Tentative Rulings for July 31, 2025
Department 502

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.

24CECG01966 ***N.F. v. Lea Gruber*** **is continued to Thursday, August 7, 2025 at 3:30 p.m. in Department 502**

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Tentative Rulings for Department 502

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Tentative Ruling

Re: ***Christina Perez v. Chedraui USA, Inc.***
Superior Court Case No. 23CECG05269

Hearing Date: July 31, 2025 (Dept. 502)

Motion: Defendant's Motion for Summary Judgment

Tentative Ruling:

To deny.

Explanation:

Christina Perez (Plaintiff) filed suit against Chedraui, USA, Inc. (Defendant) after a slip-and-fall accident that occurred in Defendant's grocery store. Plaintiff alleges causes of action for premises liability and general negligence. Defendant now moves for summary judgment.

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.)

The court strictly construes the moving party's declarations and liberally construes the opposing party's declarations. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 575 [affirming trial court's granting of employer's summary judgment motion].) Where the applicable standard of proof and the evidence and inferences allow a reasonable trier of fact to find an underlying fact in the opposing party's favor, the court should not grant summary judgment. (*Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 877, citing *Aguilar, supra,* 25 Cal.4th at 850.)

Defendant Fails to Satisfy Its Initial Burden

Negligence and Premises Liability

"The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." (*Kesner*

v. Superior Court (2016) 1 Cal.5th 1132, 1158.) Defendant contends summary judgment is proper because Plaintiff cannot establish that Defendant had actual or constructive notice of the alleged dangerous condition of its property. In general, "questions of whether a dangerous condition could have been discovered by reasonable inspection and whether there was adequate time for preventive measures are properly left to the jury. [Citations.]" (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 843 [trial court erred in granting city's nonsuit motion because jury could have inferred city had constructive knowledge of dangerous condition created by encroaching sign].)

Defendant correctly argues that because Plaintiff' asserts Defendant failed to address a dangerous condition, she must prove Defendant had actual or constructive notice of the condition. The California Supreme Court has determined that the jury must resolve the notice issue on a case-by-case basis, with no exact time limit:

> Whether a dangerous condition existed long enough for a reasonably prudent person to have discovered it is ordinarily 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.

(*Ortega v. Kmart Corp*. (2001) 26 Cal.4th 1200, 1207 [affirming *jury verdict* that defendant's failure to inspect premises within a reasonable time was sufficient for inference that spilled milk was on floor long enough to give defendant chance to discover and remedy it].)

A plaintiff may use circumstantial evidence and inferences to prove an entity should have discovered a dangerous condition:

> [A] plaintiff may prove a dangerous condition existed for an unreasonable time with circumstantial evidence, and … "evidence that an inspection had not been made within a particular period of time prior to an accident may warrant an inference that the defective condition existed long enough so that a person exercising reasonable care would have discovered it."

(*Ortega v. Kmart Corp, supra,* 26 Cal.4th at p. 1210, citing *Bridgman v. Safeway Stores, Inc.* (1960) 53 Cal.2d 443, 447.)

Material Facts

Defendant contends it is entitled to summary judgment because Plaintiff cannot prove that Defendant had actual or constructive notice of a dangerous condition. Defendant suggests its records, maintenance procedures, and video surveillance footage conclusively dispose of its liability for negligence. To support the motion, Defendant presents 12 material facts. Plaintiff does not dispute eight of these facts. Specifically, it is undisputed that Plaintiff slipped on a liquid substance near Register #5 inside the El Super grocery store and fell. (Fact No. 1.) The store's surveillance camera captured the incident. (Fact No. 2.) Defendant's on-site operations manager, Stephanie Guzman, conducted an investigation. (Fact Nos. 3, 4.) After Plaintiff fell, a security guard took photographs of the area and Plaintiff's shoes. (Fact No. 5.) Defendant trains its

employees to clean any spills promptly when discovered. (Fact No. 8.) Plaintiff did not see the liquid on the ground before she fell. (Fact No. 11.) In her written discovery responses, Plaintiff did not identify any employee who observed or created the hazard. (Fact No. 12.)

