Tentative Rulings for March 15, 2022
Department 503

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(17) **Tentative Ruling**

Re: ***Rose v. County of Fresno***
Superior Court Case No. 17CECG02164

Hearing Date: March 15, 2022 (Dept. 503)

Motion: Defendant's Motion for Reduction of Judgment Pursuant to Government Code Section 985

Tentative Ruling:

To deny.

Explanation:

The hearing on defendant's motion for reduction of judgment pursuant to Government Code section 985 was previously set on August 8, 2019. Following supplemental briefing, the court determined that the issues raised in the motion were matters embraced in or affected by the appeal filed by defendant on June 17, 2019, and that the perfecting of the appeal stayed the motion. Thus, the court found, by operation of law, that it lacked jurisdiction to hear the motion, vacated the hearing, and directed the moving party to reschedule the hearing on the motion once the appeal was no longer pending. (See August 28, 2019 Minute Order). The judgment was affirmed on December 7, 2021, the remittitur issued on February 7, 2022, and this hearing was subsequently set.

As relevant here, Government Code section 985 provides: "[A]fter a verdict has been returned against a public entity . . . , the defendant public entity may . . . request a posttrial hearing for a reduction of the judgment against the defendant public entity for collateral source payments paid or obligated to be paid for services or benefits that were provided prior to the commencement of trial." (Gov. Code, § 985, subd. (b).) A "collateral source payment" is money "paid or obligated to be paid" by "private medical programs, health maintenance organizations, state disability, unemployment insurance, private disability insurance, or other sources of compensation similar to those listed. . . ." (*Id*., subds. (a)(1)(B), (f)(2).) "'[A] defendant seeking an offset against a money judgment has the burden of proving the offset. [Citation.]' [Citation.]" (*Textron Financial Corp. v. National Union Fire Ins. Co*. (2004) 118 Cal.App.4th 1061, 1077, quoting *Conrad v. Ball Corp*. (1994) 24 Cal.App.4th 439, 444.)

Plaintiffs argue that defendant has failed to prove the amount of the collateral source liens and whether they had been paid. In *Joyce v. Simi Valley Unified School Dist*. (2003) 110 Cal.App.4th 292, 308, the appellate court upheld the trial court's refusal to deduct the collateral source payments from a judgment based on the lack of adequate evidence to prove the liens. The trial court, in denying the deduction, stated "it 'would be engaging in speculation to know what the liens are, what has been paid or not paid.'" (*Ibid*.) This is because, at the hearing, the court must determine what portion of collateral source payments should (i) be reimbursed from the judgment to the collateral source providers, (ii) be deducted from the verdict, or (iii) accrue to plaintiff's benefit. (Gov.

Code, § 985, subd. (f); see *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 154-155; *Joyce v. Simi Valley Unified School Dist., supra*, 110 Cal.App.4th at pp. 307-308.) The effect of a section 985 adjustment is that, after the appropriate reductions and set-offs are made, all collateral source subrogation and lien rights terminate. (*Joyce v. Simi Valley Unified School Dist., supra,* 110 Cal.App.4th at p. 308.) The *Joyce* court held that the defendant could not fail to introduce evidence of the liens on its section 985 motion and thereby prejudice the rights of the collateral source providers still owed reimbursement. (*Ibid*.)

Defendant has only established the amount of the collateral source *payments*. It has failed to establish the amount of any liens by the collateral sources or whether such liens have been paid.

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: KAG on 3/9/2022 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***DeLeon v. Vallarta Food Enterprises, Inc.***
Superior Court Case No. 20CECG01620

Hearing Date: March 15, 2022 (Dept. 503)

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

Defendant's Motions to Compel Form Interrogatories, Special Interrogatories, and Requests for Production of Documents

Tentative Ruling:

To grant defendant's motion for summary judgment. (Code Civ. Poc., § 437c, subd. (c).) Defendant shall submit to the court, within five days of service of the minute order, a proposed judgment consistent with the summary judgment order.

To find defendant's motions to compel plaintiff to provide further responses to form interrogatories, special interrogatories, and requests for production of documents moot in light of the court's ruling on defendant's summary judgment motion.

Explanation:

This is a slip and fall personal injury action. Plaintiff alleges that, on June 7, 2018, she entered defendant's supermarket and slipped and fell while walking in the area of the cash registers. The complaint alleges causes of action for negligence and premises liability.

