Tentative Rulings for June 25, 2024
Department 403

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.

21CECG01663 ***Jerry Vang v. Lazette Cano*** **is continued to Thursday, June 27, 2024, at 3:30 p.m. in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Samrech v. Saint Agnes Medical Center et al.***
Superior Court Case No. 23CECG01594

Hearing Date: June 25, 2024 (Dept. 403)

Motion: Defendant Kalwant Dhillon, M.D.'s Motion for Summary Judgment

Ruling:

To grant. Prevailing party is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Plaintiff alleges in this medical malpractice that defendants Saint Agnes Medical Center and Kalwant Dhillon, M.D. were negligent in their care and treatment of plaintiff with regard to the surgical left inguinal incarcerated hernia repair on April 8, 2022. Dr. Dhillon now moves for summary judgment.

As the moving party, Dr. Dhillon bears the initial burden of proof to show that plaintiff cannot establish one or more elements of their causes of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

> "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."

(*Munro v. Regents of Univ. of Calif*. (1989) 215 Cal.App.3d 977, 984-85.)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (TRG 2021) ¶ 10:205.5, citing *Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

To establish that a physician's care was negligent, a plaintiff must provide expert testimony establishing that the treatment fell below the applicable standard, unless the medical process at issue is matter of common knowledge and thus susceptible to

comprehension by a lay juror. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

Dr. Dhillon relies on a declaration by expert Jonathan Carter, M.D., a physician who has treated and cared for many patients with left inguinal hernias like plaintiff. Based on his knowledge, education, training, professional experience and review of the relevant materials in this case, Dr. Carter concludes that Dr. Dhillon complied with the applicable standard of care with respect to their treatment and care of plaintiff, and obtained informed consent for the treatment / procedure at issue.

This is sufficient to shift the burden to plaintiff to raise a triable issue of fact. Plaintiff has not filed any opposition to the motion. Accordingly, the court intends to grant the 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 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 (Judge) on 6/20/2024 (Date).

(34)

Tentative Ruling

Re: ***Maney v. SF Markets, LLC, et al.***
Superior Court Case No. 22CECG01613

Hearing Date: June 25, 2024 (Dept. 403)

Motion: (1) by Hastings Ranch Shopping Center, L.P. for Summary Judgment, or Alternatively, Summary Adjudication

(2) by SF Markets, LLC for Summary Judgment, or Alternatively Summary Adjudication

Tentative Ruling:

To deny the motion for summary judgment and alternative motion for summary adjudication by Hastings Ranch Shopping Center, L.P.

To grant the motion for summary judgment of SF Markets, LLC. Prevailing party is directed to submit to this court, within 10 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Hastings Ranch Shopping Center, L.P.

"'Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 713, quoting Code Civ. Proc. § 437c(c).) Summary judgment is properly directed toward the entire complaint and not portions thereof. (see *Barnick v. Longs Drug Stores, Inc*. (1988) 203 Cal.App.3d 377, 384; *Khan v. Shiley, Inc*. (1990) 217 Cal.App.3d 848, 858-859.)

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1132 ["On a motion for summary judgment or summary adjudication, the pleadings delimit the scope of the issues . . .."].)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

If defendant carries this initial burden of production, the burden of production shifts to plaintiff to show that a triable issue of material fact exists. Plaintiff does this if he can show, by a preponderance of the evidence, that it is more likely than not that a given element can be established or that a given defense cannot be established. (*Aguilar*, *supra*, 25 Cal.4th at 850, 852.)

In determining whether plaintiff has met his burden of production, the court must evaluate the plaintiff's evidence independently. That is, the court may not weigh the plaintiff's evidence or inferences against the defendant's, as if the court were sitting as a trier of fact. If the plaintiff meets his burden, then the court must deny summary judgment, even if defendants have presented conflicting evidence. If the plaintiff meets his burden, a reasonable trier of fact could find for plaintiff and a triable issue of fact does exist for the jury to consider. (*Aguilar, supra,* 25 Cal.4th at 856-857.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment/adjudication. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 ["Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion."].)

