

S292448

FILED WITH PERMISSION

No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CODY KUNAU, an individual, Petitioner, vs. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SHASTA, Respondent.	Superior Court No.: 205953 Ct. of App. No.: C104107 Trial Date: N/A
CITY OF REDDING, a California municipality, SYSCO CORPORATION, a Delaware corporation, and DOES 1-20, Real Parties in Interest.	

PETITION FOR REVIEW

**RELIEF REQUESTED FROM ORDER BY HON. BENJAMIN L. HANNA,
GRANTING DEFENDANT CITY OF REDDING'S MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT,
AND AFTER A DECISION BY THE COURT OF APPEAL,
THIRD APPELLATE DISTRICT, CASE NO. C104107**

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CERTIFICATE OF INTERESTED ENTITIES AND PARTIES

There are no known entities or parties that are required to be disclosed pursuant to California Rule of Court 8.208. In the underlying action, the named plaintiff is an individual, and he is the only interested party pursuant to Rule 8.208. The real parties in interest for the respondents are identified in the caption.

Dated: August 15, 2025

/s/ John Kevin Crowley
JOHN KEVIN CROWLEY
Attorney for Petitioner / Plaintiff
CODY KUNAU

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ISSUES PRESENTED

The issue presented is whether the language of the City of Redding's ("City" or "Redding") Code of Ordinances section 13.40.040, which states:

[T]he parks foreman is authorized and directed to plant, inspect and maintain trees in planting strips and public areas, and remove such trees when they institute a hazard or impediment to public travel...

when read in conjunction with Code of Ordinances section 13.40.050's prescription that maintenance and upkeep performed on the City's trees shall be:

[U]nder the general supervision of the parks foreman and in accordance with the rules established by the comprehensive tree plan...

prescribe a mandatory duty for Redding to maintain and care for the trees that are planted on and about its own public roadways so as to prevent injury to pedestrians legally using those same public roadways.

WHY REVIEW SHOULD BE GRANTED

DECIDE THE IMPORTANT LEGAL QUESTION OF THE APPLICATION OF A MANDATORY DUTY TO A MUNICIPALITY FOR THE NEGLIGENT CARE AND MAINTENANCE OF TREES THAT ARE SITUATED ALONGSIDE CITY STREETS AND THAT THE MUNICIPALITY OWNS AND CARES FOR, WHEN THOSE TREES FALL AND INJURE LAWFUL PEDESTRIANS

A delivery truck was using Redding's roadway as it was intended, simply turning from one public street onto another public street, in the downtown area of Redding, when it struck a tree's low-hanging branches that then fell and struck petitioner Cody Kunau ("Kunau") and caused serious injuries. Real Party Redding admits the large trees planted alongside and above the City's roadway are its responsibility and Redding's Code of Ordinances sections 13.40.040 and 13.040.050 confirm the same.

Here, the Supreme Court's review is necessary because the respondent Superior Court's Order that granted Redding's Motion to Strike, and the Third District Court of Appeal's denial of Kunau's writ petition, eliminated the petitioner's cause of action for negligence-based liability against Redding pursuant to Government Code section 815.6. However, not all of the petitioner's causes of action alleged in the First Amended Complaint are eliminated, and thus, Kunau is deprived "of an opportunity to plead a substantial portion of the case," so that "extraordinary [writ] relief may prevent a needless trial and reversal." (*Angie M. v. Superior Court (Hiemstra)* (1995) 37 Cal.App.4th 1217, 1223; *North American Chemical Co. v. Superior Court (Trans Harbor, Inc.)* (1997) 59 Cal.App.4th 764, 773; *Driscoll v. Superior Court (Spencer)* (2014) 223 Cal.App.4th 630, 636.) The Order of the Superior Court, together with the Court of Appeal's Decision, have created a legal vacuum in this case in which **there is no legally-responsible party for the alleged negligent maintenance and care of the trees planted on Redding's streets.**

Still, neither the Order granting the Motion to Strike, nor the Court of Appeal's decision denying the writ petition, are supported in law or by the facts. Because Redding's own Code of Ordinances sections 13.40.040 and 13.040.050 establish a mandatory duty for the City **to care for trees that it plants and owns alongside the roadway**, the inability of Kunau to rely upon Section 815.6 for negligent maintenance renders his operative complaint an inefficient, piecemeal request for relief. Moreover, the offending decisions allow the municipality to operate with impunity with respect to caring for its trees and the resulting dangerous conditions presented to pedestrians and vehicles. However, California does not provide such a loophole for persons or entities to escape legal liability. (See Civ. Code §1714.)

Next, Redding's "Comprehensive Parks Maintenance and Operations Plan" ("Plan") establishes a mandatory duty for Redding to care for and maintain its own trees. The Plan, which was approved by Redding in 2022, prescribes the City's responsibility to plant, care for and remove trees to achieve its stated goal "to provide healthy shade and ornamental trees to city property. Redding currently is striving to attain a superabundant tree canopy throughout the City." (Plan, Section 620, "Trees," p. 32.) The Plan also mandates:

Established trees are inspected on average every four years and pruned by city personnel on this same cycle on an as needed basis. Downtown trees are inspected and pruned on a three-year cycle. Pruning is performed in compliance with the national pruning standards. **Trees are pruned for the purposes of removing large dead limbs, raising to keep clear of vehicular and pedestrian traffic**, and for sight clearance at intersections. Topping is not an acceptable pruning method, is harmful to the tree and is not practiced by the city. Cabling, bracing, bark tracing, cavity work and other tree surgery practices will be performed by city personnel at the recommendation of the Urban Forester. Spraying and fertilization applications will be performed by city personnel on an as needed basis.

(Plan, Section 620, "Trees," p. 33 [emphasis added].) The language of the City's own Plan describes Redding's duty to prevent low-hanging limbs from striking vehicles and pedestrians – which is the same act that injured the petitioner in this case. The failure to recognize the existence of the City's duty with respect to maintenance and care for the trees is reversible error in this instance.

Importantly, the dispute involves a rudimentary fact pattern. Here, it is foreseeable that a vehicle travelling upon the City's roadway, over which limbs and branches from the City's trees have grown to such lengths that permits vehicles to strike the limbs and branches, will strike said branches and limbs when lawfully using the roadway and cause them to fall upon a lawful pedestrian. The respondent Court's Order explicitly eliminates liability for the City in the preceding, law-school exam scenario. In plain terms, the Order

stamps approval for the City to grow the trees, ignore hazardous conditions on public property caused by its trees, and then eschews all liability when those trees fall and injure a pedestrian. The Order fails to follow long standing precedent derived from common law origins, i.e., the possessor of land is the party bearing responsibility for its safe condition because the possessor has control. (See *Green v. Menveg Properties, Inc.* (1954) 126 Cal.App.2d 1, 9; see also *Schwartz v. Helms Bakery Ltd.* (1967) 67 Cal.2d 232, 239; see also Rest.2d Torts, §328E.)

In this case, the City has control over the injurious trees, yet the Order improperly states no liability under Section 815.6 flows from Redding's control; however, no other party has control over the trees, and thus Redding is able to escape liability in perpetuity under Section 815.6 for all injuries caused by its negligent care of the trees, and an injured pedestrian is left to tend to their injuries in the absence of a legal remedy. The practical effect of the Order further illustrates its impropriety.

