Tentative Rulings for December 5, 2023
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)

**** THIS COURT IS PRESENTLY IN A JURY TRIAL. IF YOU ARE REQUESTING ARGUMENT ON ONE OF THE BELOW TENTATIVES, YOU MUST REQUEST IT TIMELY PURSUANT TO THE CRC AND LOCAL RULES AS IF THE HEARING WAS TODAY. ALL HEARINGS TIMELY REQUESTED WILL BE HELD THURSDAY DECEMBER 7, 2023 AT 3:30 P.M.**

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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(03)

Tentative Ruling

Re: ***Ibarra v. Bodega Latina Corporation, dba El Super***
Superior Court Case No. 22CECG00451

Hearing Date: December 5, 2023 (Dept. 503)

Motion: Defendant's Motion for Summary Judgment, or in the Alternative Summary Adjudication

Tentative Ruling:

To deny defendant's motion for summary judgment, and the alternative motion for summary adjudication.

Explanation:

Defendant contends that plaintiff will be unable to prevail on her claims for general negligence and premises liability because the curb on which she tripped was not a dangerous condition, or even if it was, it was an open and obvious condition and thus defendant had no duty to warn plaintiff of it or remedy the condition. However, the question of whether a condition is dangerous, and whether it is open and obvious, is generally an issue of fact for the jury to decide.

"Civil Code section 1714, subdivision (a), provides in relevant part: 'Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property. ...' [¶] In order to state a cause of action for negligence, plaintiff must state facts showing that defendant had a duty to plaintiff, that the duty was breached by negligent conduct, and that the breach was the cause of damages to the plaintiff." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

"Premises liability is a form of negligence based on the holding in *Rowland v. Christian, supra*, 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." (*Ibid,* citations omitted.)

"It is well established in California that although a store owner is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise reasonable care in keeping the premises reasonably safe. In order to establish liability on a negligence theory, a plaintiff must prove duty, breach, causation and damages. A plaintiff meets the causation element by showing that (1) the defendant's breach of its duty to exercise ordinary care was a substantial factor in bringing about plaintiff's harm, and (2) there is no rule of law relieving the defendant of liability. These are factual questions for the jury to decide, except in cases in which the facts as to causation are undisputed." (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205, citations omitted.)

"A '[d]angerous condition' is defined as 'a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property ... is used with due care in a manner in which it is reasonably foreseeable that it will be used.' 'The existence of a dangerous condition is ordinarily a question of fact but "can be decided as a matter of law if reasonable minds can come to only one conclusion."'" (*Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 131, citations omitted.)

Also, "[t]he fact that an accident occurred does not give rise to a presumption that it was caused by negligence. Instead, the injured plaintiff must establish sufficient facts or circumstances that support an inference of a breach of duty, to defeat a summary judgment motion by a defendant that is asserting due care was exercised. It is not enough for the plaintiff to provide speculation or conjecture that a dangerous condition of property might have been present at the time of the accident." (*Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 432, citations omitted.)

Thus, courts have found that "premises liability may not be imposed on a public entity when the danger of its property is readily apparent." (*Biscotti v. Yuba City Unified School Dist.* (2007) 158 Cal.App.4th 554, 560.) Likewise, with regard to private property owners, "because the possessor or operator of a given premises is not an insurer of the safety of invitees onto his premises, he is entitled to assume that any such invitee will perceive that which should be obvious to him in the ordinary use of his senses." (*Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, 121.) "Witkin puts the matter more succinctly when he writes, '... if the danger is *so obvious* that a person could reasonably be expected to see it, *the condition itself serves as a warning*, and the landowner is under no further duty unless harm was foreseeable despite the obvious nature of the danger.' (*Id.* at p. 122, quoting 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 930, p. 301, italics in original.)

