Q: In this case, if the injured plaintiff had seen the stake he tripped on many times before tripping on it and knew it was there before he got hurt, and the stake was necessary to keep the tilt a whirl secure, do you think Fairs Are Us could prevail on a motion for summary judgment in california state court?

ChatGPT

A: In California state court, a motion for summary judgment is granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law (California Code of Civil Procedure § 437c(c)). In evaluating whether Fairs Are Us could prevail on a motion for summary judgment given the plaintiff’s prior knowledge of the stake, several legal principles and defenses could be considered:

**Key Legal Principles**

1. **Assumption of Risk:**
   * If the plaintiff had seen the stake many times before and knew it was there, Fairs Are Us could argue that the plaintiff assumed the risk of injury. Assumption of risk can be a complete defense to negligence claims if it is shown that the plaintiff voluntarily and knowingly assumed the risks inherent to a particular activity (Knight v. Jewett (1992) 3 Cal.4th 296, 309).
2. **Open and Obvious Doctrine:**
   * The open and obvious doctrine posits that a landowner is not liable for injuries caused by a condition that is open and obvious because it serves as a warning itself. If the stake was an open and obvious condition that the plaintiff knew about, Fairs Are Us could argue that they had no duty to warn the plaintiff of the risk (Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659, 673).
3. **Necessity of the Stake:**
   * If the stake was necessary to keep the Tilt-A-Whirl secure, Fairs Are Us might argue that the stake served a legitimate safety purpose, and removing or modifying it could have introduced other risks. They might assert that reasonable measures were in place to mitigate the risk, such as making the stake visible or providing warnings.

**Factors to Consider**

* **Plaintiff's Knowledge and Conduct:**
  + Evidence that the plaintiff had seen the stake multiple times and was aware of its presence would support the argument for assumption of risk and the open and obvious doctrine.
* **Necessity and Reasonableness:**
  + If the stake was crucial for the safety of the ride, and Fairs Are Us can demonstrate that it was positioned and maintained in a reasonable manner, they could argue that they met their duty of care.
* **Alternative Measures:**
  + The court will consider whether Fairs Are Us took reasonable alternative measures to mitigate the risk, such as using bright paint to mark the stake or placing warning signs.

**Case Law**

* **Knight v. Jewett (1992) 3 Cal.4th 296**: Establishes the doctrine of primary assumption of risk, which may apply if the plaintiff voluntarily engaged in an activity with inherent risks.
* **Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659**: Discusses the open and obvious doctrine, highlighting situations where landowners are not liable for injuries caused by obvious conditions.

**Conclusion**

Given the facts presented:

* The plaintiff’s prior knowledge of the stake and the necessity of the stake for ride security could provide strong arguments for Fairs Are Us to prevail on a motion for summary judgment.
* If Fairs Are Us can demonstrate that the risk was open and obvious and/or assumed by the plaintiff, and that they took reasonable measures to ensure safety, the court may find in their favor.

However, whether Fairs Are Us would ultimately prevail depends on the specific details and evidence presented, including the adequacy of warnings and any mitigating actions taken. The court will carefully consider whether there are any genuine issues of material fact that would necessitate a trial.

**Sources**

* California Code of Civil Procedure § 437c
* Knight v. Jewett (1992) 3 Cal.4th 296
* Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659

Q: Write a motion for summary judgment that conforms to the SF Superior Court rules based on the above

A: Below is a draft of a Motion for Summary Judgment that conforms to the San Francisco Superior Court rules, based on the facts provided and the legal arguments discussed.

**LAW OFFICES OF ROBERT BROWN** Robert Brown, Esq. (SBN 123456) 123 Main Street San Francisco, CA 94101 Tel: (555) 123-4567 Email: rbrown@lawoffice.com

Attorney for Defendant Fairs Are Us

**SUPERIOR COURT OF THE STATE OF CALIFORNIA** **COUNTY OF SAN FRANCISCO**

**John Doe,**  
**Plaintiff,**  
**v.**  
**Sierra County; Fairs Are Us; and DOES 1-10, inclusive,**  
**Defendants.**

**Case No.:** [Case Number]

**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on [Hearing Date] at [Time], or as soon thereafter as the matter may be heard in Department [Department Number] of the above-entitled court located at 400 McAllister Street, San Francisco, CA 94102, Defendant Fairs Are Us (“Defendant”) will, and hereby does, move the Court for an order granting summary judgment in its favor pursuant to California Code of Civil Procedure section 437c.

