children, including Plaintiff;
- Any evidence, including witness testimony and documents, relating to Plaintiff's general damages; and
- Any evidence, including witness testimony and documents, relating to Plaintiff's special damages.

Further monetary sanctions are imposed against Plaintiff in the amount of \$2,600.00.

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

**3-4. 22CV03060 DN v. Doe 1 et al.**

*EVENT: (1) Defendant County of Butte's Demurrer to Plaintiff D.N.'s Complaint, Or, In the Alternative, Motion to Stay Action*

*(2) Defendant County of Butte's Motion to Strike Portions of Plaintiff D.N.'s Complaint*

The demurrer and motion to strike is continued one last time to October 16, 2024 at 9:00am. The Court intends to rule on the motions at that time, regardless of whether an appellate decision has issued.

**5-6. 23CV03298 Penna, Maurice v. Neher, Wyatt J et al.**

*EVENT: (1) Application for Writ of Possession and for Temporary Restraining Order*

*(2) Application for Temporary Restraining Order*

The Court will hear from counsel. The Court is in receipt of the affidavit of publication. However, unless and until the moving papers are served, it appears the Court does not have jurisdiction over these motions.

**7. 24CV01560 In re: Guardado, Heather Carlene**

*EVENT: Change of name (Adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**8. 24CV01565 In re: Padilla, Alberto Ray**

*EVENT: Change of name (adult)*

The Court will hear from Petitioner.

**9. 24CV01737 Weinzinger, Robert D v. Baker, Dennis**

*EVENT: Petition for Judgment of Abandonment (Civ. Code § 798.61)*

Petition for Judgment of Abandonment is GRANTED. The Court will sign the proposed order.

**10. 24CV01753 In re: Terian, Madylin Nayiri**

*EVENT: Change of name (adult)*

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

**11. 21CV01421 Garibay, Miguel v. Bianchi, Jim et al.**

*EVENT: Plaintiff's Motion to Compel Further Supplemental Responses and Production to Defendant Bianchi Partnership and Request for Monetary Sanctions*

Plaintiff's Motion to Compel Further Supplemental Responses and Production to Defendant Bianchi Partnership and Request for Monetary Sanctions is DENIED as untimely pursuant to CCP § 2031.310(c). Plaintiff was electronically served with Defendant's verification on April 24, 2024. As a result, Plaintiff's deadline was June 11, 2024 (45 calendar days plus 2 court days) to provide notice.

The Court disagrees with Plaintiff that the "last day" for purposes of CCP § 12 was Saturday June 8 because the (2) court days still had to be counted pursuant to CCP § 1010.6.

In *Golf & Tennis Pro Shop, Inc. v. Superior Court*, (2022) 84 Cal. App. 5th 127, the Fourth District Court of Appeal was faced with a similar 45-day rule problem. Although the Court did not explain in detail how it calculated the time period, because the facts are directly on point with the facts before us, it is dispositive.

Even using the later date of March 17, 2021, the motion as to St. George and Frye was untimely. Because their verifications were electronically served on March 17, 2021, petitioner's deadline to "give notice" of its motion to compel their responses was May 4, 2021 (45 calendar days plus 2 court days after service of the verifications).

(*Golf & Tennis*, supra at p. 136-137)

Counting 45 days from March 17, 2021, not including March 17, 2021, lands on May 1, 2021. According to the Court's research, May 1, 2021 was a Saturday. Thus, just as in *Golf & Tennis Pro Shop*, the 45th day in the this case falls on a Saturday.

*Golf & Tennis* also involved electronic service. *Golf & Tennis* concluded that the last day was May 4, 2021, which according to the Court's research was a Tuesday. Thus, *Golf & Tennis* clearly did not find that Saturday was the "last day" for purposes of CCP § 12. Rather, *Golf & Tennis* applied the two Court days as Monday and Tuesday, and applied the rule that the last day (in this case Tuesday) is included, meaning Tuesday is the last day.

Consequently, the June 12 filing is untimely. Although Plaintiff made efforts to meet and confer prior to June 12, no evidence has been presented amounting to notice as prescribed by CCP § 1010.

Defendant shall prepare and submit the form of order within 2 weeks.

**12-14. 24CV00454 Edington, Alyssa et al v. CMH Manufacturing West, Inc et al.**

*EVENT: (1) Application to Appear Pro Hac Vice (Attorney Tomas W. Thagard)*

*(2) Application to Appear Pro Hac Vice (Attorney Wayne Scott Simpson)*

*(3) Application to Appear Pro Hac Vice (Attorney James C. Lester)*

The Court will hear from counsel. There appears to be no proof of service indicating the State Bar was served with the application as required by CRC 9.40(c)(1).

15. **24CV00485 American Express National Bank v. Grinstead, Larry**

*EVENT: Plaintiff's Motion to Deem Matters Admitted and For Monetary Sanctions*

Plaintiff's Motion to Deem Matters Admitted and For Monetary Sanctions is GRANTED.  
The Court will sign the proposed order.