Moreover, the respondent Superior Court's tentative order, when reciting the text of Ordinance in support of its decision to grant the Motion, omitted reference to Section 13.40.040's mandatory language to "remove such trees when they institute a hazard or impediment to public travel." The respondent Court's failure to include Section 13.40.040's directive to remove hazardous trees in its analysis leads to the conclusion this crucial language in the statutory scheme was improperly disregarded by the respondent Superior Court, and further ignored by the Third District Court of Appeal. In addition, the Order ignores Redding's admissions in the Plan that it is responsible for maintenance and care of the trees.

Accordingly, Kunau presents good cause to grant review and permit Kunau to fully and fairly litigate his First Cause of Action for Negligence against Redding, and thereby

avoid costly and inefficient patchwork litigation. The petitioner has no other plain, speedy, or adequate remedy at law because direct appeal does not follow from the respondent court's Order granting real party's Motion to Strike, but which did not dispose of Kunau's entire action. (See Civ. Proc. Code §904.1.) The Order granting the Motion eliminated a substantial portion of the petitioner's case, and Kunau will be unduly prejudiced if he is required to try the case without the cause of action for negligence supported by Government Code section 815.6.

Moreover, a trial in the absence of the negligence cause of action based upon Section 815.6 would likely contribute to confusion for the jury, and constitute a waste of judicial resources, and petitioner will be unduly burdened if he has to try the case in the absence of Section 815.6, as if it is later determined that the Motion was wrongly granted, a second trial would be required on the issue. Moreover, the factual basis for Kunau's claims in the present trial, and any future trial, would naturally overlap and the interests of judicial economy would be furthered by granting relief. Additionally, there is a public interest in clarification of the scope of a municipality's duty with respect to maintenance and care for trees situated within the municipality's custody and control.

PROCEDURAL HISTORY

On March 10, 2025, petitioner and plaintiff Cody Kunau filed his First Amended Complaint ("FAC") against defendants Redding and Sysco Corporation ("Sysco") that alleged causes of action against Redding for Negligence (Gov. Code §§815.2, 815.4, 815.6, 820, 835; Redding Code of Ordinances sections 13.40.040 and 13.40.050) and Premises Liability. (Writ Petition ["WP"], Exhibit 1 [to WP], FAC, p. 003.) On or about April 9, 2025, real party and defendant Redding filed a Motion to Strike ("Motion"): 1) the request for attorneys' fees; and, 2) reference to Government Code section 815.6 as a

basis for liability in the First Cause of Action for Negligence in the FAC. (WP, Exhibit 2, Redding's Motion, p. 026.) On April 28, 2025, petitioner filed his Memorandum of Points and Authorities in Opposition to Redding's Motion. (WP, Exhibit 3, Kunau's Opposition to Redding's Motion, p. 042.) Thereafter, real party Redding filed its Reply in support of the Motion. (WP, Exhibit 4, Reply in Support of Redding's Motion, p. 050.)

After the initial hearing date was continued by the respondent Superior Court, it issued a Tentative Ruling which granted Redding's Motion, and in the text of the tentative ruling, the respondent omitted all reference to the phrase "and remove such trees when they institute a hazard or impediment to public travel." On June 2, 2025, the hearing on Redding's Motion took place, and after which the respondent Superior Court granted the Motion without leave to amend. True and correct copies of the Superior Court's Tentative Ruling and Order granting Redding's Motion are attached hereto as **Exhibit 1**.

On June 27, 2025, petitioner filed a Petition for Writ of Mandate or Prohibition ("Writ Petition"). Pursuant to Rule of Court, Rule 8.504I(2), petitioner Kunau incorporates by reference, as if fully set forth herein, the Writ Petition. The Third District Court of Appeal issued a decision that denied the petitioner's Writ Petition on or about July 31, 2025, however, counsel for petitioner did not receive an email or order from the Court's TrueFiling system on July 31, 2025. A true and correct copy of the Third District's Opinion is attached hereto as **Exhibit 2**. Counsel for petitioner only obtained the Third District's Decision by logging onto the Court's website while he inquired about the status of the Writ on or about August 11, 2025. The petitioner filed a notice of receipt of the Third District's Decision on or about August 12, 2025, and has brought this request for relief at the earliest possible moment.

FACTUAL SUMMARY

On or about October 2, 2023, Kunau was walking on the sidewalk that runs along Tehama Street, and approaching the intersection with Market Street, in the City of Redding. (WP, Exhibit 1, FAC, ¶6, P006) Large trees are planted near the intersection and along Tehama and Market Streets. (*Id.*) Kunau continued and turned onto Market Street when he was struck throughout his head and body by large tree branches and limbs that were dislodged from the trees located alongside and/or on Tehama and Market Streets. (WP, Exhibit 1, FAC, ¶7, P006.) The petitioner alleges that the branches and limbs that struck him were positioned and/or had grown to a height that was insufficient to allow for clear passage for vehicles and trucks lawfully entering and exiting Tehama and Market Streets. (WP, Exhibit 1, FAC, ¶8, P006.)

The force of impact from the dislodged tree limbs and branches knocked the petitioner to the ground and shattered his sunglasses. (WP, Exhibit 1, FAC, ¶9, P006.) Kunau suffered serious physical and emotional injuries as a result of being struck by the tree limbs and branches, including a concussion, that would require the petitioner to visit a medical services provider for treatment. (WP, Exhibit 1 FAC, ¶11, P007.) Moreover, months after being struck, Kunau continues to suffer from painful cluster headaches that cause him to become incapacitated. (WP, Exhibit 1, FAC, ¶12, P007.) In addition, the FAC alleges that the tree limbs and branches at issue are “owned, maintained, supervised, designed, trimmed, grown, serviced and cultivated” by defendant Redding, and that the “tree limbs and branches that fell and struck the plaintiff were not maintained, supervised, designed, trimmed, grown, serviced and cultivated” by Redding in a manner so as to prevent them from falling on Kunau. Further, Kunau timely submitted a claim to

Redding, pursuant to Government Code section 810, *et seq.*, on or about March 1, 2024.
(WP, Exhibit 1, ¶14, P007.)

DISCUSSION

I. REVIEW IS NECESSARY BECAUSE RESPONDENT SUPERIOR COURT’S ORDER IGNORES THE LANGUAGE SET FORTH IN BOTH THE CITY OF REDDING’S CODE OF ORDINANCES SECTIONS 14.40.040 AND 14.40.050, AND COMPREHENSIVE PARKS MAINTENANCE AND OPERATIONS PLAN SECTION 620 THAT PRESCRIBE A MANDATORY DUTY ON THE CITY TO PROVIDE MAINTENANCE AND UPKEEP ON ITS OWN TREES AND TO REMOVE TREES WHEN THEY POSE A HAZARD TO THE PUBLIC BECAUSE THE CITY MAINTAINS EXCLUSIVE CONTROL OF THE TREES

The issues raised by this request for review are critical to the proper application of statutory interpretation and the provision of a remedy to an injured party. At issue is the language contained in Redding Code of Ordinances sections 13.40.040 and 13.40.050. Attached hereto as **Exhibit 3**, are true and correct copies of Redding Code of Ordinances sections 13.40.040 and 13.40.050. Redding Code of Ordinances section 13.40.040 states: “[T]he parks foreman is authorized and directed to plant, inspect and maintain trees in planting strips and public areas, and remove such trees when they institute a hazard or impediment to public travel.” (Redding Code of Ord., §13.40.040 [emphasis added].) Black’s Law Dictionary defines the verb “direct” as meaning: “to cause (something or someone) to move on a particular course,” “to guide (something or someone); to govern,” and importantly, “to instruct (someone) with authority.” (Black’s Law Dictionary (12th ed. 2024) [emphasis added].) When the definition of “direct,” as used in its verb tense, is applied to Section 13.40.040’s use of “directed” to the “parks foreman” to remove “trees when they institute a hazard or impediment to public travel,” a “directive” is established by the Ordinance.