However, just because a defect is obvious does not automatically mean that the landowner owes no duty of care toward persons on the premises. "Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition. However, this is not true in all cases. '[I]t is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger. The foreseeability of injury, in turn, when considered along with various other policy considerations such as the extent of the burden to the defendant and consequences to the community of imposing a duty to remedy such danger [citation] may lead to the *legal* conclusion that the defendant' owed a duty of due care to the person injured. (*Krongos v. Pacific Gas & Electric Co.* (1992) 7 Cal.App.4th 387, 393, citations omitted, italics in original.)

Also, "'[i]t is ordinarily a question of fact whether in particular circumstances the duty of care owed to invitees was complied with, ... whether the particular danger was obvious, whether an invitee was contributorily negligent, or whether the defect was trivial.' In *Powell v. Vracin,* the court noted that 'Whether the step from the floor level to the ground and the ground immediately outside the opening were so negligently maintained as to render defendants liable in damages was a question of fact for the jury.'" (*Henderson v. McGill* (1963) 222 Cal.App.2d 256, 260, citations omitted; see also *Chance v. Lawry's, Inc*. (1962) 58 Cal.2d 368, 374 [holding that whether the danger

created by an open planter box was so obvious as to relieve defendant of its duty to warn the plaintiff was a question of fact for the jury].)

"There is one line of cases, however, in which the obviousness of the condition does not afford the defendants relief from liability. That line consists of those cases where 'people would not in fact expect to find the condition where it is, or they are likely to have their attention distracted as they approach it, or, for some other reason, they are in fact not likely to see it, though it could be readily and safely avoided if they did.'" (*Ibid.*) In such cases, the question of whether the defendant was negligent in failing to warn of or correct the defect should be submitted to the jury." (*Ibid*.)

In addition, "[a]s explained in *Beauchamp v. Los Gatos Golf Course*, the 'obvious danger' exception to a landowner's ordinary duty of care is in reality a recharacterization of the former *assumption of the risk* doctrine, i.e., where the condition is so apparent that the plaintiff must have realized the danger involved, he assumes the risk of injury even if the defendant was negligent. As noted, this type of assumption of the risk has now been merged into comparative negligence. In addition, recent authority makes it clear that while a readily apparent danger may relieve the property owner of a duty to *warn,* it no longer necessarily absolves him of a duty to *remedy* that condition." (*Donohue v. San Francisco Housing Authority* (1993) 16 Cal.App.4th 658, 665, citations omitted.)

In *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, the Court of Appeal held that a jury instruction stating that "a business proprietor cannot be held liable for an injury resulting from a danger which was obvious or which should have been observed in the exercise of ordinary care" was incorrect. (*Id*. at p. 116.) "[U]nder certain circumstances, an obvious or apparent risk of danger does not automatically absolve a defendant of liability for injury caused thereby." (*Id.* at p. 118.) "A review of *Beauchamp* makes it even more apparent that the obvious nature of a danger is not, in and of itself, sufficient to establish that the owner of the premises on which the danger is located is not liable for injuries caused thereby, and that although obviousness of danger may negate any duty to warn, it does not necessarily negate the duty to remedy." (*Id.* at p. 119.)

In the present case, the defendant contends that there was no dangerous condition on its property, or it there was, the danger posed by the curb was open and obvious and thus it had no duty to warn of the condition or attempt to remedy it. Defendant points to several facts in support of its contention, including the fact that plaintiff had visited the store often before (Defendant's Undisputed Material Fact No. 2), she has never seen anyone trip and fall on the curb before (UMF No. 4), and defendant has never had any other complaints about customers tripping over the curb before. (UMF No. 5.)

Defendant also alleges that its entrance is designed and constructed in the standard fashion for commercial businesses, including having an asphalt parking lot, painted striping on the asphalt surfaces, curbs between the pedestrian areas and the vehicle/pedestrian areas, sidewalks, accessible curb ramps that comply with the ADA's requirements, speed bumps, and "No Parking" and "Fire Lane" signs and stencils. (UMF No. 7.) The accessible ramps are commonplace and are required by the ADA. (UMF No. 8.) The curb ramp is in a legal, code-required location. (UMF No. 9.) The curb ramp and sidewalk are of standard dimensions and materials. (UMF No. 10.) Thus, the curb and ramp are of reasonable design and construction. (UMF No. 11.)

