Mark Baker
1520 E. Covell Suite 5 - 467
Davis, CA 95616
mbaker@moonlightadvocacy.org
503-272-1188
Pro Se

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARK BAKER,

Plaintiff,

vs.

CITY OF WOODLAND,

Defendant.

Case No.: 2:26-cv-00091-AC

NOTICE OF FIRST IMPRESSIONS

NOTICE OF FIRST IMPRESSIONS

Plaintiff submits this Notice to assist the Court in the efficient management of this litigation following its recent reassignment. Pursuant to the Court's inherent authority to manage its docket and identify controlling issues of law, Plaintiff hereby identifies several novel questions of federal preemption and civil rights. These issues represent "first impressions" in this District regarding the interplay between the National Traffic and Motor Vehicle Safety Act, Federal Motor Vehicle Safety Standards Section 108 (FMVSS 108), and Title II of the Americans with Disabilities Act. Early identification of these issues is intended to streamline future briefing and clarify the technical regulatory framework governing the City of Woodland's vehicle fleet.

I. STEADY-BURNING REQUIREMENT FOR AUXILIARY VEHICLE LAMPS (49 C.F.R. § 571.108 (S6.2.1))

"NHTSA interprets FMVSS No. 108 to require that **all auxiliary lamps be steady burning** except for auxiliary lamps that supplement required lamps that flash, such as turn signals." (NHTSA Interpretation Letter NCC-231121-001, June 27, 2024.) (emphasis added.)

Question of Law: Does the "Impairment Provision" of 49 C.F.R. § 571.108 (S6.2.1), as interpreted by the expert agency, create a mandatory federal safety standard for steady-burning auxiliary lights that preempts a State's discretionary permission (e.g., Cal. Veh. Code § 25252) to use flashing lights?

Novelty: This Court must decide whether a municipality's use of flashing auxiliary vehicle lights, which the federal government has officially determined "impair" required safety lighting, is a violation of federal law, regardless of permissive state statutes.

II. THE FEDERAL "MAKE INOPERATIVE" PROHIBITION (49 U.S.C. § 30122)

"A manufacturer, distributor, dealer, rental company, or motor vehicle repair business **may not knowingly make inoperative** any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, rental company, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or

a similar purpose during maintenance or repair) when the device or element is inoperative. (49 U.S.C. § 30122(b).) (emphasis added.)

"NHTSA has also determined that entities listed in § 30122 of the Safety Act that install 'emergency warning lights' on new or used vehicles would violate the 'make inoperative' provision of the Act... because 'emergency warning lights' would impair the effectiveness of required lamps." (NHTSA Interpretation Letter NCC-241023-001, December 13, 2024.)

"NHTSA interprets the impairment provision to prohibit auxiliary lamps that are so bright as to obscure or distract from a vehicle's required lamps... [and] to require that all auxiliary lamps be steady burning." (NHTSA Interpretation Letter NCC-231121-001, June 27, 2024.)

Question of Law: Is a municipality Negligent Per Se when it contracts with a motor vehicle repair business (upfitter) to perform modifications that violate the federal "Make Inoperative" prohibition?

Novelty: This issue presents a first-impression question of whether a municipality's duty to maintain its fleet in compliance with FMVSS 108 is a non-delegable duty. Plaintiff contends that:

1. The third-party upfitter violated 49 U.S.C. § 30122 by installing flashing auxiliary lights that render mandated safety lamps inoperative.
2. Under Cal. Gov. Code § 815.4, the City is vicariously liable for the upfitter's violation of this federal safety statute.
3. The City's knowing direction to violate a federal safety standard constitutes Negligence Per Se under Cal. Evid. Code § 669.

III. FLASHING LIGHT AS SENSORY BARRIER (28 C.F.R. § 35.130)

"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." (28 C.F.R. § 35.130(a).)

Question of Law: Does the use of high-intensity, digitally pulsing lights, which can trigger sensory overload, seizures, migraines, and physical pain in neurodivergent individuals, constitute a discriminatory barrier to access under Title II of the ADA?

Novelty: Most ADA barrier cases focus on physical/architectural obstacles like ramps or curbs. This case presents a novel question for the Ninth Circuit: Whether sensory/environmental stimuli (specifically high-intensity, digitally flashing light) can legally constitute a barrier that excludes individuals with neurological disabilities from public streets and sidewalks.

IV. FLASHING LIGHT AS COMMUNICATION (28 C.F.R. § 35.160)

"A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." (28 C.F.R. § 35.160(a)(1).)

Question of Law: Are municipal vehicle flashing lights "communications" under the ADA, and if so, must the municipality ensure these communications are "as effective" for individuals with sensory disabilities as they are for the general public?

Novelty: A city may typically interpret 28 C.F.R. § 35.160(a)(1) as requiring sign language interpreters or braille. This case asks the Court to determine if the flashing lights on a city vehicle constitute a "communication" and whether such a communication that causes sensory overload, panic, or seizure meets the "as effective" requirement.

V. SIREN AS COMMUNICATION (28 C.F.R. § 35.160)

"A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." (28 C.F.R. § 35.160(a)(1))

Question of Law: Are municipal emergency sirens "communications" under the ADA, and if so, must the municipality ensure these communications are "as effective" for individuals with sensory disabilities as they are for the general public?

Novelty: A city may typically interpret 28 C.F.R. § 35.160(a)(1) as requiring sign language interpreters or braille. This case asks the Court to determine if the sirens on a city vehicle constitute a "communication" and whether such a communication that causes an inability to hear or physical pain meets the "as effective" requirement.

Dated: March 1, 2026

Respectfully Submitted,

By: /s/ Mark Baker
Pro Se