Moreover, a “directive” is “something that serves to direct, guide, and usually impel toward an action or goal, *especially*, government: an authoritative order or instrument issued by a high-level body or official.” (Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/directive>, accessed on June 10, 2025.) And when Section 13.40.040 is read together with Section 13.40.050’s mandate that maintenance and upkeep performed on the City’s trees shall be “under the general supervision of the parks foreman and in accordance with the rules established by the comprehensive tree plan,” the intent of the Code of Ordinances is ascertained to apply a mandatory duty on Redding to care for its trees so as to not allow their branches and limbs to fall on unsuspecting pedestrians located on the sidewalk below.

Moreover, the Comprehensive Parks Maintenance and Operations Plan (“Plan”) adopted by Redding in 2022, demonstrates that Redding possesses a mandatory duty of maintenance and upkeep of its own trees. A true and correct copy of the relevant portions of the Plan are attached hereto as **Exhibit 4**. (Redding’s Plan, Section 620: Trees, p. 32-33.)

Another important piece of the analysis of whether Redding has a duty to care for its trees, and for which the respondent Court abstained from performing, is the issue of control. A city maintains “control” over the trees if it has the power or authority (i.e., “ability and opportunity”) to protect against a dangerous condition at the location. (*Bonanno v. Cent. Contra Costa Transit Auth.* (2003) 30 Cal.4th 139, 148; see *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 832 [property “controlled by” means “power to prevent, remedy or guard against the dangerous condition”]; see also *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1260-1262.) Here, the responsibility for the maintenance of the trees at issue is clearly delineated by Sections 13.40.040 and

13.40.050 and assigned to Redding who controlled the trees. Again, statutory “control” is synonymous with “authority” or “power”, and from which a duty will emanate. (See *Low*, 7 Cal.App.3d at 832; see also *Gillespie v. City of Los Angeles* (1950) 36 Cal.2d 553.)

The respondent Court’s Order is the product of an improper interpretation of Redding’s Code of Ordinances, Redding’s Plan and unfairly deprives the petitioner of his due process guarantee to a fair and complete trial. Indeed, the Order leaves Kunau, and any other pedestrian injured by Redding’s trees situated alongside its public roadways, without a remedy at law as there is no defendant from whom redress may be sought. In order to prevent such a nonsensical result, the Order must be vacated.

II. THE PETITIONER’S ALLEGATIONS AND THE STATUTORY SCHEME SATISFY THE *BECERRA* CRITERIA

Here, the language of Section 14.40.040 is mandatory: the parks foreman is both “authorized” and “directed” to care for and maintain the trees that ultimately fell onto the petitioner and caused him to suffer severe injuries. Moreover, real party and defendant’s “parks foreman” is “directed” to **“remove such trees when they institute a hazard or impediment to public travel.”** (**Exhibit 3**, Redding Code of Ordinances, §13.40.040 [emphasis added].) And akin to the Ordinances, the Plan mandates that “Downtown trees are inspected and pruned on a three-year cycle.” And the reason the City must maintain its trees: “Trees are pruned for the purposes of removing large dead limbs, raising to keep clear of vehicular and pedestrian traffic, and for sight clearance at intersections.” (**Exhibit 4**, Redding’s Plan, Section 620: Trees, p. 33.)

Finally, the real party / defendant should be charged with knowledge of its own Ordinances and Plan that establish a mandatory duty to care for the trees at issue.

In both Redding's moving papers, and in the Tentative Ruling that later became the Order, there is no discussion, let alone mention of the phrase in Section 13.40.040 that reads "and remove such trees when they institute a hazard or impediment to public travel." Moreover, there is no acknowledgment or reference to the Plan by the City. The respondent Superior Court's Tentative Ruling even appears to intentionally omit this portion of the relevant Ordinance and in contravention of the respondent Court's duty to read all portions of a statute together to ascertain legislative intent. (See *Weber v. County of Santa Barbara* (1940) 15 Cal.2d 82, 86-87; see also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634.)

Again, the City's Ordinances and Plan each prescribe a mandatory duty on Redding to care for its trees. Government Code section 815.6 states:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

(Gov. Code §815.6.) Thus, the Section may serve as a basis of public entity liability for defects in public property under circumstances such as those presented by the petitioner, where a separate mandatory duty exists for a public entity to repair public property, in this case the trees, that are overgrown or in poor condition. (See **Exhibit 3**, Redding Code of Ordinances, §§13.40.040, 13.40.050(B); see also **Exhibit 4**, Plan, Section 620: Trees, p. 32-33.) Finally, Kunau satisfied the criteria to maintain reference to Section 815.6 in his well-pleaded FAC:

Gov. Code §815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting §815.6 as a basis for liability; and (3) breach of the mandatory duty must be a proximate

cause of the injury suffered. Whether an enactment is intended to impose a mandatory duty is a question of law for the court.

(See generally *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1458.)

As applied to Kunau's FAC, the First Cause of Action fulfills the *Becerra* criteria to establish that Redding's Code of Ordinances and Plan prescribe a mandatory duty pursuant to Government Code section 815.6: 1) The Plan, and Sections 13.40.040 and 13.40.050, direct Redding's "parks foreman" to plant, care for, maintain and remove trees that pose a danger to vehicles and persons on or about the public sidewalks; 2) The Plan and Sections 13.40.040 and 13.40.050 were intended to prevent the situation wherein a tree limb grows to a dangerous condition, dislodges and falls on a pedestrian; 3) The petitioner alleges that because Redding was negligent in its maintenance of the trees, they fell onto Kunau and caused severe injuries. (See generally *Becerra*, 68 Cal.App.4th at 1458; see generally *McLaughlin v. City of Los Angeles* (1943) 60 Cal.App.2d 241, 244-45; see also *Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 204-05; see also *Owen v. Los Angeles* (1947) 82 Cal.App.2d 933, 935.)

Here, it is foreseeable that a vehicle, travelling lawfully along the intersection of Tehama and Market Streets, would strike branches and limbs that were permitted to grow too close to the roadway and cause the branches and limbs to fall and seriously injure a pedestrian. Moreover, the petitioner alleges that Redding possessed knowledge of the dangerous condition created by the trees prior to the time Kunau suffered injury. (WP, Exh. 1, FAC, ¶10, P007; see *Sheldon v. City of Los Angeles* (1942) 55 Cal.App.2d 690.)

PRAYER

For all of the aforementioned reasons, the petitioner respectfully requests that this Court grant review, and that this Court issue a decision determining that the petitioner has demonstrated the applicability of Government Code section 815.6 to his First Cause of Action for Negligence, and vacate and/or set aside the Order granting Redding's Motion.