Plaintiff's accident happened at approximately 5:04 p.m. in daylight. (UMF No. 12.) Plaintiff was about to enter the store from the parking lot when she saw carts lined up outside the entrance. (UMF No. 13.) Plaintiff walked around the carts to get to the store's entrance. (UMF No. 14.) She was looking toward the front of the store as she walked. (UMF No. 15.) Defendant claims that she was able to see the curb in front of her. (UMF No. 16.) The curb was painted red, and had been recently painted. (UMF Nos. 17, 18.) There were no cracks in the curb, and there was nothing sticking out of it. (UMF Nos. 19, 20.)

There was a collection cart with a line of shopping carts in front of the entrance when plaintiff tried to enter the store. (UMF No. 13.) The cart has a revolving light and a horn to warn customers of its presence. (UMF Nos. 21, 22.) Plaintiff walked around the back of the collection cart near where the light is located. (UMF No. 23.) There was nothing impeding plaintiff's view of the curb after she walked around the collection cart. (UMF No. 33.) There were no people standing or walking in between her and the curb as she approached the curb. (UMF No. 34.)

Defendant also claims that there is no other way for it to collect carts than to have a clerk gather them from the parking lot and place them in the cart corral near the store entrance. (UMF Nos. 24-26, 30-31.) Defendant alleges that the carts being brought into the corral was not a factor in causing plaintiff's accident. (UMF No. 27.) The carts did not block the store's entrance, as there was still a pathway for the customers to enter the store. (UMF Nos. 28, 29.) Also, defendant alleges that other stores also place their cart corrals in the same location, near the store entrance. (UMF No. 32.)

Defendant therefore concludes that these facts show that the curb was not a dangerous condition, and even if it was, the condition was open and obvious so it had no duty to warn of it or remedy it. Defendant contends that plaintiff knew or should have known of the curb's existence from her many prior visits to the store, that she had a clear view of the curb, that the curb itself was of a reasonable, standard design, and there were no cracks or other defects in it, and that the presence of the collection cart in front of the store entrance did not cause the accident. Defendant contends that plaintiff was simply negligent in failing to look where she was going, and that it had no duty to warn her of the obvious condition posed by the curb.

However, "'[t]he existence of a dangerous condition is ordinarily a question of fact but "can be decided as a matter of law if reasonable minds can come to only one conclusion."'" (*Mixon v. Pacific Gas & Electric Co.*, *supra*, 207 Cal.App.4th at p. 131, citations omitted.) Likewise, whether a condition is so open and obvious as to relieve defendant of any duty to warn of or remedy the condition is generally a question of fact. (*Osborn v. Mission Ready Mix*, *supra*, 224 Cal.App.3d at p. 122.)

Here, plaintiff has presented evidence in opposition that raises triable issues of material fact with regard to whether the curb was a dangerous condition and whether she had a clear view of the curb as she approached the entrance to the store. Plaintiff testified in her deposition that she did not see the curb because the collection cart was blocking her view, and she tripped on the curb as she was trying to go around the carts. (Plaintiff's depo., 32:25, 33:1-10, 34:19-24, 35:4-8; 39:1-3, 50:2-9, 54:6-1.) Plaintiff's retail safety expert has also submitted his declaration, in which he states that the curb constituted a dangerous condition because it was not fully painted red or yellow, which constituted a dangerous condition because customers might not notice the curb and

therefore might be more likely to trip over it. (Balian decl., ¶¶ 7, 9.) He states that the failure to paint the curb fully red or yellow was below the accepted safety practice for the industry and failed to warn the customers of the elevated hazard presented by the curb. (*Id*. at ¶ 9.) Mr. Balian also states that the defendant's collection cart constituted an obstruction of the store entrance, which contributed to the unsafe conditions at the front of the store because customers would have to go around the carts to enter the store, which increased the likelihood that they might trip over the curb. (*Id*. at ¶¶ 6, 9.) This is in fact what happened to plaintiff. (*Id*. at ¶ 8, Plaintiff's depo., 32:25, 33:1-10, 34:19-24, 35:4-8; 39:1-3, 50:2-9, 54:6-1.)