Defendant's Separate Statement

A summary judgment motion must show that the "*material* facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co*. (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

A party moving for summary judgment or summary adjudication must support the motion with a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, and each of these material facts must be followed by a reference to the supporting evidence. (Code Civ. Proc., § 437c, subd. (b)(1), (f)(2).) A separate statement is required to afford due process to the opposing party and to permit the judge to expeditiously review the motion for summary judgment or summary adjudication to determine quickly and efficiently whether material facts are disputed. (*Parkview Villas Ass'n, Inc. v State Farm Fire & Cas. Co*. (2005) 133 Cal.App.4th 1197, 1210; *United Community Church v Garcin* (1991) 231 Cal.App.3d 327, 335.) As a result, the separate statement should include only *material* facts—ones that could make

a difference to the disposition of the motion. (Cal. Rules of Court, rule 3.1350(f)(3); see also rule 3.1350(a)(2) [defining "material facts"].)

As a result, the moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the matters it contends are "undisputed," and cite the specific evidence (pleadings admissions, or discovery, or declarations) showing there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist*." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [superseded by statute on other grounds]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

In the case at bench, defendant argues summary judgment, or alternatively summary adjudication, is proper as it owed no duty to plaintiff because it neither exercise control over the premises nor had actual notice of the alleged dangerous condition of the threshold. In support, defendant presents as undisputed facts that plaintiff "does not know" if defendant was informed of the alleged condition and "does not know" if defendant possessed or controlled the incident location. (UMF 12, 13.) Defendant also supports its position with the undisputed fact that plaintiff did not notify defendant of any problems with the threshold prior to the incident. (UMF 14.)

"It is not enough for defendant to show merely that plaintiff 'has no evidence' on a key element of plaintiff's claim. Defendant must also produce evidence showing plaintiff *cannot reasonably obtain* evidence to support that claim. [*Gaggero v. Yura* (2003) 108 CA4th 884, 891, 134 CR2d 313, 318; *Zoran Corp. v. Chen* (2010) 185 CA4th 799, 808, 110 CR3d 597, 604]." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) § 10:244.) This is where the motion falls short.

Defendant's material fact nos. 12, 13 and 14, regardless of the supporting testimony from plaintiff's April 5, 2023 deposition or responses to a request for admission that plaintiff lacks information and belief sufficient to admit or deny whether plaintiff "does not know" the status of defendant's possession, control, or notice, are not sufficient to demonstrate plaintiff cannot reasonably obtain this information. Although it appears plaintiff has conducted some discovery following the continuance of the hearing date on this motion pursuant to Code of Civil Procedure section 437c, subdivision (h), the separate statement does not meet the standard of providing evidence that plaintiff cannot reasonably obtain the information.

Moreover, plaintiff's personal lack of knowledge of Hastings Ranch, L.P.'s possession or control of the premises or notice of the dangerous condition is not dispositive of the fact of possession, control or notice. Rather these are topics within the defendant's knowledge and simply pointing out that plaintiff herself does not know is not sufficient to meet defendant's burden on summary judgment or summary adjudication without demonstrating plaintiff cannot reasonably obtain evidence to support her claim. Interpreting the material fact as plaintiff not having evidence to support her claims of defendant's possession, control and notice of the alleged defect produces the same result.

Defendant argues plaintiff's "factually devoid" discovery responses and deposition testimony are sufficient to shift the burden to plaintiff to prove the existence of a triable issue of material fact. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590.) The *Union Bank* ruling cited by defendant is with regard to the evidence submitted in support of the moving party's material facts in summary judgment. In contrast, the material facts themselves presented in the separate statement are insufficient to shift defendant's burden on summary judgment. Defendant has not meet its burden, and the burden therefore does not shift to plaintiff to raise triable issues of fact. (Code Civ. Proc. § 437c(p)(2).)

SF Markets, LLC

Plaintiff Deborah Maney alleges in her Complaint that on May 27, 2020, at a Sprouts Farmers Market store she tripped and fell after having come "into contract with a dangerous and hazardous condition. Plaintiff alleges in her Complaint that defendant "allowed a dangerous condition such as a trail of milk to be on their premises serving as a hazard, and further allowed said dangerous condition to remain in disrepair, notwithstanding the fact that Defendants knew and/or should have known of the dangerous condition but failed to warn and/or repair, remedy the dangerous condition, that "there had been numerous prior Incidents."

Defendant SF Markets, LLC moves for summary judgment of the complaint on the basis that plaintiff cannot establish the existence of a dangerous condition on the premises, plaintiff cannot establish defendant caused the alleged dangerous condition, and defendant had no notice of the alleged dangerous condition. Defendant Hastings Ranch Shopping Center, L.P. had the opportunity to notice it's joinder to the motion filed by SF Markets, LLC however it does not appear it filed a timely notice of joinder.