Dated: August 15, 2025

/s/ John Kevin Crowley
JOHN KEVIN CROWLEY
Attorney for Petitioner and Plaintiff
CODY KUNAU

CERTIFICATION OF WORD COUNT COMPLIANCE

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, I hereby certify that this brief contains less than 8,400 words, including footnotes. In making this certification, I have relied on the word count of the word processing program used to prepare the brief.

Dated: August 15, 2025

/s/ John Kevin Crowley
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S292448

No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CODY KUNAU, an individual, Petitioner, vs. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SHASTA, Respondent.	Superior Court No.: 205953 Ct. of App. No.: C104107 Trial Date: N/A
CITY OF REDDING, a California municipality, SYSCO CORPORATION, a Delaware corporation, and DOES 1-20, Real Parties in Interest.	

PETITIONER'S EXHIBITS IN SUPPORT OF PETITION FOR REVIEW

**RELIEF REQUESTED FROM ORDER BY HON. BENJAMIN L. HANNA, GRANTING
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<u>Exhibit</u>	<u>Description</u>	<u>Date</u>	<u>Page</u>
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2	Third District Court of Appeal's Decision	07/31/2025	PET-018
3	City of Redding Code of Ordinances §§13.40.040 and 13.40.050		PET-023
4	City of Redding Comprehensive Parks Maintenance and Operations Plan, Section 620: Trees, pg. 32-33	02/24/2022	PET-026

EXHIBIT 1

Tentative Rulings and Resolution Review Hearings

May 12, 2025

Department 63

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings are available online no less than 12 hours in advance of the time set for hearing. Tentative rulings may be found on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link under the "Online Services" tab. A QR code that links to the tentative rulings is posted outside the courtroom. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Per Local Rule 5.13, telephonic appearances through CourtCall (888-882-6878; courtcall.com) are generally permitted on the Law & Motion and Resolution Review calendars and can be made without leave of Court.

8:30 a.m. – Law & Motion

BANGHART VS. REDDING APPLIANCE CENTER, ET AL.

Case Number: 24CV-0204133

Tentative Ruling on Motion to Compel Further Supplemental Requests for Production and to Compel the Resumption of the Deposition of Joe Heslin: Plaintiff Travis Banghart moves to compel further production from Defendant Joseph Heslin and to resume the deposition of Joseph Heslin. Defendant opposes the motion.

Meet and Confer. Plaintiff has provided evidence of sufficient efforts to meet and confer prior to filing the motion.

Merits. Defendant Heslin was deposed on March 12, 2025. The Deposition Notice included nine separate requests for production. Defendant provided objections and responded to each, either indicating that all responsive nonprivileged documents, if any, would be produced or that that he could not produce responsive documents as he was unaware of any that exist. Three documents were produced prior to the deposition. During the deposition, Mr. Heslin testified multiple times that he did not search for the requested records. Following meet and confer efforts, Plaintiff brought this motion.

(a) If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production.

(b) This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040.

CCP § 2025.480.

The Declaration of Joseph Heslin was filed with the Opposition. Defendant declared that he tasked Mario Callegari with obtaining cellular phone records in the Fall of 2024. Many months ago, Defendant provided his counsel with his cellular phone to search for text messages and emails and one text was found. Plaintiff argues that Defendant Heslin is included in emails produced elsewhere in the case so this means that Defendant Heslin has withheld relevant records. However, being included in an email chain does not mean that Defendant Heslin still has possession of or had possession of those emails when the case was filed. The Court notes that the Complaint was filed nearly two years after Plaintiff worked at Redding Appliance Center. Plaintiff has failed to show that Defendant Heslin failed to comply with the Deposition Notice or that he is withholding any responsive

information specifically discussed in the memorandum is a social security number. The Court notes that Petitioner's social security number is not found anywhere in the Administrative Record.

Petitioner has not identified specific information within the Administrative Record (other than a social security number or driver's license information) that Petitioner asserts is entitled to sealing. The specific harm identified by Petitioner is the negative impact to Petitioner's identity, employment, financial security, and privacy. Petitioner also asserts, without specifying how, that the information could subject Petitioner to abuse, harassment, and/or ridicule. Petitioner did not discuss any countervailing considerations. Respondent points out that the underlying facts of Petitioner's arrest are contained within the Petition for Writ of Mandate filed by Petitioner on November 1, 2024 and are already public information. Respondent additionally argues that the public has an interest in records concerning intoxicated drivers.

The Court finds that Petitioner has failed to establish that there is an overriding interest that supports sealing of the Administrative Record or any portion thereof. The motion is **DENIED**. The clerk is directed to return the large white envelope conditionally filed under seal by Petitioner. The Court notes that Petitioner submitted a Notice of Lodging of Administrative Record with the Administrative Record attached. As the Administrative Record was lodged by Respondent, the clerk is also directed to return the copy submitted by Petitioner. Petitioner provided a proposed order that will be modified to reflect the Court's ruling.

KUNAU VS. CITY OF REDDING, ET AL.

Case Number: 24CV-0205953

Tentative Ruling on Motion to Strike: Defendant City of Redding moves to strike the reference to Gov. Code § 815.6 and the prayer for attorney fees from the First Amended Complaint filed by Plaintiff Cody Kunau on March 10, 2025. Plaintiff opposes the motion as to Gov. Code § 815.6 and concedes as to the prayer for attorney fees.

Meet and Confer. Before filing a motion to strike a party is required to meet and confer in person or on the telephone. CCP § 435.5(a). Defendant provided evidence that a letter was sent to Plaintiff in lieu of meeting and conferring in person or by telephone as required by statute. However, a determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike. CCP § 435.5(a)(4).

Merits. A motion to strike can be used to attack the entire pleading, or any part thereof, including single words or phrases. *Stearns Ranchos v. Atchison Topeka & Santa Fe Railway* (1981) 19 Cal. App. 3d 24. It is proper for the Court to strike any irrelevant, false or improper matter. CCP § 436(a). The Court can also strike any part of a pleading that is not drawn or filed in conformity with California law. CCP § 436(b).

“Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” Gov. Code § 815.6.

In *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854, 197 Cal.Rptr. 914, the court stated: “Government Code 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty ...; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability ...; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered.” (*Ibid.*; citations omitted.) Whether an enactment is intended to impose a mandatory duty is a question of law for the court. (See *Nunn v. State of California* (1984) 35 Cal.3d 616, 624, 200 Cal.Rptr. 440, 677 P.2d 846; *Fox*

v. County of Fresno (1985) 170 Cal.App.3d 1238, 1242, 216 Cal.Rptr. 879.)

One of the essential elements that must be pled is the existence of a specific statutory duty. (*Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802, 223 Cal.Rptr. 206.) “Duty cannot be alleged simply by stating ‘defendant had a duty under the law’; that is a conclusion of law, not an allegation of fact. The facts showing the existence of the claimed duty must be alleged. [Citation omitted.] Since the duty of a governmental agency can only be created by statute or ‘enactment,’ the statute or ‘enactment’ claimed to establish the duty must at the very least be identified.” (*Id.* at p. 802, 223 Cal.Rptr. 206.) Therefore, a “ ‘ ... litigant seeking to plead the breach of a mandatory duty must specifically allege the applicable statute or regulation.’ ” (*Sullivan v. City of Sacramento* (1987) 190 Cal.App.3d 1070, 1080, 235 Cal.Rptr. 844.) “Unless the applicable enactment is alleged in specific terms, a court cannot determine whether the enactment relied upon was intended to impose an obligatory duty to take official action to prevent foreseeable injuries or whether it was merely advisory in character.” (*Ibid.*)

Becerra v. County of Santa Cruz (1998) 68 Cal. App. 4th 1450, 1458.

