Tentative Rulings for March 6, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(35)

Tentative Ruling

Re: ***Thorpe-Ghazal v. Bell et al.***
Superior Court Case No. 24CECG02613

Hearing Date: March 6, 2025 (Dept. 503)

Motion: By Defendant Thomas L. Bell to Lift Stay

Tentative Ruling:

To deny.

Explanation:

Plaintiff Ylva Thorpe-Ghazal ("Plaintiff") filed the instant action regarding certain allegations against each of defendants Thomas L. Bell ("Bell") and Stanley Cooper ("Cooper"). On November 7, 2024, the claims against Cooper were ordered to arbitration, and this court issued a stay pending completion of arbitration. Bell now seeks to lift the stay as it pertains to Plaintiff's claims against Bell.[1]

Bell contends that Cooper did not request a stay when Cooper sought to compel Plaintiff to arbitration. Cooper, in response to the present motion, concedes that there was only an implied seeking of stay pending arbitration. To the extent that the court will not construe the prior motion as having sought a stay, Cooper now seeks a stay, informally through this response, or by way of further motion work.

Bell further contends that the stay should, at minimum, be lifted as to the claims against him as severable from the claims against Cooper. Bell submits that he was separately licensed in a different profession, creating different standards of care and levels of assessments. Bell concludes that these causes of action, as applied to him, will be based on different facts and circumstances from Cooper as a result.

Plaintiff opposes. As Plaintiff argues, and the court agrees, while the legal standards may different, the facts and circumstances between the claims pending against Bell and Cooper, appear to arise out of the same set of allegations.

On balance, the court exercises its inherent authority to control its docket to deny lifting the stay. (*E.g.*, *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 141 *citing Landis v. North American Co.* (1936) 299 U.S. 248, 257 [affirming language stated that "the power to stay proceeding is incidental to the power inherent in every court to control the disposition of the causes of action on its docket with economy of time and effort for itself, for counsel, and for litigants."]) While the court acknowledges, as Bell submits, no party expressly sought a stay in the prior motion to compel arbitration, a stay, as Plaintiff and Cooper submit, is nevertheless warranted. Though Bell argues that he will suffer an inability to defend himself as a consequence of not participating in Cooper's arbitration, Bell

[1] Bell's Request for Judicial Notice is granted.

acknowledges that he is subject to different standards and that his actions are his own. Bell will have the opportunity, here in state court, to present his defenses, with any due consideration to facts and conclusions potentially found as to Cooper where such consideration may be relevantly sought. Accordingly, the court finds that maintaining the stay previously imposed promotes judicial efficiency, and the motion is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 3/4/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***County of Fresno v. Belardes et al.***
Superior Court Case No. 16CECG01933

Hearing Date: March 6, 2025 (Dept. 503)

Motion: By Non-Party Orlonzo Hedrington for Disbursement

Tentative Ruling:

To deny, without prejudice.

Explanation:

"Plaintiff Orlonzo Hedrington" ("Hedirngton") seeks disbursement of funds previously interpleded by Petitioner County of Fresno. However, on February 14, 2019, this action was dismissed. An order of dismissal constitutes a final judgment in the action. (Code Civ. Proc. § 581d.) While the judgment stands, no further orders are warranted. The motion is denied.[2]

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
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[2] The court further notes that while the papers identify Hedirngton as a plaintiff, Hedrington is not named as any party to this action. Further, the papers appear to alternatively identify that the moving party may be defendant AKJ Properties, which is an entity of unknown designation. To the extent that AKJ Properties may be a corporation, corporations may not represent themselves before the court in *propria persona*, nor can corporations represent themselves through their officers, directors, or any other employee who is not an attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) Corporations must be represented by an appropriately licensed attorney in court proceedings. (*Ibid*.)

(27)

Tentative Ruling

Re: ***Fridoon (David) Alvand v. County of Fresno/Complex/Class Action***
Superior Court Case No. 24CECG03849

Hearing Date: March 6, 2025 (Dept. 503)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To sustain, without leave to amend. Defendant shall submit to this court a judgment of dismissal within ten (10) days from the date of this order.

Explanation:

The court notes that plaintiff is representing himself in this matter, but a plaintiff who represents himself in propria persona is "entitled to same, *but no greater*, rights than represented litigants …." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795, emphasis added.) Plaintiff's complaint for property damage names a public entity as the sole defendant - the Department of Social Services (County of Fresno). Yet, both the complaint (item 9) and the meet and confer discussions indicate that plaintiff did not present his claim to the governing board *before* filing his complaint with the court. His complaint does not allege compliance with the Government Code. (§ 945.4.) Defendant's demurrer is sustained.