Evidentiary Objections

Declaration of Juan Agredano

Objection No. 1: Plaintiff objects to page 1, lines 27-28, of the declaration of Juan Agredano, which states that he translated the declaration of Jorge Orozco from English to Spanish, as an unqualified translation under Evidence Code section 753. This objection is overruled. The declarant testified under penalty of perjury as to his act of translating the document for Mr. Orozco, and this is consistent with the requirements of a translator's declaration. In the first paragraph of his declaration, Mr. Agredano states that he is fluent in both English and Spanish, and, in the second paragraph, he explains that he became involved in this motion to translate Mr. Orozco's declaration. The objection that the declaration is an unqualified expert opinion is overruled. There is no expert opinion being offered by Mr. Agredano in his declaration. The hearsay, authentication and foundation objections are overruled.

Objection No. 2: Plaintiff objects to page 1, line 28, through page 2, line 2, of the declaration of Juan Agredano that, after the translation, Mr. Orozco confirmed that he

understood the translation, as an unqualified translation under Evidence Code section 753 and again as an unqualified expert opinion. The statement is also objected to as hearsay. Insofar as the statement purports to confirm that Mr. Orozco stated that the translation was understood, and that the statement is offered for the truth of the matter asserted, the objection is sustained. The statement is not material to the translator's declaration. What is required is a statement that the translator confirms that both the English and Spanish versions of the translated documents are accurate. Such a statement is found in paragraph 3, at page 2:5-6, and is not the subject of an objection.

Objection Nos. 3 and 4 (duplicate of No. 3): The declaration of Jorge Orozco in English as attached to the Agredano declaration as Exhibit A is objected to as hearsay and lacking foundation and authentication. These objections are overruled. The translator's declaration sufficiently addresses his qualifications to translate between English and Spanish (Agredano Decl. at p. 1:20) and confirmed the accuracy of the translations (*Id.* at p. 2:5-6) to lay the foundation for the English translation of the declaration. The hearsay objections are also overruled. The Orozco declaration is signed under penalty of perjury by the declarant making the statements from his own personal knowledge and are appropriate to consider for the truth of the matters asserted.

Declaration of Joana Basulto

Objection No. 1: Plaintiff objects to page 2, lines 7-29, of the declaration of Joana Basulto, stating that she reviewed the inspection log for the date of the incident, as hearsay, lacking foundation and lacking authentication. These objections are overruled. The declarant testifies regarding her review, and any summary of the contents of the log is not being considered for the truth of the statement but as foundation and authentication of the log attached to the declaration.

Objection No. 2: Plaintiff objects to page 2, lines 10-11, the declarant stating, "Attached hereto as Exhibit 'A', please find a true and correct copy of the Gleason inspection log for June 7, 2018," as lacking foundation and authentication. The declarant authenticates the inspection log attached to her declaration. The declarant has stated that she is responsible for implementing the Gleason automated inspection system (Basulto Decl. at ¶ 1), and that she reviewed the log for the date of the incident. She appears to be the appropriate person to authenticate the inspection log itself. The objections are overruled.

Objection No. 3: Plaintiff objects to page 2, lines 11-13, of the declarant's summary of the contents of the inspection log relevant to the incident, as hearsay. The objection is sustained. The summary is not material to the declaration. The attached document speaks for itself.

Objection No. 4: Plaintiff objects to the attached inspection log Exhibit A, as hearsay and lacking foundation and authentication. These objections are overruled. The declarant has provided foundation and authenticated the document. As indicated in defendant's reply, the document is a business record and excepted from exclusion from evidence as hearsay. (Evid. Code, § 1271.)

Summary Judgment

> Summary judgment is warranted "if all the papers submitted show that there is no triable issue as to any material fact" such that "the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) "The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case.'" (*Miller v. Department of Corrections* [2005] 36 Cal.4th [446,] 460 . . . .) The burden then "'shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action."'" (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 274 . . . .)

(*Peralta v. Vons Companies, Inc.* (2018) 24 Cal.App.5th 1030, 1034–1035.)

> A store owner is not the insurer of its patrons' personal safety, but does have a duty to exercise reasonable care to keep the premises reasonably safe for patrons. (See *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205 . . . . (*Ortega*).) This includes a duty to keep the floors safe for patrons' use. (*Tuttle v. Crawford* (1936) 8 Cal.2d 126, 130 . . . .) To establish an owner's liability for negligence, the plaintiff must prove duty, breach, causation, and damages. (*Ortega,* at p. 1205 . . . .)

(*Peralta v. Vons Companies, Inc.*, *supra*, 24 Cal.App.5th at p. 1035.)