Plaintiff refers to Redding Municipal Code §§ 13.40.040 and 13.40.050 in the First Amended Complaint.

A. The parks foreman is authorized and directed to plant, inspect and maintain trees in planting strips and public areas, and remove such trees when they institute a hazard or impediment to public travel.

B. Before removing any such tree, the parks foreman shall give the adjoining property owner at least ten days' advance written notice thereof and of the property owner's right to file an objection to the removal with the commission, whose decision thereon shall be final.

C. Before removing any such tree, the parks foreman shall obtain the concurrence of the director of community services or his designee.

D. No such notice or concurrence shall be required in the case of manifest public hazard and immediate necessity.

Redding Municipal Code § 13.40.040.

A. Notwithstanding Section 13.40.040, the parks foreman may permit a property owner to maintain trees in the parking strip adjoining his property, provided that the type of tree planted therein is one of the trees listed in the comprehensive tree plan.

B. All trimming and other maintenance work upon such trees shall be done by a licensed tree trimmer as provided in Section 13.40.070A or by the owner under the general supervision of the parks foreman and in accordance with the rules established by the comprehensive tree plan.

Redding Municipal Code § 13.40.050.

The only portion of Redding Municipal Code §§ 13.40.040 and 13.40.050 that could possibly constitute a duty is § 13.40.040(a) that directs the park foreman to plant, inspect, maintain, and remove trees.

“ ‘[A]pplication of [Government Code] section 815.6 requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity; it must require, rather than merely authorize or permit, that a particular action be taken or not taken. [Citation.] It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion.’ ” (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 898, 95 Cal.Rptr.3d 183, 209 P.3d 89 (*Guzman*)). Courts construe this requirement “rather strictly, finding a mandatory duty only if the enactment ‘affirmatively imposes the duty and provides implementing guidelines.’ ” (*Ibid.*; see *Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1240, 271 Cal.Rptr.

72 (*Clausing*) [“If rules and guidelines for the implementation of an alleged mandatory duty are not set forth in an otherwise prohibitory statute, it cannot create a mandatory duty.”].) *Srouy v. San Diego Unified School District* (2022) 75 Cal. App. 5th 548, 559-560.

Nothing before the Court leads the Court to the conclusion that § 13.40.040 was intended to impose an obligatory duty to take official action to prevent foreseeable injuries. Therefore the enactment of Redding Municipal Code § 13.40.040 does not impose a mandatory duty as required by Gov. Code § 815.6. Even if the Court were to find that the first two prongs were met, the third prong of proximate cause must also be met.

“ ‘Proximate cause is legal cause, as distinguished from the layman's notion of actual cause, and is always, in the first instance, a question of law.’ ” (*Golden v. Dungan* (1971) 20 Cal.App.3d 295, 97 Cal.Rptr. 577; *Tate v. Canonica* (1960) 180 Cal.App.2d 898, 5 Cal.Rptr. 28.) Proximate cause “is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury (or damage complained of) and without which such result would not have occurred.” (*Kettman v. Levine* (1953) 115 Cal.App.2d 844, 253 P.2d 102.)

Whitecombe v. County of Yolo (1977) 73 Cal. App. 3d 698, 702-703.

Certainly, a vehicle hitting a tree could be considered an efficient intervening cause. As Redding Municipal Code §§ 13.40.040 and 13.40.050 are the only statutes listed in the First Amended Complaint, listing Gov. Code § 815.6 is improper and Gov. Code 815.6 shall be stricken.

As the parties agree, and the Court concurs, that attorney fees should be stricken the Court will order the prayer for attorney fees stricken without analysis.

The Motion to Strike is **GRANTED**. Gov. Code § 815.6 and the prayer for attorney fees shall be stricken from the First Amended Complaint. The Court notes that Plaintiff requested leave to amend but did not provide how any amendment could cure the defect. Unless Plaintiff appears at the hearing and provides how the defect can be cured, leave to amend will not be granted. Defendant submitted a proposed Order that will be modified to reflect the Court’s ruling.

LOCKE, ET AL. VS. STERNBERG, ET AL.

Case Number: 23CV-0203172

Tentative Ruling on Application to Appear Pro Hac Vice: Boris Zhadanovskiy, an attorney admitted to practice law in the State of Florida, seeks admission pro hac vice in order to represent Plaintiffs Timothy Locke and Deborah Metzger. California Rule of Court, Rule 9.40 provides the procedural requirements for a pro hac vice application and requires a verified application with the following information:

- (1) the applicant's residence and office address;
- (2) the courts to which the applicant has been admitted to practice and the dates of admission;
- (3) that the applicant is a member in good standing in those courts;
- (4) that the applicant is not currently suspended or disbarred in any court;
- (5) the title of court and cause in which the applicant has filed an application to appear as counsel pro hac vice in this state in the preceding two years, the date of each application, and whether or not it was granted; and
- (6) the name, address, and telephone number of the active member of the State Bar of California who is attorney of record.

CRC 9.40(d).

Rule 9.40(c)(1) also requires service of the application on all parties that have appeared and on the State Bar. The State Bar also requires payment of a fee. The notice requirements of CCP § 1005 apply and proof of service in

Patrick L. Deedon, State Bar No. 245490
Craig P. Bingham, State Bar No. 342851
MAIRE & DEEDON
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cbingham@maire-law.com

Attorneys for Defendant,
CITY OF REDDING

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SHASTA

CODY KUNAU, an individual,

CASE NO. 24CV-0205953

Plaintiff,

**NOTICE OF ENTRY OF AMENDED
ORDER ADOPTING TENTATIVE
RULING SUSTAINING DEFENDANT
CITY OF REDDING'S MOTION TO
STRIKE**

v.

CITY OF REDDING, a municipality; SYSCO
CORPORATION, a Delaware corporation; and
DOES 1 through 30, inclusive

*[Fee exemption pursuant to Cal Gov Code § 6103
applicable to Defendant]*

Defendants.

SYSCO SACRAMENTO, INC.,

Cross-Complainant,

v.

THE CITY OF REDDING,

Cross-Defendant.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on June 23, 2025, the Court entered its Order on
Defendant CITY OF REDDING's Motion to Strike. A true and correct copy of said Order is

1 attached hereto as **Exhibit "A"** and incorporated by reference.

2
3 Dated: June 26, 2025

MAIRE & DEEDON

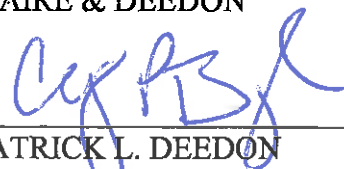
4 
5 _____
6 PATRICK L. DEEDON
7 CRAIG P. BINGHAM
8 Attorneys for Defendant,
9 CITY OF REDDING
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EXHIBIT “A”

FILED

JUN 23 2025

CLERK OF THE SUPERIOR COURT
BY: K. MIRANDA, DEPUTY CLERK

Patrick L. Deedon, State Bar No. 245490
Craig P. Bingham, State Bar No. 342851
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Attorneys for Defendant,
CITY OF REDDING

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SHASTA

CODY KUNAU, an individual,

Plaintiff,

v.