Therefore, plaintiff has presented evidence that raises a triable issue of material fact with regard to whether the curb was a dangerous condition, as well as whether it was so obvious that the defendant had no duty to warn plaintiff about it or take steps to remedy the danger. A jury should be allowed to determine whether the curb was a dangerous condition due to its partially painted nature, as well as the fact that there was a large line of shopping carts that obstructed the entrance and obscured plaintiff's view of the curb as she approached it. As a result, the court will not grant summary judgment of the plaintiff's negligence and premises liability claims based on the alleged fact that the condition was open and obvious.

Defendant also argued that the court should grant summary judgment because plaintiff failed to use reasonable care when she approached the front of the store and failed to see the curb. Again, defendant contends that the curb and sidewalk are of a reasonable design and construction, the curb itself was in good condition and was painted red, the weather was nice, it was daylight, and there was nothing that prevented plaintiff from having a clear view of the curb as she approached it. Defendant claims that plaintiff simply failed to look where she was going, and therefore it should not be held liable for her accident.

Again, however, the question of whether plaintiff acted reasonably in failing to notice and step over the curb is a question of fact that should be resolved by a jury, not the court on summary judgment. (*Mixon v. Pacific Gas & Electric Co.*, *supra*, 207 Cal.App.4th at p. 131; *Osborn v. Mission Ready Mix*, *supra*, 224 Cal.App.3d at p. 122; *Beauchamp v. Los Gatos Golf Course* (1969) 273 Cal. App. 2d 20, 34.) Plaintiff has presented evidence raising triable issues of material fact with regard to whether her view of the curb was obstructed by the line of carts in front of the store entrance which caused her to fail to see the curb. (Plaintiff's depo., 32:25, 33:1-10, 34:19-24, 35:4-8; 39:1-3, 50:2-9, 54:6-1.) She has also presented her expert's declaration, which states that the partially painted curb did not comply with industry safety standards and increased the risk of customers tripping over it. (Balian decl., ¶¶ 7, 9.) In addition, he states that leaving the carts in front of the entrance posed a safety risk because it obstructed the entrance of a high traffic area of the store. (*Id*. at ¶¶ 6, 9.) Therefore, the court will not grant summary judgment based on plaintiff's allegedly unreasonable conduct in failing to notice the curb.

Defendant next contends that the curb presented, at most, a trivial defect, and therefore it has no liability for plaintiff's accident. The trivial defect doctrine was originally applied in actions against public entities and has been codified in the Government Tort Claims Act. (*Ursino v. Big Boy Restaurants* (1987) 192 Cal.App.3d 394, 396.) "Under that legislation, injury resulting from a defect in public property is actionable only when the condition of the property 'creates a substantial (as distinguished from a minor, trivial or

insignificant) risk of injury ....'" (*Ibid*, citation omitted.) However, the trivial defect defense has also been extended to private landowners sued for dangerous conditions on their premises. (*Id*. at pp. 396-399.) Where the facts are undisputed, the court may properly grant summary judgment upon a finding that the defect was trivial as a matter of law. (*Ibid*.) "In summary, persons who maintain walkways, whether public or private, are not required to maintain them in an absolutely perfect condition. The duty of care imposed on a property owner, even one with actual notice, does not require the repair of minor defects." (*Id.* at p. 398.)

"The decision whether a crack or other defect in a walkway is dangerous does not rest entirely on the size of the depression. Although the size of a crack or pothole is a pivotal factor in the determination, 'a tape measure alone cannot be used to determine whether the defect was trivial.' 'Instead, the court should determine whether there existed any circumstances surrounding the accident which might have rendered the defect more dangerous than its mere abstract depth would indicate.' 'Aside from the size of the defect, the court should consider whether the walkway had any broken pieces or jagged edges and other conditions of the walkway surrounding the defect, such as whether there was debris, grease or water concealing the defect, as well as whether the accident occurred at night in an unlighted area or some other condition obstructed a pedestrian's view of the defect.' The court should also consider the weather at the time of the accident, plaintiff's knowledge of the conditions in the area, whether the defect has caused other accidents, and whether circumstances might either have aggravated or mitigated the risk of injury. (*Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566–567, citations and footnote omitted.)