This motion is based on the ground that there is no triable issue of material fact, and Defendant is entitled to judgment as a matter of law. The motion is made on the grounds that the undisputed facts establish that Plaintiff assumed the risk of injury, the hazard was open and obvious, and Defendant met its duty of care by maintaining the safety of the Tilt-A-Whirl ride.

This motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the Separate Statement of Undisputed Material Facts, the Declaration of Robert Brown, Esq., the pleadings and papers on file herein, and such other and further oral and documentary evidence as may be presented at the hearing.

**Dated:** [Date]  
**LAW OFFICES OF ROBERT BROWN**  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**Robert Brown, Esq.**  
Attorney for Defendant  
Fairs Are Us

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant Fairs Are Us seeks summary judgment on the grounds that Plaintiff John Doe’s claims are barred by the doctrines of assumption of risk and the open and obvious nature of the hazard. Plaintiff was aware of the stake in the ground, which was necessary for the secure operation of the Tilt-A-Whirl ride, and knowingly proceeded despite this awareness. Furthermore, Defendant took reasonable steps to ensure the safety of its patrons.

**II. STATEMENT OF FACTS**

On January 23, 2024, Plaintiff attended the Sierra County Fair and tripped over a stake near the Tilt-A-Whirl ride, resulting in injuries. The stake was necessary for the structural integrity of the ride and was visible to Plaintiff, who had seen it multiple times before the incident. Despite this knowledge, Plaintiff chose to walk near the stake, resulting in his injuries.

**III. LEGAL STANDARD**

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law (Cal. Civ. Proc. Code § 437c(c)). The moving party bears the initial burden of showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850).

**IV. ARGUMENT**

**A. Plaintiff Assumed the Risk of Injury**

Under the doctrine of primary assumption of risk, a defendant owes no duty of care to protect a plaintiff from risks inherent in a particular activity if the plaintiff voluntarily engages in the activity with knowledge of the risks involved (Knight v. Jewett (1992) 3 Cal.4th 296, 308-309). Here, Plaintiff had seen the stake multiple times and knew of its presence, thereby assuming the risk of injury by walking near it.

**B. The Hazard Was Open and Obvious**

The open and obvious doctrine provides that a landowner is not liable for injuries caused by an obvious danger because the danger itself serves as a warning (Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659, 673). The stake was visible and known to Plaintiff, making it an open and obvious hazard.

**C. Defendant Met Its Duty of Care**

Defendant maintained the stake as a necessary safety measure for the Tilt-A-Whirl ride. The stake’s visibility and necessity for the ride’s operation demonstrate that Defendant took reasonable steps to ensure patron safety. There is no evidence that Defendant acted negligently.

**V. CONCLUSION**

For the foregoing reasons, Defendant Fairs Are Us respectfully requests that the Court grant its motion for summary judgment.

**Dated:** [Date]  
**LAW OFFICES OF ROBERT BROWN**  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**Robert Brown, Esq.**  
Attorney for Defendant  
Fairs Are Us

**Separate Statement of Undisputed Material Facts**

**1.** Plaintiff attended the Sierra County Fair on January 23, 2024.  
**2.** Plaintiff tripped over a stake near the Tilt-A-Whirl ride.  
**3.** The stake was necessary for the structural integrity of the ride.  
**4.** Plaintiff had seen the stake multiple times before the incident.  
**5.** The stake was visible and known to Plaintiff.  
**6.** Defendant maintained the stake as a safety measure for the ride.  
**7.** There is no evidence that Defendant acted negligently in maintaining the stake.

**Declaration of Robert Brown, Esq.**

I, Robert Brown, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California and am counsel of record for Defendant Fairs Are Us.
2. Attached hereto as Exhibit A is a true and correct copy of the incident report regarding Plaintiff’s fall.
3. Attached hereto as Exhibit B is a true and correct copy of Plaintiff’s deposition transcript where he admits seeing the stake multiple times before the incident.
4. Attached hereto as Exhibit C is a true and correct copy of the safety inspection reports for the Tilt-A-Whirl ride.

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

Executed on [Date] at San Francisco, California.

Robert Brown, Esq.