CITY OF REDDING, a municipality; SYSCO
CORPORATION, a Delaware corporation; and
DOES 1 through 30, inclusive

Defendants.

SYSCO SACRAMENTO, INC.,

Cross-Complainant,

v.

THE CITY OF REDDING,

Cross-Defendant.

CASE NO. 24CV-0205953

OUT
**AMENDED [PROPOSED] ORDER
ADOPTING TENTATIVE RULING
SUSTAINING DEFENDANT CITY OF
REDDING'S MOTION TO STRIKE**

Date: June 2, 2025

Time: 8:30 a.m.

Department: 63

HONORABLE BENJAMIN L. HANNA

*[Fee exemption pursuant to Cal Gov Code § 6103
applicable to Defendant]*

Defendant, CITY OF REDDING ("Defendant"), moved to strike to Plaintiff, CODY KUNAU'S ("Plaintiff") Complaint. This matter came on for hearing on June 2, 2025, at 8:30 a.m. in Department 63 of the above-entitled Court. CRAIG P. BINGHAM of Maire & Deedon appeared on behalf of Defendant and Plaintiff appeared by Counsel John David Crowley. Having

OUT
**AMENDED [PROPOSED] ORDER ADOPTING TENTATIVE RULING SUSTAINING DEFENDANT CITY OF
REDDING'S MOTION TO STRIKE**

PAGE 1

PET-011

COPY

1 considered the moving documents, opposition, reply, as well as oral argument, the Court adopts
2 its tentative ruling:

3 **IT IS SO ORDERED:**

4 In Plaintiff's First Amended Complaint's First Cause of Action for Negligence, Plaintiff
5 failed to plead facts alleging that the City of Redding was under a mandatory duty which it failed
6 to perform. This defect is not curable. The Motion to Strike is sustained and all citations to
7 Government Code section 815.6 are stricken without leave to amend.

8 In Plaintiff's First Amended Complaint, Plaintiff failed to plead facts justifying a demand
9 for attorney's fees. The Motion to Strike is sustained and the demand for attorney's fees is stricken
10 as stipulated without leave to amend. *This amended order replaces and supersedes*
11 *order signed by this Court on June 2, 2025.*

12 Dated: JUN 23 2025

BENJAMIN L. HANNA

JUDGE OF THE SUPERIOR COURT

1 Re: *Cody Kunau v. City of Redding, et al.* (Our File #7402)
2 Shasta County Superior Court Case No. 205953

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and employed in Shasta County, California; I am over
5 the age of eighteen years and not a party to the within action; my business address is 2851 Park
Marina Drive, Suite 300, Redding, California 96001-2813; on this date I served:

6 **AMENDED [PROPOSED] ORDER ADOPTING TENTATIVE RULING**
7 **SUSTAINING DEFENDANT CITY OF REDDING'S MOTION TO STRIKE**

8 _____ **United States Mail** - on all parties in said action by placing a true copy of the above-
9 described document(s) enclosed in a sealed envelope in the designated area for outgoing
mail addressed as set forth below.

10 _____ **Facsimile** - by personally sending to the addressee's facsimile number a true copy of the
11 above-described document(s).

12 ☒ **Electronic Service** - based on applicable law or statute, including California Rules of
13 Court rule 2.251 and/or California Code of Civil Procedure section 1010.6, or an
14 agreement of the parties to accept service by electronic transmission, I electronically
served the document(s) on the interested party/parties as set forth below.

15 _____ **Overnight Courier** - via Federal Express to the person at the address set forth below.

16 _____ **Personal Service** - by personally delivering or causing to be delivered a true copy of the
17 above-described document(s) to the person(s) and at the address(es) set forth as shown
18 below.

19 **SEE ATTACHED MAILING LIST**

20 I declare under penalty of perjury that the foregoing is true and correct. Executed
21 06/13/2025, at Redding, California.

22 By: 
23 **LINDA NEWELL**

1 Re: *Cody Kunau v. City of Redding, et al.* (Our File #7402)
2 Shasta County Superior Court Case No. 205953
3

4 **PROOF OF SERVICE MAILING LIST**
5

6 John Kevin Crowley
7 ATTORNEY AT LAW
8 125 South Market Street, Suite 1200
9 San Jose, CA 95113-2288
10 Tel: (408) 288-8100 / Fax: (408) 288-9409
11 John Kevin Crowley: jkclaw@pacbell.net
12 Mariela Villarreal: mariela@gedlaw.com

Attorney for Plaintiff
CODY KUNAU

11 Michael L. Amaro
12 Mary E. Bevins
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14 180 E. Ocean Blvd., Suite 1150
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16 Tel: (562) 912-4157 / Fax: (866) 611-6619
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18 Mary Bevins: mbevins@amarolawyers.com
19 Brad Makorow: bmakorow@amarolawyers.com
20 Joti Morrison: jmorrison@amarolawyers.com

Attorneys for Defendant and Cross-Complainant
SYSCO SACRAMENTO, INC.

1 Re: *Cody Kunau v. City of Redding, et al.* (Our File #7402)
2 Shasta County Superior Court Case No. 205953

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and employed in Shasta County, California; I am over
5 the age of eighteen years and not a party to the within action; my business address is 2851 Park
6 Marina Drive, Suite 300, Redding, California 96001-2813; on this date I served:

7 **NOTICE OF ENTRY OF AMENDED ORDER ADOPTING TENTATIVE RULING
8 SUSTAINING DEFENDANT CITY OF REDDING'S MOTION TO STRIKE**

9 United States Mail - on all parties in said action by placing a true copy of the above-
10 described document(s) enclosed in a sealed envelope in the designated area for outgoing
11 mail addressed as set forth below.

12 Facsimile - by personally sending to the addressee's facsimile number a true copy of the
13 above-described document(s).

14 X Electronic Service - based on applicable law or statute, including California Rules of
15 Court rule 2.251 and/or California Code of Civil Procedure section 1010.6, or an
16 agreement of the parties to accept service by electronic transmission, I electronically
17 served the document(s) on the interested party/parties as set forth below.

18 Overnight Courier - via Federal Express to the person at the address set forth below.

19 Personal Service - by personally delivering or causing to be delivered a true copy of the
20 above-described document(s) to the person(s) and at the address(es) set forth as shown
21 below.

22 **SEE ATTACHED MAILING LIST**

23 I declare under penalty of perjury that the foregoing is true and correct. Executed
24 06/26/2025, at Redding, California.

25 By: 
26 LINDA NEWELL

Re: *Cody Kunau v. City of Redding, et al.* (Our File #7402)
Shasta County Superior Court Case No. 205953

PROOF OF SERVICE MAILING LIST

John Kevin Crowley ATTORNEY AT LAW 125 South Market Street, Suite 1200 San Jose, CA 95113-2288 Tel: (408) 288-8100 / Fax: (408) 288-9409 John Kevin Crowley: jkclaw@pacbell.net Mariela Villarreal: mariela@gedlaw.com	<i>Attorney for Plaintiff</i> CODY KUNAU
Michael L. Amaro Mary E. Bevins AMARO / BALDWIN LLP 180 E. Ocean Blvd., Suite 1150 Long Beach, CA 90802 Tel: (562) 912-4157 / Fax: (866) 611-6619 Michael Amaro: mamaro@amarolawyers.com Mary Bevins: mbevins@amarolawyers.com Brad Makorow: bmakorow@amarolawyers.com Joti Morrison: jmorrison@amarolawyers.com	<i>Attorneys for Defendant and Cross-Complainant</i> SYSCO SACRAMENTO, INC.