Plaintiff contends Defendant's evidence fails to establish Fact Nos. 6, 7, 9, and 10 conclusively. For example, Defendant relies on "sweep logs" to establish that it "enforces a policy requiring floor inspections every 30 minutes, documented by sweep logs." (Fact No. 6.) When the court examines the "sweep sheet" for the date of the fall (Saturday, April 16, 2022), the last entry before the fall lists the time as 12:57 p.m. The previous entry lists the time as 11:54 a.m., 63 minutes earlier. (Guzman decl., ¶ 7, ex. D.) Resolving all doubts in Plaintiff's favor, this evidence fails to support the claim that Defendant strictly enforces, without fail, a policy requiring floor inspections every 30 minutes. Furthermore, Defendant concedes the materiality of this fact by including it in its separate statement. (See, *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 [court cautioned the moving party to include only truly material facts in separate statement because separate statement concedes materiality of all included facts].)

Defendant also relies on a sweep sheet entry to establish Fact No. 7: "On April 16, 2022, an employee completed a sweep of the front-end area of the store at 12:57 p.m." This evidence creates an inference that an employee completed a sweep, but that is not the only inference. Strictly construing the Defendant's evidence, another reasonable inference is that an employee wrote the time in the log, but did not complete the sweep, or the employee superficially swept the floor and missed the area with the liquid substance.

Fact No. 9 relies on video surveillance footage to "confirm[] that an employee inspected and swept the floor near Register #5 at 12:49 p.m. on the date of the subject incident." (Fact No. 9, [Guzman decl., ¶¶ 8-9, ex. E (surveillance video)].) The court has reviewed the video footage, which does not depict the actual time, but starts at 00:00 and continues to 53:12. The video shows a sweeper spending a few seconds at the location of the incident, noted at about 29:15 to 29:27 of the video, with the sweeper rubbing his right shoe a few times over the same area where Plaintiff later falls at about 42:47. Plaintiff correctly notes that a trier of fact could conclude the sweeper saw a hazard, which he attempted to clean by rubbing his shoe over it, but missed the hazard or failed to clean it fully.

Defendant relies on different evidence, ignoring the video footage, to establish Fact No. 10: "No employee observed or was advised of any spill or hazard in the area before the incident." Defendant relies primarily on paragraph 11 of manager Guzman's declaration, wherein she declares:

> Based on my investigation and review of the business records described herein, neither I nor any store employees were made aware of the presence of liquid on the floor prior to the incident. The store's employees are trained to be vigilant even outside of scheduled sweeps and to carry a paper towel with them at all times to address hazards the moment they encounter them. Had any employee, including myself, observed or been

notified of the spill, it would have been promptly cleaned in accordance with store policy.

(Guzman decl., ¶ 11, p. 3:9-14.)

In addition to the Guzman declaration, Defendant also relies on Plaintiff's response to special interrogatory number 29, wherein Plaintiff responded to the question of when she first reported the incident to Defendant's employees with "[r]ight after the fall." (Def.'s evid., ex. 4.) Defendant's cited evidence fails to establish conclusively that no employee observed the hazard before the incident. Furthermore, Defendant's own video and photographic evidence supports an inference that the sweeper observed the liquid, but did not use a paper towel to "address the hazard." (See Guzman decl., ex. C [photos depicting scene shortly after fall appear to show slippery substance on smooth concrete floor], and ex. E [surveillance video].)

Defendant's evidence shows its employees made an effort to follow Defendant's own safety policies, but it also shows Defendant's employees did not strictly follow the rules like clockwork. The evidence and inferences allow a reasonable trier of fact to find in Plaintiff's favor that a dangerous condition of the floor existed long enough for Defendant to have discovered it by a reasonable inspection with adequate time for preventive measures.[1] Defendant's failure to meet its burden of production and persuasion makes it unnecessary for the court to consider Plaintiff's opposition, including the argument that Defendant failed to comply with the procedural requirements to file a summary judgment motion.

Conclusion

In conclusion, the court has scrutinized Defendant's moving papers and resolved all doubts in Plaintiff's favor. Defendant fails to submit evidence to establish conclusively Fact Nos. 6, 7, 9, and 10. In light of these disputed, unsupported, and concededly material facts in Defendant's separate statement, Defendant fails to meet its burden to show Plaintiff's claims lack merit as a matter of law. Therefore, the court must deny 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: kck on 07/30/25.
(Judge's initials) (Date)

[1] Although, at trial, Plaintiff has the burden to prove Defendant had notice of the alleged dangerous condition, on this motion for summary judgment, notice remains an issue of fact that Defendant fails to negate as a matter of law.