Leave to amend is routinely granted after a demurrer has been sustained. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) However, in this case, it does not appear that plaintiff can offer any facts which would cure the defect. In addition, plaintiff has not filed an opposition to the demurrer. Therefore, the demurrer is sustained, without leave to amend.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 3/4/2025.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Joe Bracamonte v. General Motors, LLC***
Superior Court Case No. 20CECG02553

Hearing Date: March 6, 2025 (Dept. 503)

Motion: by Defendant to Strike Costs

Tentative Ruling:

To deny the motion in all respects except for the $550 court reporter fees associated with item 12 which has been withdrawn by plaintiff. The adjusted total fees are $9,061.68.

Explanation:

As acknowledged in defendant's moving papers (Points & Auth. at p. 3:12), the statutory basis for this case is the Song-Beverly Act, which specifically includes the recovery of "reasonable" costs. (Civ. Code, § 1794, subd. (d).) Furthermore, "a prevailing party is entitled as a matter of right to recover costs in any proceeding." (Code Civ. Proc., § 1032, subd. (b).) An opposing party may challenge a costs memorandum (Rules of Court, rule 3.1700(b)) which requires the court determine whether the subject cost falls within the statute appears proper. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) If the subject cost satisfies this test, "the burden is on the objecting party to show [the costs] to be unnecessary or unreasonable." (*Ibid*.)

All of the costs items identified in defendant's motion fall within the categories specified in subdivision (a) of Code of Civil Procedure section 1033.5, particularly, the items addressing recovery of jury fees, deposition costs, service of process, and filing and CourtCall costs. (§ 1033.5, subd. (a)(1),(3), and (4); see also *Landwatch San Luis Obispo County v. Cambria Community Services District* (2018) 25 Cal.App.5th 638, 646.) These items include required fees (e.g. jury fees) and/or were incurred from conducting customary discovery procedures (e.g. witness depositions). Therefore, defendant has not met its burden as it relates to most of the items identified in its motion.

On the other hand, plaintiff does not oppose the court reporter fees associated with item 12, and withdraws that cost ($550). (Opp. at p. 6:15-20.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 3/4/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Natalie Soto v. Equinox Holdings, Inc.***
Superior Court Case No. 23CECG03564

Hearing Date: March 6, 2025 (Dept. 503)

Motion: Defendant's Motion for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant the defendant's motion for summary judgment. The defendant is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

The plaintiff, Natalie Soto (Plaintiff), fell on stairs and suffered injuries after completing a workout class at a gym (the Club) as a guest. Plaintiff filed a form complaint (Corrected Complaint) for personal injuries with causes of action for premises liability and negligence against the Club's owner, Equinox Holdings, Inc. (Defendant or Equinox, erroneously sued as Equinox Holding, Inc.). Defendant now moves for summary judgment or summary adjudication, based on a guest liability waiver Plaintiff signed before taking the workout class.

Defendant Satisfies Its Initial Burden

Defendant moves for summary judgment under Code of Civil Procedure section 437c against Plaintiff, based on a waiver Plaintiff electronically signed on March 17, 2023 (Waiver), before her class. (Fact Nos. 4-9.) Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

In a motion for summary judgment, the pleadings delimit the scope of the issues and frame the outer measure of materiality. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.) A defendant moving for summary judgment must negate the plaintiff's "theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (*Ibid*, italics original.)

Plaintiff alleges she visited the Club on March 17, 2023, as a guest of Bryana Hernandez to take a workout class. She describes her fall as follows:

> Upon conclusion of the class, located on the second floor, Plaintiff and Ms. Hernandez made their way down the stairs to the first floor with other people leaving the class. Plaintiff noted that people were drinking from their water bottles as they walked down the stairs. [¶] As Plaintiff walked down the first set of stairs, she slipped on water on one of the stairs and fell down the next four stairs. Plaintiff could hear what seemed to be bones cracking and she had trouble getting up. The workout class instructor helped her up and down the next set of stairs, which had slip guard. With assistance, Plaintiff was able to leave the gym. Plaintiff had a previously scheduled job interview later that day, March 17 at 3:00 p.m. Plaintiff managed to get through the interview, but then immediately went to urgent care on March 17, 2023.