EXHIBIT 2

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

CODY KUNAU,
Petitioner,
v.
THE SUPERIOR COURT OF
SHASTA COUNTY,
Respondent;
CITY OF REDDING et al.,
Real Parties in Interest.

C104107
Shasta County
No. 24CV0205953

BY THE COURT:

The petition for writ of mandate or prohibition is denied.


DUARTE, Acting P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Kunau v. The Superior Court of Shasta County
C104107
Shasta County Super. Ct. No. 24CV0205953

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

John Kevin Crowley
Law Office of John Crowley
125 S. Market Street, Suite 1200
San Jose, CA 95113

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Redding, CA 96001

Craig P. Bingham
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Michael Lee Amaro
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180 E. Ocean Boulevard
Suite 1150
Long Beach, CA 90802-4356

Mary Evelyn Bevins
Amaro Baldwin LLP
180 E. Ocean Boulevard
Suite 1150
Long Beach, CA 90802-4356

Shasta County Superior Court
1500 Court Street, Room 319
Redding, CA 96001
(By e-mail)

STATE OF CALIFORNIA
California Court of Appeal,
Third Appellate District

E-NOTICE

STATE OF CALIFORNIA
California Court of Appeal, Third Appellate District

Case Name: **24CV0205953 | Kunau v. The Superior Court of Shasta County**

Case Number: **C104107**

Lower Court Case Number: **24CV0205953**

My email address used to e-notify: **truefilingadmin@truefiling.com**

I notified by email a copy of the following document indicated below:

Title of papers e-notified: **C104107 - Order - ORDER DENYING PETITION FILED.
- 7/31/2025**

PERSON SERVED	EMAIL ADDRESS	DATE / TIME
Crowley, John	jkclaw@pacbell.net	07-31-2025 4:11:09 PM
Service Tracking Id: 17f6550f2f944226a86910584741a1f9		
Deedon, Patrick	pdeedon@maire-law.com	07-31-2025 4:11:09 PM
Service Tracking Id: cf9ab7ce54294ef6830fdd9542e9e7c3		
Bingham, Craig	cbingham@maire-law.com	07-31-2025 4:11:09 PM
Service Tracking Id: b372b24690b94c68ac40f03b395c6f8a		
Amaro, Michael Lee	mamaro@amarolawyers.com	07-31-2025 4:11:09 PM
Service Tracking Id: 5e3f4f0d439442f6b7c822a12ca1db49		
Bevins, Mary Evelyn	mbevins@amarolawyers.com	07-31-2025 4:11:09 PM
Service Tracking Id: e9714d7be56e45a4a53905a4799a5604		
B. Haskett, Court of Appeal, Third Appellate District	truefilingadmin@truefiling.com	07-31-2025 4:11:09 PM
Service Tracking Id: b635367bc26a4ea09134bfe935ebaf66		

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07-31-2025

Date

Colette M. Bruggman, Clerk

Clerk/Executive Officer

B. Haskett

Deputy Clerk

Court of Appeal, Third Appellate District

Court

EXHIBIT 3



[Sign In](#) [Sign Up](#)

 Redding

■ **Code of Ordinances**

■ **Title 13. STREETS AND SIDEWALKS**

■ **Chapter 13.40. TREES AND SHRUBS**

§ 13.40.040. Maintenance and removal on public areas.

Latest version.

- A. The parks foreman is authorized and directed to plant, inspect and maintain trees in planting strips and public areas, and remove such trees when they institute a hazard or impediment to public travel.
- B. Before removing any such tree, the parks foreman shall give the adjoining property owner at least ten days' advance written notice thereof and of the property owner's right to file an objection to the removal with the commission, whose decision thereon shall be final.
- C. Before removing any such tree, the parks foreman shall obtain the concurrence of the director of community services or his designee.
- D. No such notice or concurrence shall be required in the case of manifest public hazard and immediate necessity.

(Ord. 2263 § 1 (part), 2000: prior code § 27-4)



[Sign In](#) [Sign Up](#)

 Redding

■ **Code of Ordinances**

■ **Title 13. STREETS AND SIDEWALKS**

■ **Chapter 13.40. TREES AND SHRUBS**

§ 13.40.050. Property owner—Maintenance.

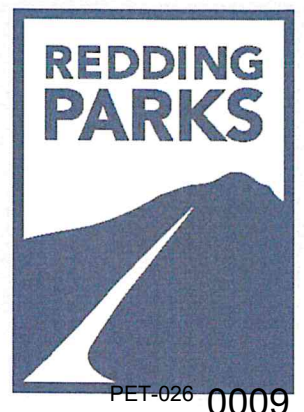
Latest version.

- A. Notwithstanding Section 13.40.040, the parks foreman may permit a property owner to maintain trees in the parking strip adjoining his property, provided that the type of tree planted therein is one of the trees listed in the comprehensive tree plan.
- B. All trimming and other maintenance work upon such trees shall be done by a licensed tree trimmer as provided in Section 13.40.070A or by the owner under the general supervision of the parks foreman and in accordance with the rules established by the comprehensive tree plan.

(Ord. 2263 § 1 (part), 2000; Ord. 2190 § 4 (part), 1997; Ord. 1282 § 1 (part), 1976: prior code § 27-5)

EXHIBIT 4

Comprehensive Parks Maintenance and Operations Plan

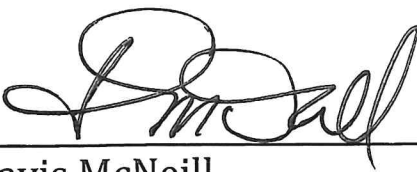


Approval



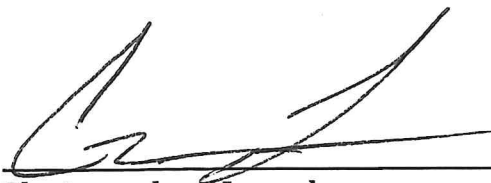
Joseph Forseth-Deshais
Assistant Director of Community Services

2/24/2022
Date



Travis McNeill
Parks Superintendent

02/24/2022
Date



Christopher Loucks
Parks Superintendent of Urban Forestry

2/24/2022
Date

warm-hot weather for proper adhesion.

- Courts are overlaid on an approximate 10-year schedule, depending upon funding. Overlays include crack filling, adding several layers of sealant and colorant, and repainting of all lines. A contractor typically performs this work.

Prior to a large scheduled (rental) event, the tennis courts are either swept or blown off, nets are inspected and tightened, and visible damages are repaired. Lastly, the areas around the courts are policed for glass and/or trash. Cracks within the court surfaces are repaired on a priority basis, with high use Mode 1 courts receiving the most frequent repairs. It is the goal of maintenance personnel to provide safe and aesthetically pleasing playing surfaces at all times.