Defendant has the burden of proving that there is a complete defense or that plaintiff cannot establish one or more elements of each of his causes of action. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) To show that plaintiff cannot establish her claims, defendant may either (1) affirmatively negate one or more elements of each claim, or (2) by relying on plaintiff's inadequate discovery responses, show that plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 855.)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Id*. at p. 850.)

The two causes of action for negligence and premises liability are substantially similar. Plaintiff must establish duty, breach, causation, and damages. To prevail at *trial*, plaintiff must prove that defendant owed her a legal duty, that it breached that duty, and that the breach was the proximate or legal cause of his injuries. (*Sharon P. v. Arman Ltd.* (1999) 21 Cal.4th 1181, disapproved on other grounds in *Aguilar, supra,* 25 Cal.4th at 853, fn. 19.)

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. (BAJI No. 8.00 (1983 rev.).) (*Brooks v. Eugene Berger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619 (emphasis added).)

At trial the burden rests upon the plaintiff to show the existence of a dangerous condition, and that the defendant knew or should have known of it. (*Vaughn v. Montgomery Ward & Co.* (1950) 95 Cal.App.2d 553, 556.) Plaintiff cannot prevail unless she can prove that the owner had either actual or constructive notice of a dangerous condition and failed to remediate that condition within a reasonable amount of time. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1206.)

In the present case, the complaint itself does not define the dangerous condition alleged to have caused plaintiff's fall. The moving papers and opposition describe the location of plaintiff's incident as the entry/exit sliding door at the metal threshold and adjacent carpet floor mat. This is understood to be the "dangerous condition" causing plaintiff to trip and fall. Plaintiff attempts to create a dispute as to the description of the area and dangerous condition causing her to trip and fall by adding that the carpet adjacent to the metal threshold is partially raised. (See UMF No. 3 and Plaintiff's Response thereto.) However, plaintiff's evidence of the alleged raised and/or improperly laid carpet at the threshold is lacking.

As evidence to support the assertion that the carpet adjacent to the metal threshold was raised and/or improperly laid plaintiff cites to the surveillance video of the entryway where the trip and fall occurred between 11:56:46 a.m. and 12:56:44 p.m. and to her attorney's declaration. The surveillance footage does not show any clear evidence of the carpet at the threshold being raised. Mr. Kasler's declaration describing the "partially bubbled and raised" carpet at the threshold includes no foundational information. Defendant's Objection No. 1 to the Kasler declaration is sustained. Neither plaintiff nor her husband testified regarding any alleged defect as to the carpet. (Def. Exh. E and Plf. Exh. [unmarked], Plf. Depo, 56:12-24, 58:20-59:5, 59:15-60:9, 61:13-62:5; Def. Exh. F, William Maney Depo., 24:7-10, 25:3-16.) Accordingly, plaintiff has failed to create a triable issue of material fact by alleging the carpet adjacent to the metal threshold was raised and/or improperly laid.

Plaintiff asserts additional disputes as to material facts identified in the moving papers, however the "dispute" does not truly dispute the material fact. Plaintiff attempts to dispute the fact of store manager Andrea Alva's "opening walk" to identify safety issues and the inability to recall such issues being present by challenging Ms. Alva's credibility and the weight her testimony should be given. (UMF No. 5 and Plaintiff's Response thereto.) Plaintiff makes a similar credibility challenge to the findings of biomechanics consultant, John Brault, stating the inspection was conducted over three years after the incident and alleging there was an improperly laid carpet at the entrance. (UMF No. 18 and Plaintiff's Response thereto.) However, as discussed above there is no evidence of a raised and/or improperly laid carpet provided by plaintiff and plaintiff does not otherwise dispute the fact of Ms. Alva's morning inspection or the factual findings of the inspection of the threshold beyond questioning the credibility and weight

of the evidence[1]. The court does not determine credibility or weight on summary judgment. Plaintiff has not disputed the underlying material facts.

Similarly, plaintiff disputes the wording of material fact nos. 8 and 9 with regard to where plaintiff was looking when she fell and describing the fall "as she crossed the threshold" versus being "caused to trip and fall when she came into contact" with the threshold. (UMF Nos. 8 and 9 and Plaintiff's Responses thereto.) There is no true dispute of the underlying material facts that plaintiff was not looking down at the floor when she tripped and fell.