(Corrected Comp., p. 4.) Plaintiff alleges she suffered broken bones, which required surgery, and suffered other damages.

Defendant provides the court with a copy of the Waiver signed by Plaintiff, and evidence that Plaintiff reviewed and electronically signed the Waiver before her exercise class. (Fact Nos. 8, 9.) Defendant bases its motion on the language of the Waiver, in which Plaintiff agreed to waive, release, and discharge Defendant and all others responsible for any injury or loss she might suffer at the Club's facilities. The one-page Waiver includes the following language:

> In consideration of being permitted access to the Club, classes, events, activities, or other programs and/or entering the Club, and using its facilities, including without limitation the pool and the surrounding area and equipment, you fully, expressly, and voluntarily on behalf of yourself and your heirs, representatives, successors and/or assigns:…. [¶] (5) voluntarily and knowingly waive, release, forever discharge, indemnify and hold harmless Equinox Holdings, Inc., and each of its direct and indirect parents, subsidiaries, affiliates and each of their respective successors and assigns and all others (collectively Releasees or Equinox Parties) from any and all liability, damages, losses, suits, demands, causes of action (including without limitation, negligence), or any other claims of any nature whatsoever including without limitation, any property loss or damage, loss of earnings or earning capacity, personal injury, illness or impairment, physical pain, mental anguish, paralysis, heart attack or death arising out of, or in connection with the use or non-use of the Club, any service, product or equipment, whether related to exercise or not, including those losses or damages resulting from or caused by, in whole or in part, the negligence or gross negligence of any of the aforementioned Releasees, provided that the forgoing release and waiver of liability shall not apply to any losses or damages to the extent prohibited by law[.]

(Fact No. 8.)

The language of the Waiver is clear, broad, and unambiguous. It releases Defendant and all others legally responsible for any negligence or personal injury claim arising out of Plaintiff's use of the Club, whether related to exercise or not. The Waiver bars Plaintiff from pursuing the claims she alleges against Defendant in her Corrected Complaint. Therefore, Defendant has satisfied its initial burden to show it has a complete defense to Plaintiff's Corrected Complaint, based on the Waiver. The burden then shifts to Plaintiff to raise a triable issue of material fact.

Plaintiff Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) Plaintiff fails to present evidence to dispute any of Defendant's material facts. Plaintiff contends the Waiver is void and unenforceable as a matter of public policy for two reasons: (1) Defendant did not give Plaintiff a copy of the Waiver after she electronically it; and (2) the Waiver allows Defendant to escape liability for its own gross negligence.

Copy of Waiver

Plaintiff relies on an unreported federal district court case, *Crannage v. Gold's Gym* (C.D. Cal. 2019) 2019 WL 7856763 (*Crannage*). Defendant points out that in *Crannage,* the district court denied summary judgment because the defendant had not "sufficiently authenticated [the plaintiff's] electronic signature on the Membership Agreement." (*Id.* at p. 3.) *Crannage* is distinguishable because Plaintiff has admitted she reviewed and electronically signed the Waiver before her exercise class (Fact No. 9); and *Crannage* involved a membership agreement to join a gym, not a guest liability waiver.

Secondarily, with no analysis, the district court in *Crannage* stated the defendant's failure to provide a copy of a written gym membership contract rendered the contract "void and unenforceable" as a matter of public policy, citing Civil Code section 1812.91. (*Crannage, supra,* at p. 3.) Section 1812.91 of the Civil Code provides: "Any contract for health or dance studio services which does not comply with the applicable provisions of this title shall be void and unenforceable as contrary to public policy." Civil Code section 1812.82, requires a contract for "health studio services" be written and given to the customer:

> Every contract for health studio services shall be in writing and shall be subject to the provisions of this title. A copy of the written contract shall be physically given to or delivered by email to the customer at the time he or she signs the contract.

(Civ. Code, § 1812.82.) Civil Code section 1812.81 defines a contract for "health studio services" to mean:

> [A] contract for instruction, training or assistance in physical culture, body building, exercising, reducing, figure development, or any other such physical skill, or for the use by an individual patron of the facilities of a health studio, gymnasium or other facility used for any of the above purposes, or for membership in any group, club, association or organization formed for any of the above purposes[.]

(Civ. Code, § 1812.81.)

The Waiver is a one-page document in which Plaintiff released Defendant from liability for negligence, and assumed the risk of injury sustained by using the Club's facilities, whether related to "exercise or not." (Fact No. 8.) Therefore, the Waiver does not fall within the definition of a contract for health studio services, and the requirement of Civil Code section 1812.82 does not apply to void the Waiver.

