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July 17, 2019

The Honorable Art W. McKinster, Presiding Justice
The Honorable Richard T. Fields
The Honorable Michael J. Raphael
California Court of Appeal
Fourth Appellate District, Division Two
3389 12th Street
Riverside, CA 92501

Re: Request for Publication
Huckey v. City of Temecula
Fourth Appellate District - Case No. E070213
Riverside County Superior Court - Case No. MCC1600451

Dear Presiding Justice McKinster and Justices Fields and Raphael:

The City of Temecula (“City”), respectfully requests publication of the June 28, 2019 decision in *Huckey v. City of Temecula*, Case No. E070213 (“the Opinion” or “*Huckey*”), pursuant to California Rules of Court 8.1105 and 8.1120. The League of California Cities also supports and hereby joins in this request.¹

Publication of the Opinion will significantly assist public agencies, trial courts, and the public due to the guidance it provides on several critical issues. Specifically, the Opinion clarifies the leading decision discussing trivial defects, *Felder v. City of Glendale* (1977) 71 Cal.App.3d 719, 734 (“*Felder*”).

¹ The League of California Cities is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Felder found a sidewalk slab deviation of three-quarters of an inch was a trivial defect. Many lower courts interpret *Felder* as standing for the proposition that any sidewalk slab greater than three-quarters of an inch is not a trivial defect as a matter of law. *Huckey*, however, clarifies existing law, and holds that “[s]idewalk elevations ranging from three-quarters of an inch to one and one-half inches have generally been held trivial as a matter of law.” (Opinion at p. 20.)

I. INTERESTS OF CITY OF TEMECULA AND PUBLIC ENTITIES

The City, like all other cities, has the responsibility to maintain its sidewalks. Each year, the City receives many claims arising out of falls on public sidewalks. Many of those claims involve displaced sidewalk slabs.

Publication of the Opinion will significantly assist the City and other public entities due to the guidance it provides on critical issues. Specifically, the Opinion explains the scope of the trivial defect doctrine, and clarifies existing law. It clarifies *Felder* and applies *Felder* to an accident arising out of displaced sidewalk slabs. If published, *Huckey* would be the first published decision in more than four decades to apply the trivial defect doctrine to a lawsuit arising solely out of displaced sidewalk slabs.

II. STANDARDS FOR PUBLICATION

Rule 8.1105(c) of the California Rules of Court provides that:

“An opinion of a Court of Appeal ... should be certified for publication in the Official Reports if the opinion: ... (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; (3) Modifies, explains, or criticizes with reasons given, an existing rule of law; (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule; [or] ... (6) Involves a legal issue of continuing public interest ...”

As explained below, the Opinion meets multiple standards of Rule 8.1105(c).

a. **The Opinion applies an existing rule of law to a set of facts significantly different from those stated in published opinions. (Rule of Court 8.1105(c)(2).)**

Felder was published more than 42 years ago. Since then, no other published decision involving a public entity applies *Felder* in a case where there is a sidewalk displacement, and no other mitigating factors. Twelve published appellate decisions cite *Felder*. Of those twelve decisions, eight involve public entities. None of those eight decisions involve displaced sidewalk slabs.

- *Barone v. City of San Jose* (1978) 79 Cal.App.3d 284, 290, cites *Fielder*, but that decision involves a sidewalk trip and fall accident that occurred as a result of an “irregular and jagged break” on a concrete sidewalk. (*Id.* at p. 291.)
- *Bunker v. City of Glendale* (1980) 111 Cal.App.3d 325, 330, cites *Fielder* in passing, but that decision involves a motorcyclist versus automobile collision.
- *Antenor v. City of Los Angeles* (1985) 174 Cal.App.3d 477, 482, cites *Fielder*, but that decision involves an automobile versus pedestrian accident occurring in a crosswalk.
- *Dolquist v. City of Bellflower* (1987) 196 Cal.App.3d 261, 267, cites *Fielder*, but that decision involves a pedestrian who tripped when her foot hit rebar protruding from a concrete parking abutment.
- *Davis v. City of Pasadena* (1996) 42 Cal.App.4th 701, 704, cites *Fielder*, but that decision involves a fall on a stairway.
- *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 234, cites *Fielder*, but that decision involves a plaintiff that “climbed into and was burned in a fire ring containing sand-covered hot coals at a beach park owned and operated by the City.” (*Id.* at p. 229.)
- *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 567, cites *Fielder*, but that decision involves a pedestrian who sustained injuries from a trip and fall in shallow potholes on residential street.
- *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1070, cites *Fielder*, but that decision involves an automobile versus pedestrian accident occurring in a crosswalk.

Thus, the Opinion applies an existing rule of law to a set of facts significantly different from those stated in published opinions. (Rule of Court 8.1105(c)(2).) This will be the first published decision in more than four decades that explains and clarifies the trivial defect doctrine where alleged liability arises out of displaced sidewalk slabs.

b. The Opinion explains an existing rule of law. (Rule of Court 8.1105(c)(3).)

The Opinion clearly explains when the trivial defect applies in the context of displaced sidewalks. The Opinion explains what a City must do to make a prima facie showing in a case involving a sidewalk slab that is alleged to be a trivial defect. (Opinion at p. 20.) It synthesizes appellate decisions before *Fielder* involving public entities, such as *Barret v. City of Claremont* (1953) 41 Cal.2d 70 (Opinion at p. 20), and decisions after *Fielder* involving private entities, such as *Caloroso v. Hathaway*, 122 Cal.App.4th 922. (Opinion at p. 20.)

c. The Opinion clarifies a provision of a statute. (Rule of Court 8.1105(c)(4).)

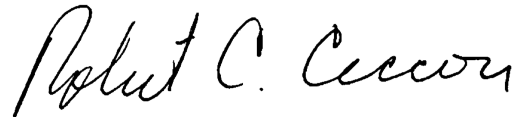
The Opinion clarifies Gov. Code, §830.2, which sets forth the trivial defect doctrine.

d. The Opinion involves a legal issue of continuing public interest. (Rule of Court 8.1105(c)(6).)

There are many, many thousands of miles of sidewalks in California. Each year, many claims and lawsuits are filed involving trip and fall accidents on public sidewalks. The application of the trivial defect doctrine to claims that arise out of displaced sidewalk slabs is of vital importance to public entities, and is an issue of continuing public interest.

For these reasons, the City and the League of California Cities respectfully request that the Court order full publication of the Opinion.

Respectfully submitted,



Robert C. Ceccon
Attorney for Respondent, City of Temecula

cc: Yoshiaki C. Kubota

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PROOF OF SERVICE

Charles Huckey v. City of Temecula

Court of Appeal, 4th Appellate District (Div. 2) Case No. E070213

I, Kelley Herrington, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On July 17, 2019, I served the within document(s) described as:

REQUEST FOR PUBLICATION

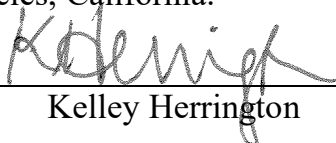
on the interested parties in this action as stated below:

Yoshiaki C. Kubota, Esq.
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*Also served by electronic service
through TrueFiling*

- (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 17, 2019, at Los Angeles, California.



Kelley Herrington