619: Trashcans and Park Litter

Parks and green spaces should have adequate, clean trashcans for the public to use. Trashcans are provided in all parks, near shelters, in park parking lots and near athletic fields and playgrounds. Trash is picked up within parks and trashcans are emptied and cleaned on a routine basis year round. Routine maintenance includes:

- Removal of trash can liner, and replacement of liner. Unless there is very little trash in the can, the plastic bag is changed each time the trash is emptied. Small amounts of trash may be picked out of the can, and the plastic bag left.
- All concrete trash cans will be washed out as needed and dependent upon maintenance mode. Minimum one time annually each spring.
- Plastic trash cans shall be black in color and replaced when needing cleaning from our inventory of clean trash cans. If the plastic trash can is not damaged it will be cleaned and placed into inventory, if damaged the can will be disposed of.
- Graffiti is removed within five (5) days of notification of its existence.
- Loose litter in turf areas are picked up according to schedule, as well as just before mowing. The optimum service frequency for cleaning and emptying trashcans and picking up litter in the various parks can be found in the Landscape Maintenance Modes.
- Staff members involved in picking up trash are supplied with gloves to protect their hands. Appropriate hand washing shall be completed after completing trash collection.
- Sharps containers are provided in each truck for disposal of any needles or other sharp objects they encounter while cleaning parks.
- Barrels, drums or other closed metal container of any type found while cleaning should not be touched. Staff are to call the Maintenance Supervisor, who will notify the City's Environmental Coordinator to determine its contents. If deemed hazardous, staff are no longer involved in the process of removal. All hazardous materials are removed via a contractor properly equipped to handle such issues.

620: Trees

Our goal is to provide healthy shade and ornamental trees to city property. Redding currently is striving to attain a superabundant tree canopy throughout the City. To do so, hundreds of trees are planted each year. Trees maintained by department staff are located in parks, along residential streets, in medians, and in other public spaces.

Trees are planted as replacement plantings or as new plantings. Often, as trees die or have to be removed, replacement trees will be ordered and planted, as budget allows. Locations and tree types are selected by the Urban Forester, with input from a variety of sources. Trees are obtained, on the most part, from commercial nurseries and are planted by city

personnel.

Trees can be dug during dormancy and planted during both spring and fall seasons, ideally from March 1 through May 31 in the spring and from November 1 to December 30 in the fall. Once trees are planted, mulch is added and trees are staked. Pruning is typically not recommended during the first growing season following planting.

Trees are watered at the time of planting and during the first growing season following planting. Trees are watered by city personnel. Fall planted trees require less watering than trees planted in Spring, but should be monitored and watered as needed during the 3 years of establishment.

Watering may be necessary during each consecutive growing season, particularly for trees on dry sites or during times of drought or very dry conditions.

Established trees are inspected on average every four years and pruned by city personnel on this same cycle on an as needed basis. Downtown trees are inspected and pruned on a three-year cycle. Pruning is performed in compliance with the national pruning standards. Trees are pruned for the purposes of removing large dead limbs, raising to keep clear of vehicular and pedestrian traffic, and for sight clearance at intersections. Topping is not an acceptable pruning method, is harmful to the tree, and is not practiced by the city. Cabling, bracing, bark tracing, cavity work and other tree surgery practices will be performed by city personnel at the recommendation of the Urban Forester. Spraying and fertilization applications will be performed by city personnel on an as needed basis.

Tree removal decisions are made by the Parks Superintendent of Urban Forestry and trees are removed by city personnel. All limbs will be chipped on site and wood transported to a central location and made available to the public for firewood. Diseased elm trees and other infected or infested trees will be entirely disposed of at the trash transfer site for burial in the regional landfill. Trees will be removed in a safe and expeditious manner and stumps will be removed in a timely manner following tree removal. Stumps will be ground out below grade and the area re-graded and seeded by city personnel. All facets of tree care are recorded and completed via work orders.

The Parks Superintendent of Urban Forestry, and Crew Supervisors, following ANSI standards for tree care, determine all specific tree maintenance tasks. Improper use of tree care equipment performed by untrained staff can lead to serious injury or death. All staff utilizing chain saws must have all required PPE. Forestry staff members are expected to utilize all appropriate PPE. All work zone safety protection equipment, including the flashing arrow board, appropriate lane closures, signage and/or flagging operations should be in place at every job site.

621: Turfgrass Areas

Our goal is to ensure that all turfgrass areas are properly mowed and maintained at the highest quality level possible. Turf may be replaced via sod or seed. Proper fertility and pest, weed and plant disease management is important to maintain proper turf health. Soil tests are performed to determine nutrient needs. Regular visual inspections identify pest and disease issues.

Routine maintenance of turf includes:

- Mowing heights are adjusted according to turf type and season. Fescues, bluegrass and ryegrass (as well as blends of these turf types) generally are mowed at 3.5" to 4" year-round. This mowing height helps turf to recover from wear and tear, reduces weed pressure, and helps reduce hot summer stress.

PROOF OF ELECTRONIC SERVICE (Court of Appeal)

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.

Case Name: Kunau v. City of Redding, et al.
 Court of Appeal Case Number: C104107
 Superior Court Case Number: 24CV-0205953

1. At the time of service I was at least 18 years of age.
2. a. My ☐ residence ☒ business ☐ address is (specify):
 125 S. Market St., Suite 1200
 San Jose, CA 95113
- b. My electronic service address is (specify): sally@gedlaw.com
3. I electronically served the following documents (exact titles):
 Petition for Review
 Petitioner's Exhibits in Support of Petition for Review
4. I electronically served the documents listed in 3. as follows:
 - a. Name of person served: Patrick L. Deedon; Craig P. Bingham
 On behalf of (name or names of parties represented, if person served is an attorney):
 City of Redding
 - b. Electronic service address of person served: pdeedon@maire-law.com
 cbingham@maire-law.com
 - c. On (date): August 15, 2025
- ☒ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment (write "APP-009E, Item 4" at the top of the page).

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

Date: August 15, 2025

Sally M. Wagner

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



Sally M. Wagner

(SIGNATURE OF PERSON COMPLETING THIS FORM)

Kunau v. City of Redding, et al.

Supreme Court of the State of CA

Case No.: _____

Court of Appeals, Sixth Appellate District

Case No.: C104107

Superior Court, County of Shasta

Case No.: 24CV-0205953

ATTACHMENT APP-009E, ITEM 4

Michael L. Amaro

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Attorneys for Defendant, Sysco Sacramento

Court of Appeal, 3rd Appellate District

Via TrueFiling

S292448

APP-009

PROOF OF SERVICE (Court of Appeal) ☒ Mail ☐ Personal Service	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.	
Case Name: Kunau v. City of Redding, et al. Court of Appeal Case Number: C104107 Superior Court Case Number: 24CV-0205953	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☐ residence ☒ business address is (*specify*):
125 S. Market St., Suite 1200
San Jose, CA 95113
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
Petition for Review
 - a. ☒ **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) ☒ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed: **August 15, 2025**
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name: **Clerk of the Superior Court**
 - (ii) Address: **1515 Court St.
Redding, CA 96001**
 - (b) Person served:
 - (i) Name:
 - (ii) Address:
 - (c) Person served:
 - (i) Name:
 - (ii) Address:
 - ☐ Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
 - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (*city and state*): **San Jose, CA**

Case Name: Kunau v. City of Redding, et al.	Court of Appeal Case Number: C104107 Superior Court Case Number: 24CV-0205953
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3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

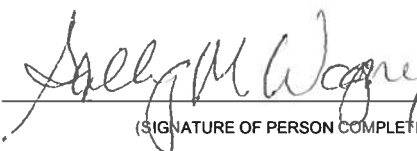
☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: August 15, 2025

Sally M. Wagner

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ 

(SIGNATURE OF PERSON COMPLETING THIS FORM)