Ordinary Negligence

To the extent Plaintiff contends the Waiver is unenforceable and violates public policy based on its provisions relating to ordinary negligence, it is well settled that such a release is enforceable in the health club context. Defendant cites *Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal.App.4th 1351 (*Benedek*), where a member of a health club was injured at the club while attempting to reposition a television. The trial court property granted the club's summary judgment motion based on a release signed by the plaintiff, which covered all personal injuries, "whether using exercise equipment or not." (*Id.* at p. 1354, underscoring original in release.) Rejecting the plaintiff's argument that the release was unenforceable because the injury did not occur in the sports context while exercising, the appellate court explained no public policy prohibits such a release:

> A written release may exculpate a tortfeasor from future negligence or misconduct. [Citation.] To be effective, such a release "must be clear, unambiguous, and explicit in expressing the intent of the subscribing parties." [Citation.] The release need not achieve perfection. [Citation.] Exculpatory agreements in the recreational sports context do not implicate the public interest and therefore are not void as against public policy. [Citation.]

(*Id.* at pp. 1356–1357, fn. omitted.) Thus, for ordinary negligence, the Waiver is not void as against public policy and is enforceable.

Gross Negligence

It is well-settled public policy that a release in the context of sports and recreation programs may exculpate a tortfeasor from future simple negligence, but not gross negligence. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 759, fn. 12 [numerous cases have upheld validity of agreements waiving ordinary negligence claims in use of fitness facilities] (*Santa Barbara*)). Plaintiff argues the Waiver is unenforceable because it does not allow Defendant to escape liability for gross negligence. The Waiver mentions gross negligence, but it expressly provides it "shall not apply to any losses or damages to the extent prohibited by law." Thus, by its own terms, the Waiver is

enforceable to release liability for future ordinary negligence claims, but it is unenforceable to release liability for future gross negligence claims.

Plaintiff contends the court should deny Defendant's summary judgment motion because she has alleged gross negligence, which is not covered by the Waiver. Plaintiff's allegations delimit the scope of the issues and affect the burden of proof. (*Hutton v. Fidelity National Title Co., supra,* 213 Cal.App.4th at p. 493.) If a plaintiff alleges facts in a complaint that demonstrate gross negligence in anticipation of a release, the initial burden on summary judgment "remains on the moving defendant asserting the release as a defense to produce evidence refuting the allegations constituting gross negligence." (*Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 880 (*Anderson*).) Plaintiff contends she has alleged such facts to demonstrate gross negligence in her Corrected Complaint.

In *Anderson*, the court encountered a similar argument. There, the plaintiff had slipped and fallen in a health club's shower room. The plaintiff filed a complaint in which he alleged he had previously fallen and had notified front desk employees of the dangerous, slippery condition of the shower room after each fall. The court found the plaintiff failed to allege sufficient facts to support a theory of gross negligence, which requires a showing of scant care or an extreme departure from the ordinary standard of care (*Santa Barbara, supra,* 41 Cal.4th at p. 754), and granted summary judgment based on the release:

> In the present case, viewing the allegations of the first amended complaint in the light most favorable to [plaintiff], we conclude [plaintiff] has failed to allege sufficient facts to support a theory of gross negligence. We note that ordinary negligence "consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm." (*Santa Barbara, supra,* 41 Cal.4th at pp. 753-754.) *Mere nonfeasance, such as the failure to discover a dangerous condition or to perform a duty, amounts to ordinary negligence.* However, to support a theory of gross negligence, a plaintiff must allege facts showing either a want of even scant care or an *extreme* departure from the ordinary standard of conduct. Gross negligence falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind.

(*Anderson, supra,* 4 Cal.App.5th at p. 881, italics added, some citations and internal quotation marks omitted.) Thus, in cases with a waiver of liability for future negligence, conduct that substantially or unreasonably increases an activity's inherent risks, or actively conceals known risks, could amount to gross negligence that would *not* be barred by the waiver. (*Ibid.)*