Plaintiff disputes that on the date of the incident she did not personally observe that the threshold was raised or elevated off the floor, or bent or damaged in any way. (UMF No. 10 and Plaintiff's Response thereto.) However, the supporting evidence cited from Plaintiff's deposition confirms she did not personally observe the metal threshold on the date of the incident and her estimated rise of the threshold at one-half to one inch is based on instinct, that she "kind of knew" she tripped over the threshold. (Plf. Depo., 59:17-60:6, 61:13-62:2.) Plaintiff's testimony regarding her estimate of the height of the threshold and the basis of that estimate does not dispute the underlying fact that she did not personally observe the threshold on the day of the incident.

Plaintiff uses the same testimony of her estimate of the height of the threshold and basis of that estimate to attempt to dispute the estimate of three-eighths of an inch from her husband, William Maney. (UMF No. 17 and Plaintiff's Response thereto.) Again, plaintiff's estimate, does not dispute the estimate of Mr. Maney based on his personal observation of the threshold.

The discrepancies in the estimates of plaintiff and her husband do not create a triable issue as to whether there was a dangerous condition at the threshold of the sliding door of Sprouts Farmers Market in Fresno. Plaintiff's estimate, not based on personal observation, of one-half to one inch is within the range of height differences found to be a trivial defect as a matter of law. (*Miller v. Pacific Gas & Electric Co.* (2023) 97 Cal.App.5th 1161, 1165 [greater than one-half inch]; *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1108 [height differential between 9/16 and one inch].)

However, in determining whether a defect is trivial as a matter of law also requires consideration of other circumstances that may have rendered the defect a dangerous condition at the time of the incident. (*Huckey v. City of Temecula*, *supra*, 37 Cal.App.5th at p. 1105.) Here, there is no dispute that in the one hour immediately prior to plaintiff's fall, during which approximately 168 entrances through the sliding door and 158 exits through the sliding door, there were no other falls. (UMF No. 4.) There is also no dispute that there were no other complaints of tripping at the sliding doors on the date of the plaintiff's fall. (UMF No. 19.)

Giving deference to plaintiff's estimate, the type and size of defect alleged in the testimony of the parties, taken with the absence of other incidents supports finding the alleged defect at the threshold on the date of the incident was trivial as a matter of law. (*Huckey*, *supra*, 37 Cal.App.5th at p. 1109-1110.) Plaintiff has failed to raise a triable issue

[1] Defendant's Objections Nos. 2, 3, 5 and 5 to the Kasler Declaration are sustained.

of material fact and has not set forth any additional material facts with evidence to support finding the threshold was a dangerous condition. Therefore, defendant SF Markets, LLC's motion for summary judgment is granted.

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 6/22/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Cordon v. Nevarez, et al.***
Superior Court Case No. 23CECG04240

Hearing Date: June 25, 2024 (Dept. 403)

Motions (x9): by defendants Adrian Nevarez, Pride Industries, and Ari Fleet LT Compelling Plaintiff's Responses to each of their Discovery Requests: Form Interrogatories, Set One, Special Interrogatories, Set One, and Requests for Production of Documents, Set One, respectively; and for Monetary Sanctions

Tentative Ruling:

To deny the motions to compel plaintiff's compliance with discovery, since plaintiff responded to the discovery requests on May 22, 2024.

To award monetary sanctions in the total amount of $1,499.85 against plaintiff and her counsel of record, Scranton Law Firm, jointly and severally, payable within 30 days of the date of this order, with the time to run from the service of this minute order by the clerk. (Code Civ. Proc., § 2030.290, subd. (c); 2031.300, subd. (c).)

Explanation:

Mootness and Monetary Sanctions

Plaintiff contends that the motions are moot because she served verified responses on May 22, 2024. While defendants do not dispute this fact, they are still entitled to monetary sanctions.

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., § 2030.290, subd. (c) [interrogatories]; 2031.300, subd. (c) [document demands].) The California Rules of Court authorizes an award of sanctions for failure to provide discovery even if "the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, rule 3.1348, subd. (a).)

While plaintiff has served her responses to the discovery sought, she fails to present any facts to warrant finding an award of sanctions to be unjust. Nor are any facts provided to show that plaintiff acted with substantial justification in her delay in serving her responses to the subject discovery.

The court finds it reasonable to allow 5 hours for the preparation of the discovery motions (one hour for the preparation of the first motion and 0.5 hours for each of the remaining 8 motions) at the hourly rate of $180, as provided by counsel, $540 for the cost

of filing the motions, and $59.85 for the cost of serving the motions. Therefore, the total amount of sanctions awarded is $1,499.85.

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 6/22/2024.
(Judge's initials) (Date)