In the present case, the evidence submitted by the parties shows that the curb was about six inches high, and it was painted partially red but it was unpainted and discolored in the area where plaintiff tripped. (UMF Nos. 10, 17, 18, and Exhibit C to Litchfield decl.) There were no cracks in the curb, and there was nothing sticking out of it. (UMF Nos. 19, 20.) Defendant's expert opines that the curb, ramp and parking lot area were all reasonably designed and constructed and complied with all applicable codes. (Litchfield decl., ¶¶ 6-10.) Neither plaintiff nor defendant is aware of any prior tripping incidents in the entrance area to the store. (UMF Nos. 4, 5.) Plaintiff had been to the store many times before. (UMF No. 2.)

The incident occurred at about 5:00 p.m. during daylight hours, and the weather was clear. (UMF No. 12.) The entrance to the store was partly obstructed by a long line of shopping carts, which forced plaintiff to walk around the carts to reach the store entrance. (UMF Nos. 13, 16.) Defendant claims that there was nothing to obstruct plaintiff's view of the curb as she approached the entrance. (UMF Nos. 33-35.) However, plaintiff claims that the line of carts prevented her from seeing the curb, which led to her tripping on the curb. (Plaintiff's depo., 32:25, 33:1-10, 34:19-24, 35:4-8; 39:1-3, 50:2-9, 54:6-1.) Plaintiff's expert opines that the obstruction caused by the carts at the entrance to the store created a dangerous condition on the premises. (Balian decl., ¶¶ 6, 9.) He also opines that the fact that the curb was not painted fully red or yellow constituted a dangerous condition and was below industry practices, and increased the likelihood of a tripping hazard. (*Id*. at ¶¶ 7, 9.)

Under these circumstances, the court cannot conclude as a matter of law that the defect was trivial and therefore defendant had no duty to warn of it or rectify it. The court can only grant summary judgment based on the trivial defect doctrine where the

undisputed facts show that the defect was so small and insignificant that the defendant landowner had no duty to warn people of it or take steps to remedy it. (*Ursino v. Big Boy Restaurants*, *supra*, 192 Cal.App.3d at pp. 396-399.) Here, there are disputed facts with regard to whether the curb was unsafe because it was only partially painted red, which made it more difficult to see and increased the chance that customers might trip over it. Also, plaintiff alleges that the line of shopping carts that partially blocked the store entrance also blocked her view of the curb, which increased its dangerousness. Therefore, the court will not grant summary judgment based on the theory that the defect was trivial.

Defendant also argues that it cannot be held liable for plaintiff's accident because it had no notice of the existence of the defect. Defendant points out that plaintiff has been to the store many times before, and she has never seen anyone else trip and fall at the entrance. (UMF Nos. 2, 4.) Nor has defendant ever received any complaints about obstructions to the entrance or tripping incidents at the curb. (UMF No. 5.) Defendant contends that there is no other way for it to collect carts than to have the clerk move them into the cart corral at the store entrance, and other stores have the same practice. (UMF Nos. 25-32.) The curb itself was a standard, ubiquitous street curb. (UMF No. 11.) Defendant contends that such curbs are common in California, and they are not inherently dangerous. Therefore, defendant contends that plaintiff cannot show that it had notice of the dangerous condition that caused her to trip and fall.

"Because the owner is not the insurer of the visitor's personal safety, the owner's actual or constructive knowledge of the dangerous condition is a key to establishing its liability. Although the owner's lack of knowledge is not a defense, '[t]o impose liability for injuries suffered by an invitee due to [a] defective condition of the premises, the owner or occupier "must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises...."'" (*Ortega, supra,* at p. 1206, citations omitted.)