Plaintiff relies on *Epochal Enterprises, Inc. v. LF Encinitas Properties, LLC* (2024) 99 Cal.App.5th 44, which acknowledges the definition of "gross negligence," as "either a want of even scant care" or "an extreme departure from the ordinary standard of conduct." (*Id.* at p. 55, citing *Santa Barbara, supra,* 41 Cal.4th at p. 754, internal quotation marks omitted.) To support her contention that Defendant acted with scant care, Plaintiff alleges she was walking down stairs from a class on the second floor with "other people

leaving the class" who "were drinking from their water bottles as they walked down the stairs." (Corrected Comp., p. 4.) "As Plaintiff walked down the first set of stairs, she slipped on water on one of the stairs and fell down the next four stairs." (*Ibid.*) She fell on a set of stairs with no slip guard, but a second set of stairs had a slip guard. At best, Plaintiff alleges nonfeasance or ordinary negligence. Plaintiff's Corrected Complaint includes no allegations to show Defendant acted with scant care or its conduct was an extreme departure from the ordinary standard of care. (*Anderson, supra,* 4 Cal.App.5th at p. 881[affirming summary judgment based on release where detailed facts alleged by plaintiff of prior falls by plaintiff and others on slippery shower floor insufficient to support gross negligence claim].) When viewing the evidence in the light most favorable to Plaintiff, the allegations in her Corrected Complaint fail to support a theory of gross negligence. Slipping and falling on a small puddle of water when a group of perspiring exercisers are descending stairs after a class and drinking from water bottles is a typical hazard relating to the use of a health club facility for exercise. Thus, because the allegations in Plaintiff's Corrected Complaint fail to allege sufficient facts to support a theory of gross negligence, Defendant need not produce evidence to refute gross negligence to meet its initial burden.

Defendant's assertion of the Waiver as a complete defense to Plaintiff's negligence cause of action is sufficient to shift the burden to Plaintiff to produce evidence to show a triable issue of material fact exists to preclude summary judgment. The court concludes Plaintiff fails to meet her burden. Plaintiff provides evidence that after participating in an hour-long yoga class, she walked down a staircase made of "stone like material," with no slip guards, and slipped on a golf-ball-sized puddle of water spilled on the steps. (Plaintiff's Fact Nos. 4-12.) She provides no evidence of how long the small puddle of water was on the steps, no expert testimony regarding the safety protocols applicable to the steps, and no evidence that reports of others falling on the steps had been communicated to and disregarded by Defendant. Her evidence that an employee failed to produce a correct incident report (Fact No. 23) may be relevant to establish ordinary negligence, but not gross negligence.

Construing all facts and inferences in favor of Plaintiff, the court finds Plaintiff has not pleaded in her Corrected Complaint, nor set forth in her opposition to the motion, any facts that would provide a basis for a trier of fact to conclude Defendant was grossly negligent, as opposed to ordinarily negligent. Therefore, Defendant has satisfied its burden of persuasion to show " ' "that under no hypothesis is there a material factual issue requiring trial." ' " (*Anderson, supra,* 4 Cal.App.5th at p. 885, citing *Melendrez v. Ameron Internat. Corp.* (2015) 240 Cal.App.4th 632, 638.)

Premises Liability

The elements of a negligence claim and a premises liability claim are the same. Both require a legal duty of care, a breach of that duty, and proximate cause resulting in injury. "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by her or her want of ordinary care of skill in the management of his or her property or person [...]." (Civ. Code § 1714, subd. (a).) Defendant cites *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, wherein the court explained:

> Premises liability is a form of negligence based on the holding in *Rowland v. Christian* [(1968)] 69 Cal.2d 108, and is described as follows: The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence. [Citation.]

(*Brooks v. Eugene Burger Management Corp., supra,* 215 Cal.App.3d at p. 1619.) A health club's release for ordinary negligence may include claims based on both general negligence and premises liability. (*Benedek, supra,* 104 Cal.App.4th at pp. 1357. 1359 [release of all premises liability in consideration for permission to use health club facility for any purpose does not violate public policy].) By the express terms of the Waiver, Plaintiff voluntarily released Defendant from any liability for Defendant's negligence before she was permitted to access the Club. Thus, Defendant has shown Plaintiff cannot prevail on her claim of premises liability.

Evidentiary Objections

The court declines to rule on Defendant's evidentiary objections because none are material to the disposition of Defendant's motion. (Code Civ. Proc., § 437c, subd. (q).) Furthermore, objections must be submitted in the proper format required by Rule of Court 3.1354 (filed separately, quoting the objectionable material and clearly stating the grounds for objections).

Conclusion

The court finds Defendant meets its burden to show it has a complete defense to Plaintiff's Corrected Complaint, based on the Waiver. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants Defendant's motion for summary judgment.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 3/4/2025.
(Judge's initials) (Date)