

***Miller v. Pacific Gas & Electric***  
**2023 DJDAR 11849**

Because evidence established that utility company’s metal plate cover over a sidewalk did not pose a substantial risk of injury, trivial defect doctrine barred injured pedestrian’s lawsuit.

**FACTS/PROCEDURE**

Crista Miller and her husband were walking in San Francisco’s Chinatown when Crista tripped on a vertical misalignment of less than one inch between the metal plate covering an underground utility vault owned by Pacific Gas & Electric (PG&E) and the surrounding sidewalk adjacent to property owned by Hip Sen Benevolent Association (Hip Sen). Miller fell and injured her ankle. The parties agree the height protrusion was less than one inch and wet from earlier rainfall. Since January 2010, prior to Crista’s fall, the City and County of San Francisco had not received any complaints or service requests for the area. Hip Sen was also unaware of any prior tripping incidents occurring in that area. After Miller’s fall the City issued notices to PG&E and Hip Sen to repair the misalignment, which was done. Miller sued PG&E and Hip Sen for general negligence and premises liability, alleging they had allowed the dangerous condition of the misalignment to exist. The defendants replied that the misalignment was not a dangerous condition given its trivial size and nature. The trial court agreed, and Miller appealed.

**HOLDING/DISCUSSION**

Holding: Affirmed. It is well settled law that landowners are “Not liable for damages caused by a minor, trivial or insignificant defect in property.” (*Caloroso v. Hathaway* (2004) 122 Cal.App.4<sup>th</sup> 922, 927.) Under the trivial defect doctrine, alleged sidewalk defects must create a substantial risk of injury to pedestrians using reasonable care in order to establish landowners’ or government entities’ duty. (*Nunez v. City of Redondo Beach* (2022) 81 Cal.App.5<sup>th</sup> 749, 757.) Whether a particular sidewalk defect is trivial and nonactionable may be resolved as a matter of law by using either a two-step analysis or a holistic multi-factor framework for assessing liability. The size of the defect is the most important factor in both methods.

Here, the Court found that the Defendants made prima facie showing that the vertical misalignment was a trivial defect based on the following: the size, nature, and quality of the defect, visibility, and lack of prior incidents. The defect involved a vertical misalignment of less than one inch and although the incident occurred at nighttime, it was illuminated with artificial lighting from multiple sources. Finally, there was no evidence of tripping incidents before Miller’s accident. In sum, the trial court properly granted summary judgment as reasonable minds could come to only one conclusion in this case – that the vertical misalignment of the metal plate cover and surrounding sidewalk was a trivial defect. There is no evidence from which a reasonable trier of fact could find the trivial sidewalk defect poses a substantial risk of injury to a foreseeable pedestrian exercising due care.