"The plaintiff need not show actual knowledge where evidence suggests that the dangerous condition was present for a sufficient period of time to charge the owner with constructive knowledge of its existence. Knowledge may be shown by circumstantial evidence 'which is nothing more than one or more inferences which may be said to arise reasonably from a series of proven facts.' Whether a dangerous condition has existed long enough for a reasonably prudent person to have discovered it is a question of fact for the jury, and the cases do not impose exact time limitations. Each accident must be viewed in light of its own unique circumstances. The owner must inspect the premises or take other proper action to ascertain their condition, and if, by the exercise of reasonable care, the owner would have discovered the condition, he is liable for failing to correct it." (*Id.* at pp. 1206–1207, citations omitted.)

Here, most of defendant's evidence does not relate to the issue of whether it had notice of the defect before the accident. Defendant has not presented any evidence showing that it conducted regular inspections of the premises to look for dangerous conditions, nor has it presented evidence of how long the subject condition existed. It appears that the curb itself has existed for an extended period of time, as defendant states that it repaints the curb on a quarterly basis. (UMF Nos. 17, 18.) While defendant's expert opines that the curb was reasonably designed and built and complies with applicable codes (UMF Nos. 10, 11), plaintiff's expert claims that the curb did not comply

with industry practices because it was only partially painted red, as opposed to being fully red or yellow, and thus presented a dangerous condition. (Balian decl., ¶¶ 7,9.) Thus, there is evidence indicating that the allegedly dangerous condition caused by the curb has existed for a long time, and as a result a reasonable trier of fact could infer that defendant either knew or should have known that it posed a danger to its customers.

In addition, the evidence indicates that defendant's own employee placed a long line of shopping carts in front of the store entrance just before plaintiff tried to enter, which blocked plaintiff's view of the curb and forced her to walk around the carts to get to the entrance. (UMF Nos. 13-16, 21-32.) Thus, since defendant's employee created the allegedly dangerous condition caused by the line of carts partially blocking the store entrance and obscuring plaintiff's view of the curb, a reasonable trier of fact could infer that defendant was on notice that a dangerous condition existed. As a result, the court will not grant summary judgment based on the alleged lack of notice of the dangerous condition.

Finally, defendant argues that plaintiff cannot prove that defendant caused her accident, as the subject curb was not a dangerous condition that defendant was required to warn plaintiff about and the presence of the collection cart did not contribute to plaintiff's accident. However, there are triable issues of material fact with regard to whether the defendant was a substantial contributing factor in causing the accident.

" 'The law defines cause in its own particular way. A cause of injury, damage, loss or harm is something that is a substantial factor in bringing about an injury, damage, loss or harm.'" (*Espinosa v. Little Co. of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1313–1314, citation omitted.) "We agree with the comment of the BAJI Committee, which took its cue from *Caldwell* when it noted, 'While there is no judicially approved definition of what is a substantial factor for causation purposes, it seems to be something which is more than a slight, trivial, negligible, or theoretical factor in producing a particular result.'" (*Id.* at p. 1314, citation omitted.)

Here, while defendant contends that its curb was of standard design and construction and did not constitute a dangerous condition, plaintiff's expert has stated that the curb posed a tripping hazard because it was not painted red in the area where plaintiff tripped. (Balian decl., ¶¶ 7, 9.) Also, the line of carts that defendant's employee placed across the entrance to the store obstructed access to the store, allegedly blocked plaintiff's view of the curb, and forced her to go around the carts to enter the store. (Plaintiff's depo., 32:25, 33:1-10, 34:19-24, 35:4-8; 39:1-3, 50:2-9, 54:6-1.) Thus, there is evidence that raises a triable issue of material fact with regard to whether defendant was a substantial factor in causing or contributing to plaintiff's accident, and the court will not grant summary judgment based on the alleged lack of evidence of causation.

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: jyh on 12/4/23.
(Judge's initials) (Date)