> Under California law '"the proprietor of a store who knows of, or by the exercise of reasonable care could discover, an artificial condition upon his premises which he should foresee exposes his business visitors to an unreasonable risk, and who has no basis for believing that they will discover the condition or realize the risk involved, is under a duty to exercise ordinary care either to make the condition reasonably safe for their use or to give a warning adequate to enable them to avoid the harm . . . " [Plaintiff] was entitled to have the jury so instructed.

(Williams v. Carl Karcher Enterprises, Inc. (1986) 182 Cal.App.3d 479, 488, overruled on another ground in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548.)

Defendant first contends that it did not know, nor could it have known through the exercise of reasonable care, that there was a dangerous condition on the floor. This is based on the testimony of its employee, Jorge Orozco, that he had inspected the area where plaintiff fell only 10 minutes before the incident as part of the regular floor inspection procedures and it was found to be clean and hazard free. (Agredano Decl., Ex. A "Declaration of Jorge Orozco" at ¶ 3.) The inspection procedures required the employee to carry a broom, dustpan and cloth to clean any spills or hazards identified. (*Id.* at ¶ 2.) Inspections occurred every 30 minutes. (*Ibid.*) The inspection is logged electronically by the employee into the Gleason Automated Inspection System by an electronic fob scanned by a sensor when the employee is inspecting the area of the

store. (*Ibid.*; Basulto Decl. ¶ 2.) Additionally, plaintiff testified that she did not see what she slipped on, nor could she say how it came to be on the floor or how long it had been there. (Garcia Decl., Ex. A, "Deposition of Plaintiff" at 34:17-20, 45:18-24-46:4.) Accordingly, defendant contends that the only evidence presented is that it took reasonable steps to insure the safety of its patrons through regularly conducted, electronically logged, formal inspections of the store by a trained employee every 30 minutes.

It is plaintiff's burden to prove that defendant knew or should have known there was a hazardous condition on the floor. (*Ortega v. Kmart Corp.*, *supra*, 26 Cal.4th at 1205.) Defendant's evidence demonstrates that it lacked actual knowledge of the hazard. Plaintiff relies on *Getchell v. Rogers Jewelry* (2012) 203 Cal.App.4th 381, 386, to support her contention that constructive knowledge of the condition of the floor is imputed to defendant because it is exclusively under defendant's control. That reliance is misplaced. The court in *Getchell* held that, under the doctrine of respondeat superior, knowledge of a spill on the floor was imputed to the defendant employer where one can reasonably infer that the spill was caused by an employee. (*Ibid.*) The facts of this case are distinguishable from *Getchell*, where the spill was located in the break room, an area limited to employees, and the circumstantial evidence supported that an employee spilled the cleaning solution on the floor where plaintiff slipped. (*Id*. at p. 384.) In the case at bench, plaintiff fell on an unknown substance in an area open to the public. There is no evidence presented by plaintiff to support an inference that the substance could only have been caused by an employee.

In a slip and fall case, constructive notice is demonstrated by evidence supporting a reasonable inference that the hazard existed long enough to be discovered in the exercise of reasonable care. (*Ortega*, *supra*, 26 Cal.4th at p. 1207.) Ordinarily, whether a dangerous condition existed long enough for a reasonably prudent person to have discovered it is a question of fact for a jury. (*Ibid*.) In the instant case, however, the plaintiff has not disputed that she "does not know who caused the substance to be on the floor" (UMF No. 6), "does not know where the substance came from" (UMF No. 7), and "does not know how long the substance had been on the floor before she fell" (UMF No. 8). Plaintiff appears to concede that she does not have any evidence, circumstantial or direct, to present to a jury to argue that the substance existed long enough to have been discovered in the exercise of reasonable care. Although a defendant store owner's constructive knowledge of a dangerous condition may be inferred from a failure to inspect the premises within a reasonable time, speculation and conjecture are insufficient to sustain the plaintiff's burden on summary judgment. (*Ortega*, *supra*, 26 Cal.4th at pp. 1205-1206.)

The evidence demonstrates that the floor was inspected ten minutes before plaintiff slipped and fell and, at that time, it was clean and hazard free. (Agredano Decl., Ex. A, "Declaration of Jorge Orozco" at ¶ 3.) Plaintiff has not presented any evidence to dispute this fact. Plaintiff has presented no evidence that would support a reasonable inference that the hazard existed long enough to be discovered in the exercise of reasonable care. Therefore, defendant'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: KAG on 3/14/2022 .
(Judge's initials) (Date)